

# **OUR FUTURE OUR SELVES**

**ABORIGINAL AND TORRES STRAIT ISLANDER  
COMMUNITY CONTROL ,  
MANAGEMENT AND RESOURCES**

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE**

**ON ABORIGINAL AFFAIRS**

**AUGUST 1990**

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The photograph on the front cover is of the Mosaic Pavement of granite and mortar commissioned in 1987 for the forecourt of the New Parliament House.

Artist: Michael Tjakamarra Nelson

William McIntosh with Aldo Rossi and Franco Cocussi fabrications

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# TERMS OF REFERENCE OF THE INQUIRY

The Committee was asked to inquire into and report on the effectiveness of existing support services within Aboriginal and Torres Strait Islander Communities, including administrative and advisory services.

## MEMBERSHIP OF THE COMMITTEE (35th Parliament)

Chairman	Mr W E Snowdon, MP
Deputy Chairman	Mr W L Smith, MP <sup>1</sup>
Members	Mr C A Blanchard, MP <sup>2</sup> Mr I M D Cameron, MP Mr M D Cross, MP Mr G Gayler, MP Mr H A Jenkins, MP <sup>3</sup> Mr C G Miles, MP Mr R E Tickner, MP <sup>4</sup> Mr A P Webster, MP <sup>4</sup>
Secretary to the Committee	Mr D R Elder
Inquiry Secretary	Mr P Stephens
Inquiry Staff	Ms A Bloomfield Mrs J Jurek

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<sup>1</sup> Mr D M Connolly, MP resigned from the Committee on 1 December 1988 and was replaced by Mr M A Burr, MP. Mr Burr resigned from the Committee on 1 June 1989 and was replaced by Mr W L Smith, MP.

<sup>2</sup> Mr C A Blanchard, MP resigned as Chairman of the Committee on 6 April 1989 and was replaced by Mr W E Snowdon, MP.

<sup>3</sup> Mr G Campbell, MP resigned from the Committee on 18 August 1989 and was replaced by Mr H A Jenkins, MP.

<sup>4</sup> Mr J N Andrew, MP resigned from the Committee on 24 August 1988 and was replaced by Mr A P Webster, MP.

**MEMBERSHIP OF THE COMMITTEE (36th Parliament)**

Chairman	Mr D J C Kerr, MP
Deputy Chairman	Dr M R L Wooldridge, MP
Members	Mr J D Anderson, MP Mr J Gayler, MP * Mr G D Gibson, MP Mr M H Lavarch, MP Mr P E Nugent, MP Mr J L Riggall, MP Mr R W Sawford, MP Mr L J Scott, MP Hon W E Snowdon, MP Mr A P Webster, MP *
Secretary to the Committee	Mr A J Kelly
Inquiry Secretary	Mr P Stephens
Inquiry Staff	Miss S Hourigan Mr P Ratas

**MEMBERSHIP OF THE SUB-COMMITTEE**

Chairman	Hon W E Snowdon, MP
Members	Mr J Gayler, MP Mr A P Webster, MP
Sub-Committee Secretary	Mr P Stephens

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\* In order to complete the inquiry in the 36th Parliament, the Committee decided to form a sub-committee, onto which it co-opted 2 Committee members from the previous Parliament.



## FOREWORD

The work for this report was largely undertaken by the previous committee under the chairmanship of Alan Blanchard and later Warren Snowdon. The task has fallen to this committee to complete the consideration of the report. To assist in this task two members of the previous committee, Alasdair Webster and John Gayler, agreed to be additional members of the committee for this purpose. On behalf of the committee I would like to thank Warren Snowdon for the considerable effort he has put into the preparation of the draft report and in chairing the sub-committee in this Parliament. I also thank the other members of the committee and the secretariat for their efforts to complete the report.

Duncan Kerr  
Chairman



## PREFACE

The production of this report marks the completion of a comprehensive Inquiry by the Standing Committee into the effectiveness of support services within Aboriginal and Torres Strait Island communities' management.

The Committee is indebted to the patience of the Aboriginal and Islander people who assisted with the Inquiry and welcomed us into their communities and organisations. It goes without saying that without their support this report would have been meaningless.

"Our Future, Our Selves" - develops many of the issues raised in the most recent of the Committee's reports - "A Chance for the Future" tabled as part of this Inquiry.

Together these reports make it starkly obvious that there has been insufficient effort in marrying the Government's policies of Aboriginal self-determination and self-management with appropriate planning and management mechanisms to ensure Aboriginal and Islander people have the means to the control, that they desire, over their lives.

It is apparent that the consultation process has been largely ineffective, inevitably reacting to the desired outcomes of Government being reached. It has not been a process where dialogue is a feature. Rather it has been one where views from above have been imposed. It is obvious that the consultation process should be based on negotiation when Government and other agencies deal with Aboriginal and Islander people. Negotiation is necessary if meaning is to be given to self-determination.

It is a matter of concern that there has been insufficient effort to co-ordinate Government programs for Aboriginal people, or to provide them with the means to be fully and actively involved in the policy development process.

The establishment of ATSIC should provide the necessary stimulus to governments and other service providers, to recognise and support ATSIC's central role in co-ordinating the development and administration of Aboriginal Affairs policy.

Central to the recommendations of the Committee is the recognition of the need to provide Aboriginal and Torres Strait Islander people with access to the skills required to manage the affairs of their community and organisations.

The Committee's recommendations have as their key, the essential and underlying importance of community development and training strategies which together provide a basis for effective self-determination and self-management.

The Committee's work points to the crucial requirements for a rethink of how Governments fund Aboriginal communities and particularly towards the notion that the existing budget framework is the most appropriate means of funding Aboriginal and Islander communities and organisations.

It has also become increasingly obvious that there is a fundamental requirement that Government field personnel have appropriate and adequate training and understanding to carry out their important tasks.

It is clear that too little has been done to match the policy rhetoric with effective service delivery.

Much more needs to be done to translate the Government's policy commitments into administrative processes that meet the goals of policy and satisfy the needs and demands of Aboriginal people.

In this report, the Committee has again detailed the essential role of community plans in general community development.

It is important that these plans not be seen by service providers merely as a means for developing the physical infrastructure of communities. Such plans should be seen as covering the gamut of community interests and concerns. The context in which they should be developed is one of extensive consultation and negotiation so that they reflect the priorities and needs of the people with whom they are developed.

The negotiation processes in formulating these plans should not be done simply to satisfy the immediate management or funding priorities of government agencies or be limited by the time constraints of budgetary processes.

A feature of the Committee's work during this and previous inquiries has been the genuine bipartisan nature of its deliberations and subsequent recommendations. It is to the credit of committee members and the secretariat that consensus has been the order of the day, at a time when the public debate over Aboriginal Affairs has too often been polarised, with Aboriginal and Islander people, as before, being the victims of unremitting, ill-informed and baseless attacks.

During the early course of this inquiry Alan Blanchard MP was Chairman of the Committee, and while Alan is no longer a member of Parliament, his dedication and sense of fairness played an important part in setting the framework for the co-operative approach that has been a feature of the Committee's work.

The Committee's secretariat warrants special recognition, particularly the former secretary, David Elder, who was an extremely valuable source of knowledge and advice over a number of enquires. David no longer works with this committee, however it is appropriate that his dedication and assistance is recognised.

Of course the other members of the secretariat who had a formidable hand in this report, especially Peter Stevens and Auriel Bloomfield, also deserve mention, working so effectively within the constraints of a tight timeframe and an enormous amount of information. Peter has also left the committee and his valued input will be missed.

It is also relevant to acknowledge the work of the current committee secretary, Allan Kelly, in the final stages of the report's preparation.

Finally I would like to express by personal thanks to the committee for their support whilst I was chairman and particularly to John Gayler MP and Alasdair Webster MP who stayed on the committee to see this report completed.

Warren Snowdon MP  
Member for the Northern Territory



## CONDUCT OF THE INQUIRY

On 18 November 1987 the Minister for Aboriginal Affairs, the Hon. Gerry Hand MP requested the Committee to inquire into support services for Aboriginal and Torres Strait Island communities, with particular reference to the effectiveness of existing support of services, including administrative and advisory services.

The inquiry was advertised in national newspapers throughout Australia in late November 1987. The Committee sought written submissions from Commonwealth, State and Territory government departments and agencies which provided support services to Aboriginal and Torres Strait Islander communities.

During the course of the inquiry it became evident that the broad nature of the terms of reference allowed a wide variety of issues to be raised. Many interpreted the term "support services" as relating to Aboriginal and Torres Strait Islander needs for services ranging from the essential type, such as water, electricity and roads, to basic services such as education, employment, health and housing.

Having regard to the breadth of the inquiry's terms of reference the Committee was concerned to ensure that it concentrate sufficiently on the full range of issues. Accordingly, the Committee adopted an approach which allowed it to deal in detail with the diversity of issues which had emerged and to better target the major areas. This was achieved by dividing the broad terms of reference into a number of separate inquiries.

On 3 November 1988 the Committee tabled in Parliament an interim report outlining this approach and the diverse inquiry issues. The areas of education and training for community management were examined first and this report was presented to Parliament on 7 September 1989. On 28 November 1989 the Committee also tabled an issues paper dealing with Aboriginal people and mainstream local government.

At the conclusion of the 35th Parliament the Committee had substantially completed its work, although it had not considered a draft report. In order to finalise the report and complete the inquiry within the term of the 36th Parliament, the Committee formed a sub-committee, onto which it co-opted two members from the previous Parliament's Committee.

The present report focuses on the remaining issues identified in the interim report, namely Aboriginal and Torres Strait Island community management and control and resource services for Aboriginal communities.

Aboriginal community and local government councils visited by the Committee continually raised the issues of community control and their lack of authority within non-Aboriginal structures in relation to the decision making process. Their principal concern

was that decisions which have a vital effect on their lives on the and operation of the community councils are usually made by distantly located public servants with little or no consultation with the relevant community. Thus, although many organisations have been given enormous responsibility for making things work in their communities, they have not been given the authority or capacity to carry them through.

At the same time, Aboriginal community councils and Aboriginal and Torres Strait Island local government bodies are required to be accountable to a wide range of Commonwealth and State government agencies, under a variety of different heads of expenditure. A major difficulty of these agencies is the differing accountability requirements, which make the proper accounting for funds a complex administrative and financial task for Aboriginal communities.

To investigate these and other concerns, the Committee held public hearings in Canberra, Kintore (NT), Woorabinda (Qld), Brisbane, Perth, Adelaide, Sydney, Darwin and Alice Springs. The Committee examined 104 witnesses and took 1124 pages of evidence. A list of witnesses who gave evidence is at Appendix 2. The transcripts of evidence are available for inspection at the House of Representatives Committee Office, the Australian National Library and the Commonwealth Parliamentary Library.

The Committee received, and published 61 written submissions totalling 3508 pages. A list is at Appendix 1. The Committee also travelled extensively, visiting Aboriginal and Torres Strait Island communities throughout Australia. A list of the places is at Appendix 4.

In the latter stages of the inquiry the Committee engaged a number of consultants. Their advice was invaluable in the preparation of the final report. Details of the consultancies are provided at Appendix 5.

The inquiry was conducted during a period of major reform of the Commonwealth's administrative arrangements for Aboriginal Affairs. The submissions to the inquiry were made by the separate portfolio agencies now incorporated together under the Aboriginal and Torres Strait Islander Commission. For this reason the report refers occasionally to the former Department of Aboriginal Affairs and the Aboriginal Development Commission. Any recommendations, however, have been addressed to the new Commission where appropriate.

The Committee would like to acknowledge the assistance it received from all the witnesses and from many other individuals and organisations. In particular, the Committee is most grateful to the Aboriginal and Torres Strait Islander people and organisations who imparted so much valuable information and shared their concerns with the Committee during informal discussions.



## LIST OF RECOMMENDATIONS

### Structures for Aboriginal Control and Management

The Committee recommends that:

1. Governments acknowledge that to give effect to policies of self-determination and self-management it is necessary to reappraise the effectiveness of existing structures and methods of dealing with Aboriginal and Islander people. Such a reappraisal should:
  - . acknowledge that the process of consultation has generally not given rise to genuine dialogue and has largely been ineffective; and
  - . accept the need for policies and outcomes to be determined by a process of negotiation, which better accords with traditional decision making processes.

The Committee recommends that:

2. A number of general principles should be observed by governments when establishing structures for Aboriginal people. These include:
  - . the process of negotiation with Aboriginal people should replace the current process of consultation;
  - . when negotiating structures, governments should avoid placing undue pressure on Aboriginal people in such a way as to achieve an outcome that would conform to established government policy or to meet a government imposed timetable;
  - . structures must be compatible with local Aboriginal aspirations and affiliations;
  - . the term 'community' needs to be defined broadly to take account of social, historical and cultural linkages;
  - . structures should emerge from, and be supported by, the people they represent or for whom they operate; and
  - . structures should be recognised within the broader power structure of Australian society.

## From Consultation to Negotiation with Aboriginal People

The Committee recommends that:

3. Government departments and agencies examine their processes of communication with Aboriginal people to:
  - . make greater use of a 'plain English' style in documents and correspondence in their dealings with Aboriginal communities;
  - . make greater use of radio and the range of visual media such as video, television, comics, posters etc;
  - . where possible and appropriate engage qualified interpreters;
  - . where appropriate encourage staff to study Aboriginal languages and, as a minimum, make a cross cultural awareness a precondition for appointment.
4. Negotiations on policies and programs involve Aboriginal people at the appropriate level - from national through to local - in all discussions towards a settlement of terms.
5. The Aboriginal and Torres Strait Islander Commission develop guidelines for negotiation that can be used by the range of departments and agencies that have dealings with Aboriginal communities and organisations.
6. Reference to negotiation be included in the corporate plans of Commonwealth departments and agencies which have contact with Aboriginal communities and organisations.
7. The Aboriginal and Torres Strait Islander Commission develop appropriate training packages for the range of staff involved in negotiation with Aboriginal communities and organisations.

8. Any training packages developed by the Aboriginal and Torres Strait Islander Commission be distributed for use by other agencies involved with Aboriginal communities.

#### Women

The Committee recommends that:

9. the report *Womens's Business* be the subject of a follow-up review to update its findings and determine the extent to which its recommendations have been adopted
10. there be at least one Aboriginal women in the Office of the Status of Women
11. the Aboriginal and Torres Strait Islander Commission pay greater attention to the needs of women and ensure that their views are actively sought
12. The Office of Aboriginal Women develop guidelines:
  - . to ensure adequate representation of Aboriginal women in decision-making forums;
  - . to ensure that all new policies and programs are reflective of the needs of Aboriginal women; and
  - . against which all current policies can be reviewed for their effectiveness and implications for Aboriginal women.
13. These guidelines be circulated to all agencies involved in service delivery to Aboriginal people.
14. The Aboriginal and Torres Strait Islander Commission immediately undertake a review of resources required to adequately co-ordinate and monitor programs and policy for their effectiveness and impact on Aboriginal women; and
  - . that the findings of the review be implemented and adequately funded to facilitate improvements in service delivery where identified.

#### Co-ordination

The Committee recommends that:

15. The Aboriginal and Torres Strait Islander Commission examine the economic cost of ineffective co-ordination.

16. The Commonwealth renegotiate agreements with the States and Territories over their respective roles and responsibilities for the delivery of services to Aboriginal people, in line with the general thrust of the report of the Human Rights Commission.
17. As the Aboriginal and Torres Strait Islander Commission develops its structures and administrative capacities, Commonwealth, State, Territory and local governments view the Aboriginal and Torres Strait Islander Commission as the co-ordinating agency for working with Aboriginal people.
18. All Commonwealth agencies involved in service delivery to Aboriginal people improve co-ordination activities of their field staff, particularly in terms of visits to remote communities.
19. Commonwealth, State and Territory government agencies develop mechanisms to rationalise their discussions with, and visits to, Aboriginal communities with a view to reducing the number of visits.
20. The Aboriginal and Torres Strait Islander Commission and the Department of Employment, Education and Training develop a proposal for the implementation of an amalgamated field officer structure.
21. The Commonwealth conduct a formal review of the effectiveness of all bureaucratic co-ordination mechanisms with the States and Territories in the area of Aboriginal affairs with a view to the Aboriginal and Torres Strait Islander Commission being given responsibility for co-ordination.
22. The question of mainstreaming of service delivery be negotiated between governments and Aboriginal people.
23. Training packages be developed by appropriate institutions for the training of government agency and community employed staff in community planning and other issues relating to community development.
24. Government agencies assist Aboriginal people to develop broad-ranging community plans which identify political and administrative requirements, infrastructure and service needs in local regions and which also reflect social, economic and cultural aspirations.
25. These plans, once developed, form the basis for co-ordinated action by government agencies in a region.
26. Commonwealth, State and Territory Governments develop organisational funding arrangements which are compatible with community development plans.

## Funding

The Committee recommends that:

27. The Commonwealth, in conjunction with the States and Territories, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations.
28. Commonwealth, State and Territory governments implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.
29. The Aboriginal and Torres Strait Islander Commercial Development Corporation support enterprises where they have the clear potential to generate additional income and employment within communities.
30. Training for involvement in enterprises be provided to Aboriginal people.
31. The management structures for enterprises reflect the broad principles set out Chapter 3.
32. The Commonwealth, State and Territory governments provide ample opportunity for Aboriginal and Torres Strait Islander communities to participate in contract work in and around their community.
33. Commonwealth, State and Territory government departments and agencies develop guidelines, where none exist, to facilitate the participation of Aboriginal and Torres Strait Islander communities in contract work. These guidelines should include:
  - . methods of directly informing communities of local tendering opportunities; and
  - . the provision of preferential tendering arrangements.
34. Relevant Commonwealth departments and agencies provide details in their annual reports of tenders let to Aboriginal communities and organisations.
35. Where a community is unsuccessful at a particular tender, the Commonwealth, State or Territory government agency responsible for the letting of the contract provide the community with a written explanation of the reasons why it was unsuccessful.
36. (DELETED)
37. The issues associated with the divestment of community-owned Aboriginal land to individuals and corporations

for their exclusive use be further investigated.

- 37A A formula be devised to establish an appropriate rate levy to the community - similar to the local government rates that would otherwise be payable - for the use of divested land.
38. In addition to normal funding to Aboriginal community councils Commonwealth, State and Territory government departments and agencies make full payment for local government services used for all facilities that they occupy in those areas.
39. Commonwealth, State and Territory governments recognise the infrastructure and resource deficiencies in Aboriginal communities and allow them to carry over funding where necessary without prejudice to their level of funding.
40. As part of this recognition, funding of Aboriginal communities and organisations be supplemented to allow for the orderly replacement of capital assets.
41. The Aboriginal and Torres Strait Islander Commission, in conjunction with the Commonwealth Office of Local Government, determine an appropriate mechanism for funding infrastructure deficiencies in Aboriginal communities.

### Accountability

The Committee recommends that:

42. As a matter of urgency the Commonwealth develop uniform accounting procedures for grants to Aboriginal and Torres Strait Islander communities and organisations
43. All government agencies negotiate with funded communities the development of appropriate performance indicators for programs and put in place performance monitoring and assessment mechanisms that have significant Aboriginal input.
44. Further research on the development and appropriate use of performance indicators be undertaken by ATSIC.
45. Commonwealth and State and Territory Governments strengthen the accounting and financial reporting capacities of Aboriginal communities and organisations by:
- . providing sufficient funding to communities and organisations to enable them to perform this function, which is required of them by funding agencies;
  - . assisting communities to develop simple but efficient accounting and financial reporting

systems; and

developing and implementing appropriate training programs for Aboriginal bookkeepers and other personnel working with Aboriginal organisations.

#### Community Advisers and Community-based Staff

The Committee recommends that:

46. Any job advertisements for community-based positions make it clear that the community is an Aboriginal or Torres Strait Islander community.
47. Eligibility requirements include the ability to communicate and operate effectively with Aboriginal and Torres Strait Islander people and sensitivity to the issues confronting them.
48. Where accommodation is provided in a community to an officer who performs a particular function, it be made available to the occupant of the position irrespective of whether the person is from the community or elsewhere.
49. With the promulgation of an industrial award for Aboriginal community workers and employees of Aboriginal organisations, the Commonwealth and Northern Territory governments fully fund the communities and organisations so that they are able to meet their obligations without a reduction in services.
50. Guidelines applicable to the operations of community-based staff be developed.
51. These guidelines should include a clear statement that the primary responsibility of community-based staff is to the Aboriginal organisation which employs them.
52. Where no award exists, all community-based staff be employed on the basis of written contracts which outline in detail job specifications and duties which could form the basis for monitoring the performance of staff.
- 52A. Where community-based staff are employed under an award, a detailed job specification and duty statement, consistent with the award and agreed between the staff member and employing community, would assist both parties in performance monitoring.
53. Recruitment of appropriate staff be recognised as integral to the successful development of a community or organisation and that funds be made available to enable more rigorous and professional selection of staff.

54. Commonwealth, State and Northern Territory governments fund the establishment of training courses for staff employed by Aboriginal community councils and organisations prior to their appointment to provide them with the necessary skills and knowledge to enable them to effectively perform their role; and that
- . these courses be officially accredited and lead to a recognised qualification; and
  - . existing community advisers and other staff be encouraged to undertake such courses once they are established.
55. The Aboriginal and Torres Strait Islander Commission, in association with other appropriate bodies, develop short training packages suitable for community advisers and other staff that can be implemented on a regional basis.
56. Once training courses are established, course qualifications should be considered as highly desirable for community employment.
57. The basis for staffing Aboriginal communities and organisations be identified along with training needs in the process of developing community or organisational plans.

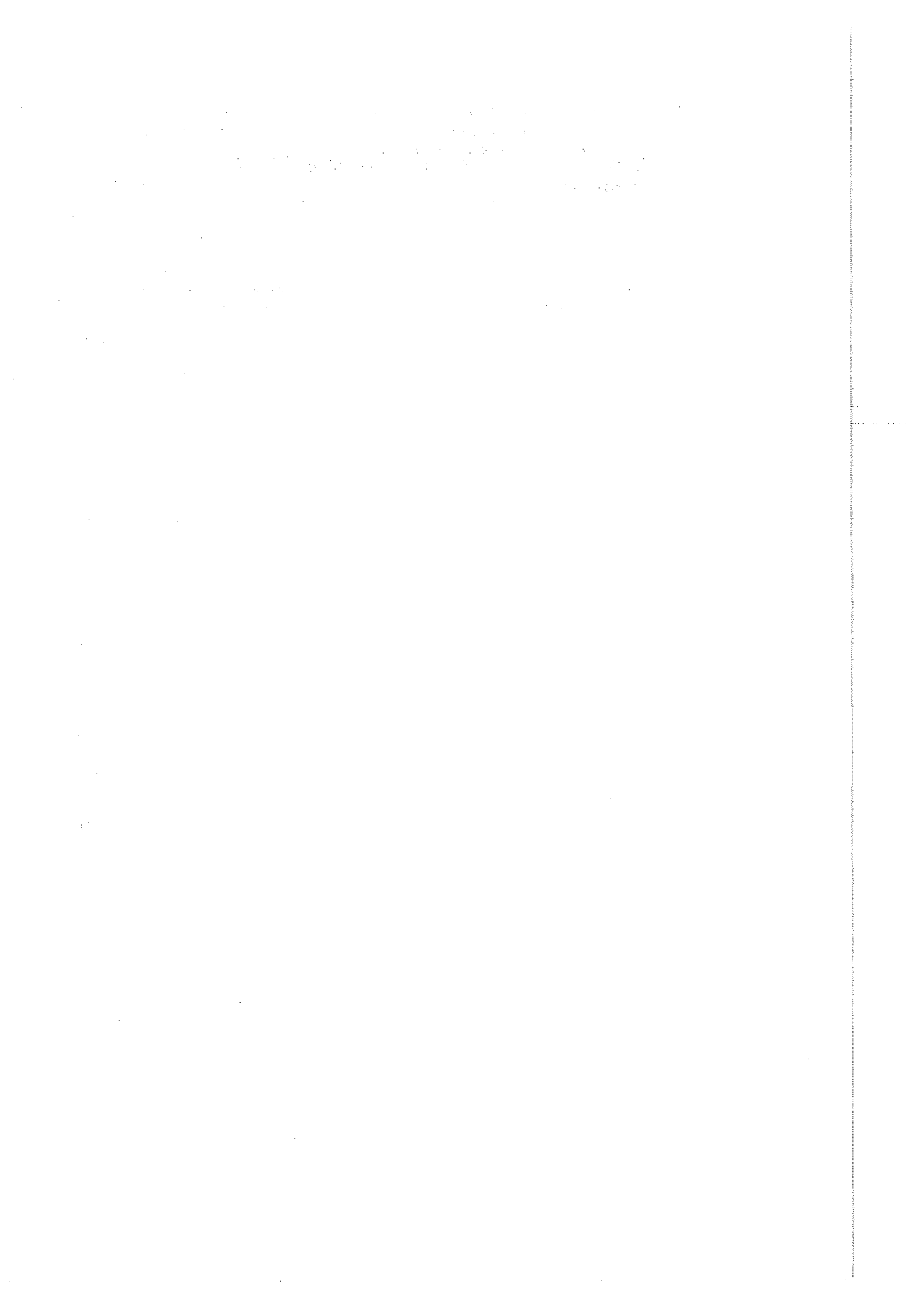
#### Resource Agencies

The Committee recommends that:

58. Resource agencies which have a primary objective of developing skills and assisting their client group to increase self-determination and self-management, be provided with funding subject to negotiated performance indicators being met.
59. Funding be provided to organisations at a sufficient level to enable them to purchase the necessary expertise, whether it be through an Aboriginal or non-Aboriginal service.
60. Training for Aboriginal people in organisation and community management be a priority for government agencies and be concurrent with all program funding, particularly the programs of resource agencies.



61. The Commonwealth Department of Employment, Education and Training ensure that funding is made available to Aboriginal resource agencies to provide them with the capacity to deliver training programs to small communities such as homeland centres and excision communities which do not have ready access to centralised training centres provided by State and Territory Departments of Education and TAFE.
62. The role of resource agencies be identified in the community planning process and adequately funded to bring policy and practice closer together.



## CHAPTER 1

### SELF-DETERMINATION, SELF-MANAGEMENT AND ABORIGINAL PEOPLE

#### *Historical background - towards self-determination*

1.1 Aboriginal society operated traditionally under a framework with a complex system of traditional laws involving family relationships, rights and obligations. These were heavily based on kinship and traditional relationships with the land, and on a tight social structure prescribing individual obligations to other family members and the land. It included a strong authoritarian hierarchy based on traditional knowledge. The more tangible manifestations of governance controlling secular affairs, such as councils, did not exist. These traditional systems have been replaced by, or overlaid with, successive non-Aboriginal forms of governance.

1.2 From Federation until the 1960s the dominant policy frameworks adopted by governments throughout Australia in relation to Aboriginal people were those of protection and assimilation in succession. The impetus for protection grew out of a belief that Aboriginal people would die out. At times it was fuelled by the desire to prevent the sustained violence and brutality inflicted on Aboriginal people and to halt the disease, depopulation and demoralisation that was affecting them. The provisions of protective legislation adopted during this period were broadly similar in each State and were both paternalistic and coercive.

1.3 A chief protector was empowered to remove Aboriginal people from urban areas to Aboriginal reserves and to compel them to remain there. Association with Aboriginal people was strictly controlled by forbidding unauthorised persons to enter reserves. Marriages needed the approval of the protector, in some cases Aboriginal property was placed in official hands and children were forcibly removed from their parents. Protective legislation defined who were Aboriginal persons and effectively transformed their status into a class of Australians, without the rights accorded to the rest of the community.<sup>2</sup> The policies of protection meant that Aboriginal people exercised little or no control over the management of their affairs and lives and they were held in a state of dependency.

1.4 From the late 1930s through the 1950s the policy of protection continued but was being supplanted gradually by assimilation. In September 1951 the Native Welfare Council, comprising Commonwealth and State ministers, met in Canberra and

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<sup>1</sup> Herein after reference to Aboriginals is meant to include Torres Strait Islanders

<sup>2</sup> Report of the the Aboriginal Women's Task Force, *Women's Business*, Office of the Status of Women, pp. 101-102

issued the first official statement on the policy of assimilation. The objectives of the policy were more clearly spelt out later by the council in a statement saying that:

... in the view of all Australian Governments ... all Aborigines and part-Aborigines are expected eventually to attain the same manner of living as other Australians and to live as members of a single Australian community, enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs,<sup>3</sup> hopes and loyalties as other Australians.

1.5 Protection and assimilation policies saw Aboriginal people relocated often away from their traditional lands in 'central' settlements where it was considered they could be protected and taught to take up life in the general Australian community - either government or mission-controlled settlements, they were characterised by a lack of any Aboriginal involvement in decision making or management. In the view of one commentator:

... the structure of life is imposed from outside; social changes have been implemented, suddenly, from outside with no reference to the Aborigines living in the communities and often poorly understood by them ... The staff are the directors and controllers; the Aborigines are the directed and controlled.<sup>4</sup>

1.6 Significantly, these were artificial communities which bore no relationship to traditional Aboriginal residential situations. Traditional patterns of interaction were upset and confused and some settlements were characterised by dissension and conflict. Differing clan and language groups who traditionally would not have resided together (and may even have been enemies) were forced to interact and even intermarry within many settlements. In many communities these problems are still being felt today. Differing groups also developed varying levels of engagement with the non-Aboriginal managers of settlements with some groups having close associations while others remained very much outsiders. Those groups that were closer to the authority in settlements tended to be the major beneficiaries of any employment or services available. This has left a legacy of communities with a range of interest and traditional groups whose needs have to be reconciled within the governing structures imposed from outside and with which the communities are expected to run their own affairs.

1.7 While Aboriginal people had little involvement in the running of settlements as non-Aboriginal institutions, some were

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<sup>3</sup> *ibid*, p. 105.

<sup>4</sup> J. Von Sturmer, 'The place of the community in the educational process: two Aboriginal settlements in Cape York, *The Aboriginal child at school*, Vol. 1(2), 1973, pp. 6-7

able to retain a level of autonomy over their internal affairs within the settlements. As Tonkinson notes about one community in Western Australia: 'Within the broad constraints of the contact situation, the Aborigines are largely free to run their internal affairs with a minimum of direct interference from outside agencies.'<sup>5</sup> The distinct separation between the running of the settlement as a European institution ('whitefella business') and the regulation of social and cultural relationships of Aboriginal people in the settlement ('blackfella business') was thus a feature of this particular settlement from its inception.

### Self-determination and self-management

1.8 The referendum of 1967 provided the Constitutional basis for Federal Government involvement in Aboriginal affairs. In this period the Federal Government was moving away from assimilation towards a policy that would give Aboriginal people the right to retain their own values and lifestyles and determine their own future within the Australian community. This change in direction was reflected in a statement by Prime Minister McMahon of a new Aboriginal policy for his Government that would encourage and assist Aboriginal people 'to preserve and develop their own culture, languages and traditions and art'. Aboriginal people were also to have 'effective choice about the degree to which, and the pace at which, they come to identify themselves with [Australian] society' and be encouraged increasingly to manage their own affairs - 'as individuals, as groups and as communities at the local level'.<sup>6</sup>

1.9 This change in policy direction was taken further by the Whitlam Government elected in late 1972 and became incorporated in a policy of 'self-determination'. The approach of self-determination, as enunciated by the Labor Government, recognised the authenticity of Aboriginal culture as a distinctive part of Australian society. Self-determination was concerned with achieving greater equality and equality of opportunity for Aboriginal people. It also envisaged Aboriginal people deciding the pace and nature of their future development within the broader framework of Australian society.<sup>7</sup>

1.10 The concepts of 'self-management' and 'self-sufficiency' were first enunciated during the period of the Fraser Government, and, although the terms are often used interchangeably, the shift from self-determination to self-management and self-sufficiency represents an increasing emphasis

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<sup>5</sup> R. Tonkinson, *The Jigalong Mob: Aboriginal Victors of the Desert Crusade*, Cummings Publishing Company, 1974 p. 62

<sup>6</sup> Quoted in W Sanders, *From self-determination to self-management*; in P Loveday (ed), *Service Delivery to Remote Communities*, NARU, Darwin, 1982, p. 5

<sup>7</sup> *ibid*, p. 6 and L Lippmann, *Generations of Resistance: for Aboriginal Struggle for Justice*, Longman Chesire, Melbourne, 1981, p. 73

on Aboriginal people being responsible as managers of their own affairs in addition to being involved in decision making and determining their own future.

#### Difference between self-determination and self-management

1.11 A consultant to the Committee noted in a seminar conducted to discuss issues relating to community management and control that:

... there is a distinction ... in broad terms between self-determination, which I think has a self-governing component to it, and self-management which is a much more administrative notion which I think fits a framework of local government.<sup>8</sup>

1.12 The distinction between the terms is important with 'self-management' focusing on efficient administration of communities and organisations. 'Self-determination', on the other hand, goes beyond this and implies control over policy and decision making, 'especially the determination of structures, processes and priorities'.<sup>9</sup>

1.13 The difference between the two concepts often provides a dilemma for government agencies. If an Aboriginal organisation encounters problems pressure is placed on government officials to intervene in the self-management process and rectify matters. By doing this, however, Aboriginal people may end up sacrificing self-determination as control of their affairs is transferred out of their hands. This problem is discussed further in Chapter 8.

1.14 From a government perspective the term 'self-determination' is often used to indicate the involvement of Aboriginal people in decision making. On the other hand, Aboriginal people have used one or other of the terms as a yardstick in order to demonstrate where government policy falls short of such expectations. At times Aboriginal people and governments have talked past each other because they have used terminology loosely.

1.15 This report is about both self-determination and self-management. It is about how Aboriginal people can have more effective control over decision making processes which affect their communities and be in a stronger position to determine priorities. It is about governments and agencies negotiating with Aboriginal people on the policies and programs affecting their social and economic status rather than seeing a continuation of what has hitherto been seen as consultation. It is also about how Aboriginal people can more effectively and efficiently manage and administer their organisations and communities.

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<sup>8</sup> Transcript of proceedings of seminar in Brisbane, 11-12 January 1990, p.4

<sup>9</sup> Dr J. Bern, Community Management and self-determination, p. 3

## Problems with existing policies

1.16 The Committee noted in its previous report that the implementation to date of policies of self-determination and self-management has been somewhat disappointing and frustrating for Aboriginal people.<sup>10</sup> As the organisation principally responsible for these policies, the former Department of Aboriginal Affairs stated that self-determination had become a reality in some areas with capable community leadership and community councils providing effective decision making. The department also noted, however, that 'many Aboriginal communities have yet to make the transition to self-determination.<sup>11</sup> More disturbing was the conclusion that, in some cases, communities are 'just as dependent upon outside agencies as they have been in the past, despite the implementation of the policy of self-determination.<sup>12</sup>

1.17 The department was not alone in pointing to the failure of self-determination and self-management policies in many circumstances. Sullivan, for example, noted that those communities in most need are also those least able to implement any form of effective self-management in non-Aboriginal terms:

Their needs are greatest because their residents are the least acculturated to European systems and predominantly neither literate, numerate, nor proficient in spoken English. On the other hand, those groups able to function within the terms of the policy, through the use of advisers or the few educated Aboriginal representatives, frequently present the administration with inconvenient decisions which are disqualified on the grounds of not being 'really Aboriginal'.<sup>13</sup>

1.18 He also noted that Aboriginal people in communities with the greatest needs may even be unable to enforce recognition of their needs, and also lack the instrumental ability to achieve fulfilment.

1.19 Paradoxically some communities, such as those described above, lack the expertise and knowledge to be self-managing and may find that they are worse off if required to administer their own communities. The capacity of a community to make its own decisions is different from its capacity to make those decisions work. This again raises the importance of the distinction between self-determination and self-management referred to earlier. For

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<sup>10</sup> *A Chance for the Future*, p. 9.

<sup>11</sup> Transcript of Evidence, p. S237.

<sup>12</sup> Transcript of Evidence, pp. S253-S254.

<sup>13</sup> P Sullivan. The Generation of Cultural Trauma: what are Antropoligists for? Australian Aboriginal Studies 1986 number 1, AIAS, p.14

example, a community which possesses the skills for effective self-management and which wishes to assume management of its community, can find that it lacks the authority or power to determine its own priorities, instead having these dictated by outside agencies.

1.20 The reasons for the failure of policies of self-determination and self-management are complex, as the earlier discussion indicates. This can be attributed to two broad reasons:

1. A failure on the part of government agencies to implement policies effectively by empowering Aboriginal communities and organisations to control their futures; and
2. Difficulties within Aboriginal communities that place obstacles in the way of Aboriginal people achieving self-determination and self-management.

1.21 The failure of governments to implement policies effectively was recognised by the Department of Aboriginal Affairs in the following terms:

1. A number of agencies which provide services to Aboriginal communities need to improve their performance to provide more effective and appropriate services in a more co-ordinated fashion.
2. There is a need to develop appropriate and sensitive executive management infrastructures to facilitate genuine self-determination.<sup>14</sup>

1.22 The problems created by the failure of governments to implement policies effectively include:

- . inadequate consultation and the failure of government agencies to negotiate with Aboriginal people;
- . poor co-ordination and confusion in administrative arrangements between the plethora of government agencies involved in Aboriginal affairs;
- . restrictions on how bodies can spend funds;
- . the existence of structures for running Aboriginal affairs which are inappropriate, having been imposed by government agencies; and
- . the fact that most of the structures available to Aboriginal people are based on a concept of 'community' which fails to recognise some important features of Aboriginal society.

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<sup>14</sup> Transcript of Evidence, p. S253.



It is also apparent to the Committee that governments have failed to ensure that that staff are qualified and appropriately trained so that they are sensitive to the needs and wishes of Aboriginal people. These problems are elaborated later in the chapter.

1.23 As for those difficulties found within the communities themselves, the Department of Aboriginal Affairs noted that some communities are characterised:

... by a lack of motivation and involvement, on the part of community members, in management processes of all kinds. This general lack of involvement and reluctance to take on management roles minimises the effectiveness of services that are provided, prevents the development of functioning community councils and generally places almost insuperable obstacles<sup>15</sup> in the way of the transition to self-determination.

1.24 The department attributes many of these problems to different values which are essential elements of Aboriginal culture and include 'regard for kinship obligations and decision-making processes and the relative unattractiveness of onerous boring administrative work in terms of Aboriginal priorities in more traditional communities.'<sup>16</sup> As well as cultural factors it must also be acknowledged that a perception by Aboriginal councils and organisations that priorities are being decided elsewhere may affect their motivation to get involved in community affairs.

1.25 Associated with these cultural factors, submissions have also pointed to Aboriginal people's lack of skills - such as English literacy, numeracy, etc - and their lack of knowledge about how the governmental system works, as major obstacles to the achievement of self-determination or self-management.

1.26 The result has been a lack of instrumental capacity on the part of Aboriginal people to manage their communities and to effect outcomes that they desire. This situation has been reinforced by the effects of long-term dependency, Aboriginal and Torres Strait Islander communities having spent years under non-Aboriginal management with little input into their own affairs.

1.27 In the remainder of this report the Committee addresses the obstacles to self-determination and self-management in terms of what is happening at the government level and at the community level. Some brief discussion follows in the remainder of this chapter.

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<sup>15</sup> Transcript of Evidence, p. S253.

<sup>16</sup> Transcript of Evidence, p. S254.

## Education and training

1.28 In its previous report, *A Chance for the Future*, the Committee dealt with education and training for community management. The Committee found that many existing training programs are ad hoc and have provided communities with few of the skilled people they require for the range of responsibilities they either wish or are expected to assume.

1.29 The Committee strongly supported the need for a comprehensive approach to training in Aboriginal communities. As part of the implementation of such an approach, better co-ordination needs to be achieved between agencies involved in providing training at the community level - where the effects of poor co-ordination have their most obvious impact.

1.30 The Committee acknowledged in its report that current approaches to training have made concessions to Aboriginal people's differing needs in some cases. Some educational institutions have responded in sensitive ways to Aboriginal needs by establishing enclave programs to support Aboriginal students and by utilising on-site methods of delivery of programs. Nonetheless, the Committee urged the adoption of more community-based training which it considers to be the most effective long-term approach.

## Consultation

1.31 The implementation of policies of self-determination and self-management, whether by Commonwealth or State and Territory governments, has often been hurried and undertaken without sufficient consultation. This, in itself, represents a strong contradiction: the imposition of programs, policies and structures without adequate consultation is inconsistent with the notion of Aboriginal communities being self-determining and having the ability to influence and control their affairs. At a more practical level the success of consultation relates directly to the success of a particular program in a community and vice versa. This view was expressed by the South Australian Government which noted that:

effective consultation is the key element in the realisation of policies (engendered by State and Federal Governments) of self-determination and self-management for Aboriginal communities. The effective delivery of services to communities is dependent on the use of satisfactory consultative processes, enabling the articulation of needs to be properly conveyed.<sup>17</sup>

1.32 The question of consultation and the need for negotiation with Aboriginal people is discussed in Chapter 4.

## Co-ordination

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<sup>17</sup> Transcript of Evidence, p. S2295.

1.33 Similarly, inadequate co-ordination of programs for Aboriginal communities is a major obstacle to both self-determination and self-management. There is a plethora of government agencies at the Commonwealth, State and Territory levels, all providing services to Aboriginal communities. Non-government agencies also play a role. In part, the breakdown in co-ordination is due to jurisdictional difficulties and policy conflicts, such as the conflict between 'mainstreaming' and providing services from agencies with a specialist brief for Aboriginal people. Problems also occur because of poor inter- and intra-agency communications, the failure of bureaucratic mechanisms and a shortage of appropriately trained and committed field officers. Whatever the reasons, it is inevitably Aboriginal communities that bear the brunt of inadequate co-ordination.

1.34 The Committee discusses the issue of co-ordination in Chapter 6. It argues in this report that the process of co-ordination needs to be reversed so that government agencies listen more to what communities want and act on these needs rather than the other way around where communities and organisations are required to fit into existing programs irrespective of their own priorities. To this end, the Committee advocates that co-ordination at the community level take place within a process of developing long-term community plans which embrace the socio-economic, cultural and physical objectives of communities. The question of community planning is discussed in Chapter 6 of this report. Such an approach is more consistent with the policy of self-determination.

#### **Funding**

1.35 The Committee recognises that there are limits to the overall level of funding for Aboriginal communities. There are, however, a number of funding issues of concern to Aboriginal people which the Committee addresses in this report. These include the need to maintain a consistent level of funding to communities and organisations, the effects of cut-backs, the capacity to generate revenue, problems associated with dependence upon multiple funding sources and the need to manage large sums. The Committee addresses these matters in Chapter 7 and proposes some methods of streamlining funding processes and enhancing Aboriginal control over this money. The Committee's recommendations are consistent with its arguments for improved co-ordination of programs and policies.

1.36 The problem of inadequate resources is compounded by the relative poverty of Aboriginal communities when compared with the general Australian community. Levels of Aboriginal unemployment and dependency on social welfare payments are exceptionally high. Consequently, Aboriginal people generally have low incomes, few assets and little capital. This means that they are not in a position to make large investments in community infrastructure and services that could raise the quality of infrastructure and services. Nor can they fund the development

of enterprises that would generate private income. Thus the dependency on government funding must remain a feature of Aboriginal community management and development for the foreseeable future. Inevitably this will limit the degree of self-determination and self-management Aboriginal communities are able to achieve.

#### **Advisory services**

1.37 In the move towards self-determination community advisers replaced superintendents and managers as the primary source of non-Aboriginal expertise in Aboriginal communities. At the same time, few Aboriginal communities were provided with the community facilities and infrastructure required to set them up as self-managing entities. At the time of handover of management responsibilities, community facilities were often run down, insufficient to meet needs and complex to operate and maintain. This made it difficult for fledgling community councils to manage efficiently these resources and created a dependency on non-Aboriginal expertise to enable them to operate facilities.

1.38 However, advisers have often lacked management, administrative and community development skills. In addition, the poor conditions of service and inadequate career structure of which most operate under have made it difficult to recruit applicants and retain quality staff. Other non-Aboriginal staff employed in communities to provide specialist skills and expertise face similar problems. As a result, many Aboriginal communities have not had available to them the human resources they need to make self-management work. The role and functions of advisory and other expert staff available to Aboriginal communities is considered in Chapter 9.

#### **Resource agencies**

1.39 The Committee also addresses the role of the range of resource agencies operating throughout Australia. In some areas these bodies fulfil primarily an advisory role to communities. However, in many other parts of Australia resource agencies play an important part in providing services to communities. For many Aboriginal people living on cattle properties, excisions, outstations or in town camps, resource agencies are the main bodies (or only body) responsible for the delivery of services. Resource agencies have proved to be a cost-efficient means of delivering services to Aboriginal people and they offer scope for increasing Aboriginal control over available resources and services. The role of resource agencies is discussed in Chapter 10.

#### **Potential conflicts with Aboriginal values**

1.40 As previously mentioned, it is also necessary to look within Aboriginal communities themselves for factors which may limit the achievement of self-determination and self-management in the way in which the policies have been implemented at the community level. There tends to be a false assumption in the theory of self-determination that if Aboriginal people take charge of their own affairs, their social and economic circumstances will improve. The point needs to be made that a

potential conflict exists between Aboriginal cultural and political demands and the requirements of efficient administration and 'rational' decision making. That is to say, conflict potentially exists between the objective of promoting Aboriginal control over their own affairs, or self-determination, and the bureaucratic requirement placed on Aboriginal communities to be self-managing.

1.41 Aboriginal people have a wide range of kinship connections which impose varying degrees of obligation on them. These obligations can make it difficult for Aboriginal people, particularly those living in a traditional community, to operate as disinterested administrators or managers. As Dr Altman noted, Aboriginal office holders and employees are faced with a dilemma in these situations and can place greater importance on their accountability to kin in terms of meeting obligations to them than on their accountability to external funding authorities in terms of ensuring that public funds are equitably and appropriately spent.<sup>18</sup> This can lead to further reliance on non-Aboriginal staff who are not inhibited by the same obligations.

1.42 The problem is deeper than simply the existence within communities of differing sectional interests. It concerns the translation of a non-Aboriginal concept of representative government into Aboriginal society. Myers notes that in Aboriginal society the individual's sense of obligation to others is not accomplished through a commitment to a corporate aggregate such as a 'community' and its representative council, but rather by a duty to specific people to whom one is related.<sup>19</sup>

1.43 From the Aboriginal perspective then, community councils can lack authority. Consequently it can be difficult to see community councils as embodying or 'representing' their communities in the same way as representative governments in non-Aboriginal society are seen as representing 'the people'. Aboriginal councils often cannot speak for all community members, nor enforce decisions that they reach, as individual community members retain the right to their own voice.

1.44 The essence of the problem relates to the structures available for self-determination and self-management. Community councils are usually non-Aboriginal bodies grafted onto Aboriginal communities for the purposes of self-determination and self-management with varying degrees of success. These matters will be addressed in Chapter 3.

1.45 In order to gain a better understanding of these complex issues the Committee decided to engage the services of several consultants with expertise in this field. Their advice has proved invaluable and is reflected in the Committee's

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<sup>18</sup> Transcript of Evidence, p. S2218.

<sup>19</sup> F R Myers, *Illusion and Reality: Aboriginal self-determination in Central Australia*; in Schire and Gordon (eds), *The Future or Former Foragers in Australia and South Africa*, Cambridge, 1985, p. 110

findings.

### The meaning of self-determination and self-management

1.46 What then should be the response to these problems? Is it time to abandon the whole approach of self-determination and self-management which, in its essence, is concerned with empowering Aboriginal people to manage their communities within the context of contemporary Australian society? The answer to this question must be no, for a number of reasons: despite the problems it is evident that a great deal has been achieved over the past 20 years; and, more importantly, self-determination remains the approach most favoured by Aboriginal people themselves. What is needed is a sorting out of what policies of self-determination and self-management should involve for Aboriginal people, and, of the important distinction between both terms and a clear direction on how the policies can be implemented effectively to reflect the wishes of Aboriginal people.

1.47 In its previous report, *A Chance for the Future*, the Committee considered the essence of self-determination to be the devolution of political and economic power to Aboriginal and Torres Strait Islander communities. The Committee defined self-determination in terms of Aboriginal control over the decision making process as well as control over the ultimate decisions about a wide range of matters including political status, and economic, social and cultural development.<sup>20</sup> It means Aboriginal people having the resources and capacity to control the future of their own communities within the legal structure common to all Australians.

1.48 On the other hand, self-management is concerned with the efficient management and administration of Aboriginal communities and organisations. It is about effectively implementing those decisions and priorities that have already been determined by Aboriginal people. Consequently, non-Aboriginal people who can understand and work within Aboriginal cultural and social aspirations will have a role in assisting some Aboriginal communities and organisations with their administrative responsibilities.

1.49 Policies of self-determination and self-management should enable Aboriginal communities to:

- . define their social, economic and cultural goals;
- . facilitate the provision of the range of services which community members want;
- . control and manage community infrastructure and facilities;

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<sup>20</sup> *A Chance for the Future*, p. 3.

- . increase their self-sufficiency both economically and in terms of having less reliance on outside personnel;
- . liaise and negotiate with government and other agencies which provide services to them.

1.50 The implementation of the policies also should require outside agencies, both government and non-government, to:

- . liaise and negotiate with Aboriginal communities and organisations prior to taking decisions on policy or service delivery.

1.51 If self-determination and self-management are to work, Aboriginal people need to gain the instrumental capacity to be able to determine their own needs and to manage their own affairs. The Committee examines in detail a number of areas where changes are necessary to bring about this objective. This requires a commitment from government at all levels to support the training initiatives recommended in the Committee's previous report, but also to alter its approach to dealing with Aboriginal communities and organisations. This shift needs to encompass a move away from 'consultation' as it is practised currently towards 'negotiation' with Aboriginal people.

1.52 For self-determination to work it is important that the policies and programs operating in each community relate to the specific needs and aspirations of that community. The Committee places great emphasis in this report on ensuring that this is so.

1.53 In its previous report, the Committee has emphasised that universal solutions or programs will not work because of the diversity of Aboriginal communities. This report deals with a range of discrete communities throughout Australia. The Committee's report is also relevant to Aboriginal people living on pastoral properties, outstations, excision communities or in town camps. Each of these communities has different concerns and expectations, different skill, resource and infrastructure bases.

1.54 The Committee reiterates in this report that Aboriginal concepts of community development are part of effective self-determination and self-management at the local level. These concepts of community development do not insist that Aboriginal people change their values and culture in order to enhance community life; rather, community development from an Aboriginal perspective is part of a process by which communities can make their own decisions about their long-term social, economic, physical and cultural objectives and be in a position to give effect to those objectives. Community development is thus intimately connected with both self-determination and self-management.





## CHAPTER 2

### IMPEDIMENTS TO SELF-DETERMINATION AND SELF-MANAGEMENT

#### *Introduction*

2.1 The incorporation of Aboriginal organisations and communities either as local or community governments or as associations does not automatically lead to an improvement in Aboriginal autonomy, better management of communities or enhancement of the quality of life for Aboriginal people. Incorporation is usually seen as a means of tapping into government funding sources and often little consideration is given to the implications of such a move. In her study of the East Kimberley, Bolger is critical of the failure to consider the implications of incorporation in terms of the responsibilities placed on a community or its impact on self-determination. She notes that:

... while it is usually stated that the community may not understand what incorporation means or the responsibilities incurred, this is regarded as acceptable so long as the community's affairs are in the hands of either a resource agency or a community adviser. There seems to be no attempt to discuss this with the community. Any ideas that forming a corporate body might have important implications for a community in terms of self-determination have long since been lost.<sup>21</sup>

2.2 In reality there are a number of complex issues that impact on the effectiveness of community control and management and, ultimately, on the strength of self-determination and self-management in Aboriginal communities. These problems, which are addressed in this chapter, are:

- . the problem associated with the concept of 'community' as it has been applied in Aboriginal affairs and as it relates to structures within Aboriginal communities;
- . the associated problems created by the presence of differing factions and groups in communities;
- . the conflict between Aboriginal cultural obligations and the political/administrative requirements of community management;
- . non-Aboriginal structures are often seen as being unrepresentative and lacking in authority by Aboriginal people; and

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<sup>21</sup> Transcript of Evidence, p. S968.

Aboriginal organisations lack authority in the non-Aboriginal power structure.

2.3 The above problems manifest themselves in a number of ways such as: a lack of participation or interest in community self-management; the existence of a number of incorporated bodies in some communities; heavy responsibilities being placed on councils; the uncertainty of Aboriginal councils and councillors about the precise nature of their role and responsibilities; and dependence on outsiders or community advisers. They are not helped by the paucity of infrastructure and the absence of the skills required for community control and management.

#### The problem of the concept of 'community'

2.4 Under the self-determination and self-management approaches, funding has been directed primarily towards community-based organisations. In this context the 'community' has tended to be defined basically in terms of a geographically bound group of people and so organisations exist and receive funding to represent and deliver services to such a group. There is a tacit assumption in this method of support to Aboriginal people that the geographically defined 'community' is also a 'community' in the sense of being a group of people who share common values and beliefs and have a shared set of interests. This will have a bearing on the appropriateness of community structures and the form of their involvement in local or community government. Further, there is an implication that the funded 'community' or 'delivery' organisations will deliver services equitably to community residents, act in the interests of all residents and provide a catalyst for the development of a number of different groups as a 'community'.

2.5 There are, however, problems with this concept of community when it is applied to Aboriginal affairs and used as the basis for funding Aboriginal community control, management and development. As previously mentioned, many of the former settlements, reserves and missions were artificial communities, having been created for the purposes of non-Aboriginal administrative convenience rather than as distinctively Aboriginal communities in accord with traditional Aboriginal social organisation and shared beliefs and interests.<sup>22</sup> The mixing of groups within these communities often meant discord and a lack of consensus about objectives and directions among the differing groups as a 'community'. It is easy to understand how the existence of a number of distinct family or religious groups may generate conflict within Aboriginal communities.

2.6 In the light of this it can be difficult for councils and other organisations to represent all interests in the communities and in some they represent the interests of only one or two clan or family groupings. Even if the interests of various sections within a large community are deliberately accommodated within the community council, it may be difficult then for the council to operate effectively as a unit because the

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<sup>22</sup> Transcript of Evidence, pp. S2214, S2217.

competing claims made on it make decision making by consensus almost impossible.

2.7 However, implicit in the policies of self-determination and self-management is the notion that the community-based organisations receiving funding are representative of the broader community so that they can be used as a vehicle for the delivery of services, as decision-making bodies and as bodies to consult about general community needs. Yet if they only genuinely represent the views of one particular section of the community any claim that they speak and operate on behalf of the whole community is undermined.

2.8 Coherent Aboriginal groups are relatively small, and family and individual mobility is marked through the exercising of multiple residential rights as members come and go from a central township. The 'community' in a geographic sense is a shifting one. As Dr Altman notes:

In central Australia, for example, people may move between a cluster of communities and locations that includes Mutitjulu, Docker River, Imanpa, Ernabella, Indulkana, Alice Springs, Areyonga and Papunya. Similar patterns are evident at Warmun and Maningrida with residential shifts being between townships and outstations, between Aboriginal townships or between Aboriginal townships and predominantly white-populated urban centres. Mobility frequently follows a pattern that may be influenced by seasonality or ceremonial commitments.<sup>23</sup>

2.9 A recent report has also pointed to the concept of 'community' for Aboriginal people as being defined in social, cultural and historical terms as well as by residence at a particular locale:

A particular concept of community is required to represent the Aboriginal reality. The physical and material aspects of 'community' centre on locale and the kinds of links individual residents have with each other. Historical events in the East Kimberley have led to the creation of a kind of permanence in the form of structures (houses, office buildings, stores, schools, power plants, garages and the like), but this provided only one significant aspect of Aboriginal communities. Equally important are the multiple-stranded social ties linking individuals, founded in land and shared associations with land and entailing shared obligations and mutual support. The term 'community' is used to represent a variable aggregation of people linked by locale and social ties.<sup>24</sup>

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<sup>23</sup> Transcript of Evidence, p. S2216.

<sup>24</sup> H C Coombs, *et al*, *Land of Promises: Aborigines and Development in the East Kimberleys*, CRES and AIAS, Canberra, 1989, pp. 33-34

2.10 The movement of small groups of closely related Aboriginal people to homeland centres on traditional lands has tended to give greater coherence to many Aboriginal 'communities'. Homeland centres themselves can be seen as comprising a community of association and family connection. The major communities from which homeland dwellers have moved also become more coherent as 'communities' because of the reduction of the number of different family groups they contain. The extent to which these changes will strengthen the authority of community-based councils and organisations is yet to be seen.

### Factionalism

2.11 Related to the issue of funding of Aboriginal people and organisations as 'communities' is the concern expressed in a number of submissions about the proliferation of community-based organisations or incorporated bodies. It is claimed that this proliferation of organisations ignores existing affiliations, promotes a splintering of the Aboriginal effort at the community level by encouraging factionalism, and creates the potential for duplication between the respective organisations. The community council at Nguiu (Northern Territory), for example, expressed its concern at being unable to co-ordinate community development and management because of the large number of incorporated bodies in the community.<sup>25</sup> It was claimed that one of the dangers of having an abundance of organisations is that authority in the community may become splintered to the point where an astute community adviser can play one faction off against another to the adviser's advantage.<sup>26</sup> Another commentator on communities in the Northern Territory has pointed to the use which individual families and clan groups make of particular community organisations in order to obtain access to funding and resources.<sup>27</sup>

2.12 While it is true that a range of organisations in a single community can divide the efforts of the community and possibly lead to over-administration or duplication, the reasons why a number of organisations can exist in a particular community need to be appreciated. First, and overriding the other reasons, is the related issue of funding of structures and organisations as 'communities' or as 'community representative' bodies and the mismatch this creates with the actual situation at the community level which really comprises a range of groups.

2.13 Second, there is the question of politics, both as practised by governments in relation to Aboriginal communities and also at the community level. Governments, pursuing their own agendas, are sponsors of groups within Aboriginal communities which reflect their policies and approaches. The situation can

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<sup>25</sup> Precis of Visit to Nguiu, 15 May 1989.

<sup>26</sup> D Turner, *Transformation and Tradition*, May 1986, p.108

<sup>27</sup> R Gerritsen, *Outstations: Differing Interpretations and Policy Implications*; in Loveday, *Service Delivery to Outstations*; NARU, 1982, p. 61

arise where different levels of government are funding divergent groups in communities to perform similar sorts of roles. The conflict created by such situations can be disruptive at the community level. However, the existence of a number of differing family and clan groupings within some communities and the rivalry and competition between them can lead to the formation of different organisations which seek their own sources of funding.

2.14 Third, where structures and organisations which exist in communities are not of the communities' choosing but have resulted from the implementation by governments of their policies and programs, Aboriginal people may or may not feel associated with these structures. Where there is dissatisfaction with imposed structures Aboriginal people have often established their own organisations which they can better control and which respond better to Aboriginal priorities. In the context of a policy of self-determination it seems contradictory to criticise the establishment by Aboriginal people of organisations that they consider better meet their needs and give them more adequate representation.

2.15 Fourth, the approaches of governments to the defining and funding of programs has actively encouraged a proliferation of organisations. One senior officer of the former Department of Aboriginal Affairs referred to the variety of 'buckets of money' which exist to fund even a single program or organisation within communities.<sup>28</sup> These 'buckets of money' reflect the multiplicity of policies and programs being supported by governments in Aboriginal affairs. Given the variety of programs which exist and the numerous sources of funding, it is hardly surprising that one effect at the community level is a proliferation of organisations to make use of every available source of funding.

2.16 The existence of a range of organisations in Aboriginal communities potentially can be inefficient by allowing for over-administration or duplication of effort. It can also encourage disharmony and conflict, reducing the ability of a community to enhance life for its residents. However, given the disparate nature of some Aboriginal communities, the existence of a range of organisations representing different groupings may be a reasonable way of ensuring that all sections of the community have access to resources. Where Aboriginal people have responded to imposed structures and organisations by setting up their own organisations, this may also be seen as a positive development in terms of Aboriginal self-determination.

#### Potential conflicts with Aboriginal values

2.17 The problem, however, is more complicated than just the presence of different groupings in communities. It concerns the difficulties caused by translating non-Aboriginal models of representative government into Aboriginal society. As the Queensland office of the Department of Aboriginal Affairs noted:

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<sup>28</sup> Transcript of Evidence, p. 1108.

The notion of delegated authority has not been successfully grafted onto Aboriginal tradition, nor has it found a viable form of expression for the political needs of different family or tribal groups in co-residence. Consequently the passage of tangible responsibility to Councils in recent years has exposed fundamental flaws in the system which can only be worked through by the communities themselves.<sup>29</sup>

2.18 It has already been noted that in Aboriginal society the individual's sense of obligation to an established or incorporated community can be outweighed by the duty to specific people to whom one is related. Consequently it is difficult to conceive of community councils as 'representing' their communities in the same way as representative governments in non-Aboriginal society are seen as representing their communities.

2.19 The imposition of council management structures on Aboriginal communities has, by and large, ignored the existence of traditional decision making processes. Aboriginal people rarely accept election as conferring legitimacy for the exercise of authority. Indeed, many Aboriginal leaders do not accept the primacy of the electoral process over traditional structures and refuse to stand for election. Authority is derived from one's position in the traditional hierarchy and based more on traditional knowledge and age.

2.20 Many of the people seeking election to the community council may be younger people who have acquired skills through western education, yet they may not be held in sufficiently high esteem by the rest of the community or they may be locked out of the decision making structures which are dominated by older people. The electoral process therefore clashes with the Aboriginal basis of authority. This can manifest itself as a lack of confidence or interest in the community council and community management.

2.21 This problem was recognised in a number of submissions. The Western Australian Government noted that the formal binding vote of a council is contrary to the less binding traditional reliance on 'consensus and family independence'. It suggested that representation based on family units may be more appropriate.<sup>30</sup> In multi-group communities conflict arises where the electoral process does not acknowledge the primacy of authority of those on whose land the community resides. This is a significant issue as Aboriginal people do not recognise the right of others to speak for resources which do not belong to them. In his evidence Dr Jon Altman noted that in some cases the elected representatives are not the real leaders and representatives of the people and, as such, possessed no authority.<sup>31</sup> In other words, the elected councils could decide anything they wanted but had no real status in the community nor

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<sup>29</sup> Transcript of Evidence, p. S276.

<sup>30</sup> Transcript of Evidence, p. S1170.

<sup>31</sup> Transcript of Evidence, p. S2217.

any right conferred on them by the community to speak on its behalf despite having been elected.

2.22 Sullivan notes that community councils work best in small, homogeneous communities where the council is in effect all adult members of the community and in larger communities which are also relatively homogeneous in terms of ritual responsibilities, language and lifelong association.<sup>32</sup> In such cases the community council and its processes of representation and decision making approach traditional authority structures and methods of reaching decisions more closely. Whilst these structures and methods of decision making may not be seen as 'democratic' in the non-Aboriginal context of representative government, they nevertheless work in terms of these communities. The conclusion to be drawn from this is that we should look to mechanisms or structures which are compatible with, or work within, existing Aboriginal structures, and which enable a reasonable degree of input by all community members and ensure a reasonably equitable distribution of resources.

2.23 The Department of Aboriginal Affairs argued that the process of Aboriginal communities becoming self-determining can entail a clash of cultures to the extent that there is a need for an accommodation to occur:

'Progress' and 'advancement' within the broader Australian society may require Aborigines taking on, to some extent, non-Aboriginal values and notions of economic and administrative rationality. The pursuit of a traditional lifestyle and the achievement of this advancement are not necessarily always compatible objectives. Reconciling the need for community development with the desire to preserve traditional cultural patterns is by no means an easy task for Aboriginal communities.<sup>33</sup>

2.24 Ultimately it is for Aboriginal communities themselves to determine the pace of change and to make accommodations in ways they feel are acceptable. This process is already occurring. In many communities the process of community management occurs through a careful balancing of Aboriginal requirements with 'whitefella business' so that council may decide and deliberate on certain matters but those people with whom traditional power resides have final say on Aboriginal interests. In some cases people with traditional authority may be automatically put on the council. Community meetings may be held to allow broader participation in decision making.

2.25 The conflict between Aboriginal cultural requirements and non-Aboriginal political or administrative structures goes beyond the friction between traditional members or those in

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<sup>32</sup> Sullivan, Aboriginal Community Representative Organisations; Intermediate Cultural Processes in the Kimberley Region, Western Australia, CRES, 1987, p.7

<sup>33</sup> Transcript of Evidence, p. S235.

authority and those who exercise decision making power on the council. It can also manifest itself in terms of a lack of motivation or participation in community management itself. If the structures are considered to be inappropriate or lacking in the power to determine priorities for Aboriginal people in that situation, particularly given the long history of dependence for all matters relating to community management, the reluctance to participate in community management is understandable. This general lack of involvement and reluctance to take on management roles minimises the effectiveness of the services that are provided and, in the view of the Department of Aboriginal Affairs, 'prevents the development of functioning community councils and generally places almost insuperable obstacles in the way of the transition to self-determination'.<sup>34</sup>

2.26 The perception exists that councils don't do the sorts of things that Aboriginal people want to do and, consequently, employment in most jobs in the community council is not highly sought after. One community council told the Committee that people were keen to work, but it was difficult to encourage them to take up positions in the council office. Most young men were outside-oriented and preferred to work as tractor drivers or carpenters, etc rather than be inside all day.

#### Role of council members and community councils

2.27 Aboriginal community councils throughout Australia are expected to handle a large number of services and perform a range of duties they have never before been expected to carry out. Indeed, it can be argued that Aboriginal councils are expected to grapple with more responsibilities than many mainstream local governments without the expertise or resources.

2.28 Aboriginal community councils may be expected to provide essential services such as electricity, sewerage and water; manage Community Development Employment Program (CDEP) programs; provide health care, recreation, social welfare and social security advice; undertake policy development for community enterprise development; be heavily involved in the school, provide housing, grade roads; maintain an airstrip; liaise with a myriad of government departments; provide services to homelands; become involved in rehabilitation; be responsible for financial planning; and management of the council budget; and remain accountable for funds to a range of different funding sources.

2.29 Council members may be either overburdened or lack an understanding of their role and responsibilities. These problems can generate an ineffective council and may even lead to the situation where the council loses control and is able to be dominated or manipulated by non-Aboriginal staff. In general Aboriginal community councils are expected to take up responsibilities for far more matters than the average mainstream local government council.

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<sup>34</sup> Transcript of Evidence, p. S253.



2.30 In most cases, community councils suddenly found themselves expected to deal with matters they had not previously handled. In its previous report, *A Chance for the Future*, the Committee indicated that the devolution of functions to communities has outpaced the level of training required for communities to adequately perform those functions.<sup>35</sup> Woorabinda Council advised the Committee that since it was elected in 1985 it has taken on much greater responsibilities than any previous council. It deals, as a matter of course, with a much larger number of government departments and agencies, suppliers of goods and services and has a greater involvement in social welfare matters. There has been a marked increase in council's total income and expenditure and the planning and co-ordination of its programs is therefore more complex.<sup>36</sup>

2.31 Councillors often have so many responsibilities that they are unable to focus fully on community management. These responsibilities can include maintenance, community development, oversight of health facilities, liaison with the school, and oversight of a budget. The council office is also the point of contact for nearly all non-Aboriginal visitors to a community such as contractors, researchers, government employees, etc, which adds considerably to the council's workload.

2.32 Dr Elspeth Young noted that Aboriginal administrative staff, whether employed full time by council as town clerks or advisers or elected as councillors, have to meet responsibilities beyond those normally covered in a council job. These include general liaison with other community members, their need to fulfil their roles in the local social structure and their roles as leaders. Dr Young argued that this frequently deflects them from purely administrative or clerical tasks to the detriment of conventional office efficiency.<sup>37</sup>

2.33 Individual council members are also uncertain about their roles. In a number of instances the Committee was told that people were unsure of their responsibilities within the legislation under which their council was incorporated. One council clerk in Queensland mentioned that no clear guidelines or instructions had been provided to council, which comes under pressure to become involved in an enormous number of issues affecting the community. Essentially the council believed it was finding out 'the hard way' what they can and cannot do. One problem facing some councils is the frequency of elections. If, as in the case in some communities, councillors are elected each year there is no guarantee of continuity or expertise, nor are council members given sufficient time to come to grips with their responsibilities. Under these circumstances it is not surprising that councils face problems and that incorporation breaches occur.

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<sup>35</sup> *A Chance for the Future*, pp. 6-7.

<sup>36</sup> *Precis of Visit to Woorabinda*, April 1988.

<sup>37</sup> *Transcript of Evidence*, p. S775.

2.34 Aboriginal communities are also facing outside pressures from developers and others who are interested in utilising Aboriginal land for purposes such as development, mining or tourism. In such cases Aboriginal councils and organisations can be pressured to make decisions quickly about matters that will have an enormous impact on their lives. Access to good advice and resources and negotiating power and skills will be crucial in such situations to enable Aboriginal people to have some control over developments in their areas.

### **Inadequate skills**

2.35 A further problem is that the human and resource skills provided to Aboriginal communities to enable them to effectively manage themselves have been inadequate. Aboriginal self-management can and does break down through the failed performance of Aboriginal organisations responsible for the conduct of a community's affairs. These breakdowns are manifested in numerous ways and include breaches of incorporation requirements. Examples of this include the failure to hold meetings, holding improperly constituted meetings, and AGMs, the manipulation of organisations and community membership, etc. The former Department of Aboriginal Affairs told the Committee that when this occurs it is often petitioned to intervene, usually by those who perceive themselves to be aggrieved or disadvantaged. This places the department in a dilemma as it has no statutory power to intervene directly.<sup>38</sup> Moreover, any direct intervention would contradict the policy of self-determination and self-management which in theory should allow for communities to be responsible for the decisions they make.

2.36 Aboriginal communities are unable to draw on significant skills from within for their community management. The broad profile of a community tends to be one with a high dependency ratio with a large proportion of the population under 18 years of age coupled with a substantial number of non-literate, untrained or transient adults. This means that it is difficult to guarantee fully operating viable community management structures, particularly in the smaller communities.

2.37 Apart from inadequate human resources, few Aboriginal communities have been provided with the community facilities and infrastructure required to set them up as self-managing entities. At the time of the change to the approaches of self-determination and self-management, community facilities were often run down, inadequate and complex to operate and maintain. This made it difficult for community councils to efficiently control and manage these resources and created a dependency on non-Aboriginal expertise to operate their facilities. While governments have invested considerable funding in infrastructure in Aboriginal communities, many still lack the range and quality of facilities available in country towns with similar populations. The Committee discusses this issue in Chapter 6 under community planning.

### **Authority**

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<sup>38</sup> Transcript of Evidence, p. S238.

2.38 Aboriginal community-based councils and organisations have also failed to function effectively because they have not received sufficient recognition by governments as the authority structures in communities. Whilst many of the councils have been given responsibilities similar to those of local government authorities elsewhere in Australia, they lack the authority and status of mainstream local governments. Governments are not immune to by-passing these organisations and making decisions in isolation from them.

2.39 At least partly, the reason why these organisations do not receive the necessary recognition for them to assert authority is that they are often not part of the established structure of power in Australian society. Attempts to incorporate Aboriginal communities either as, or on the same terms as, local government authorities will give communities a place in the established structure of government. This should go some way towards overcoming the lack of recognition of their authority. However, such moves must not become an unwanted imposition of structures on Aboriginal communities. Any moves towards establishment of Aboriginal communities as local governments or their equivalent will require negotiation with the communities concerned and should reflect the principles outlined in the next chapter for structures and organisations in Aboriginal communities.

#### Conclusion

2.40 Given the difficulties outlined above, what option should Aboriginal communities take? It is ironic that Aboriginal communities are being asked to accept non-Aboriginal structures in order to have greater control over their own affairs. Inevitably compromises are made between Aboriginal cultural values and the political and administrative requirements of service delivery and community management. For any approach to self-determination and self-management to be effective it is important that the issues discussed in this chapter be addressed and that the structures available to Aboriginal communities be sufficiently flexible to accommodate their needs. The next chapter looks at the structures available to Aboriginal people throughout Australia.

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## CHAPTER 3

### STRUCTURES FOR ABORIGINAL CONTROL AND MANAGEMENT

#### Introduction

3.1 At present Aboriginal people are presented with a range of structures for incorporation that vary between the States and the Northern Territory. These range from a form of local government in Queensland and the Northern Territory, the only two places where Aboriginal and Torres Strait Island communities are receiving local government grants commission funding, to incorporation under the various associations Acts elsewhere. In addition, the Commonwealth has its own Act under which Aboriginal councils may incorporate. Of the other States, South Australia is considering an appropriate form of Aboriginal local government; New South Wales has its system of local and regional Aboriginal land councils that provide support to individual communities; and Western Australian, Aboriginal communities are located within mainstream local government shires and lack strong structures for community self-management, although the State Government is presently considering the arrangements for service delivery to Aboriginal communities.

3.2 For Aboriginal communities or organisations to receive government funding, acquire property, enter into agreements or carry on business, it is necessary for them to form into a legal entity through some form of incorporation. The Commonwealth's approach of direct funding of organisations has seen the incorporation of a wide range of community-based organisations. In discrete Aboriginal communities, community councils have been established with responsibilities for services and facilities normally provided by local governments, although Aboriginal councils generally perform a much wider role than their mainstream equivalents. In addition, there are other organisations which are part of the current system of local governance in Aboriginal communities. These include housing associations and social clubs, which may have a clearly defined role but also interact with the council; homelands resource centres, which may either be a subsidiary of the community council or an incorporated body in its own right; land trusts and, in some cases, local land councils; resource agencies; community enterprises, etc. These structures are discussed throughout the report.

3.3 The overall picture of administration in Aboriginal communities was described in the discussion paper 'Aboriginal Participation and Equity in Local Government' as follows:

The total picture of Aboriginal local governance is one of a complex multi-layered and multi-faceted organisational structure with no unifying framework.

The non-traditional aspects are perhaps linked by the general goals of delivering services to Aboriginal communities and translating the ideology of self-management and self-determination into some kind of reality, but there is no overall coherence.<sup>39</sup>

3.4 This lack of overall coherence reflects the history of formation of community councils and organisations. In some cases structures have been set up by governments specifically to give effect to policies of self-determination and self-management. In other cases organisations have emerged from within Aboriginal communities to meet priorities identified by Aboriginal people or to cater to needs and aspirations which were not being met by structures set up by governments.

3.5 The structures available for incorporation often have little to do with self-determination but are concerned primarily with self-management. The distinction between these two policies, which was discussed in earlier chapters, means that the structures which are offered by governments to Aboriginal people for self-management are often unable to accommodate the notion of self-determination and fall short of Aboriginal aspirations.

3.6 Throughout this inquiry, the Committee has visited all the above States and the Northern Territory and has met with many different communities. The Committee also engaged consultants in order to gain a more detailed understanding of the structures at work in Queensland and the Northern Territory. This chapter outlines the structures available for community management throughout Australia. The Committee discusses the situation in Queensland and the Northern Territory in some detail based on its own consultations with communities and the work of the Committee's consultants.

## An Overview of Structures for Incorporation

### The Northern Territory

3.7 In the Northern Territory several legislative frameworks are available for the incorporation of Aboriginal organisations:

- . the Northern Territory *Local Government Act 1985* (Part VIII) which enables Aboriginal community councils to adopt local or 'community' government status;
- . the Northern Territory *Associations Incorporation Act* under which a range of organisations including community councils are incorporated; and
- . the Commonwealth *Aboriginal Councils and Associations Act*.

3.8 Councils which perform local government functions may be incorporated under any of the above legislative arrangements

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<sup>39</sup> Transcript of Evidence, p. S644.

and are eligible to receive financial assistance from the Northern Territory Local Government Grants Commission. To date some 15 communities are participating in community government schemes, seven are at the draft community government scheme stage and a further six are engaged in consultation.<sup>40</sup> Overall there are some 42 Aboriginal community councils, incorporated as either community governments or under the Northern Territory associations legislation, receiving grants commission funding. No Aboriginal community has yet been incorporated under the Commonwealth's Aboriginal Councils and Associations Act although there are 141 bodies in the Northern Territory incorporated under this legislation.<sup>41</sup>

3.9 The Northern Territory Government argues that its community government model is best suited to Aboriginal communities' needs because it offers flexibility by enabling individual schemes to be devised to meet a particular community's requirements. A scheme may be tailored in a number of areas to suit a community's wishes, such as the boundaries of the community government area; the composition of the community government council; voting procedures and eligibility; procedures for council meetings; the eligibility of persons to be members; the procedure for calling and conducting elections; and the functions to be performed by the community government council, including the operation of enterprises and/or the ability to undertake works contracts.

3.10 Thus, for example, the boundaries of the community government may be defined to include certain sacred sites and clan groupings. Outstations linked to the community may be brought within the community government areas (though this may be contentious). Restrictions can be placed on the eligibility to vote or hold office as a means of ensuring that the structure of the council reflects the social structure of the community. A problem arises, however, as to who determines the social structure and on what basis these decisions are made.

3.11 The Northern Territory Government stated that there is no time constraint upon communities to achieve community government.<sup>42</sup> Whilst this may be the case the question does arise about the pressure being placed on organisations incorporated under other arrangements to adopt community government status. Existing organisations need to be given ample opportunity to come to grips with the implications of altering their status and incorporating as a community government. In her evidence, Dr Elspeth Young described the process in one community which had doubts about the wisdom and benefits of the structure offered by community government.<sup>43</sup> She noted that the issue came to a head once pressure emerged to take on community government. In this particular case the community decided against any change for the time being until it had determined the most

<sup>40</sup> *Transcript of Evidence*, p. S2397.

<sup>41</sup> *Transcript of Evidence*, pp. S1306, S2367, S2413.

<sup>42</sup> *Transcript of Evidence*, p. S1307.

<sup>43</sup> *Transcript of Evidence*, pp. 848-849.

appropriate structures for the range of bodies and enterprises. As Dr Young noted, this was a more sensible way of handling the matter than to have adopted community government and then to have sorted out structures afterwards, an approach which had caused problems elsewhere.<sup>44</sup>

3.12 Some community councils expressed their concern at the potential to see control of their affairs transferred away from the council and towards the Northern Territory Government by way of the Local Government Act if they adopted community government.<sup>45</sup> In many ways the autonomy of community government can be limited and Aboriginal people may feel they have greater control if their organisations are incorporated as associations rather than as local governments. Local and community governments exercise only delegated powers which can be altered, restricted or withdrawn by the senior government. One concern expressed by some Aboriginal people was the scope for the Northern Territory Minister to sack the council and the council clerk and appoint an administrator.<sup>46</sup>

3.13 In its submission, the Northern Territory Government noted that the more recent community government schemes have been more innovative than the earlier schemes.<sup>47</sup> This would seem to imply that the earlier schemes were more restrictive and raises the question of the extent to which the schemes referred to genuinely respond to Aboriginal aspirations in practice. By way of example the Committee visited one town with Aboriginal and non-Aboriginal people in the Northern Territory where a community government scheme was operating. The Aboriginal people, represented by another organisation, were quite emphatic in their belief that community government was failing to meet their interests.<sup>48</sup>

3.14 If Aboriginal people are to make an informed decision about the appropriateness and shape of structures for self-management they need to be provided with sufficient flexibility or real alternatives in drafting schemes that are appropriate to their circumstances. Ultimately communities may see greater flexibility in remaining incorporated as associations rather than changing the status of their organisations to that of a community government.

3.15 Concerns have also been expressed by some Aboriginal people that the Northern Territory Government is devoting insufficient resources to consulting with communities on the

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<sup>44</sup> *ibid.*

<sup>45</sup> *Visit to the Northern Territory, 15-17 May 1989.*

<sup>46</sup> *ibid.*

<sup>47</sup> *Transcript of Evidence, p. 1307.*

<sup>48</sup> *Visit to the Northern Territory, Precis of Discussions, 29-31 January 1990*



complex issues involved.<sup>49</sup> Community government schemes can be approved after two public meetings, a public exhibition period and when the Minister is satisfied that a substantial majority of the community is in favour of its establishment. As the land councils point out, effective public meetings of residents can be a massive logistic exercise - for example, one community government council area is 12 000 square kilometres. Local transport and communication infrastructure is so poor that, unless a great deal of external assistance is provided, a large number of those who would be affected by community government proposals would not be able to attend a public meeting. The high levels of adult illiteracy similarly restrict the usefulness of the public exhibition of draft community government schemes, and the linguistic diversity of Aboriginal communities in the Northern Territory also present difficulties that need to be overcome if public opinion is to be gauged accurately.<sup>50</sup>

3.16 The Northern Territory Associations Incorporation Act provides another means by which Aboriginal organisations and councils may incorporate. Many Aboriginal community councils are, in fact, incorporated under this legislation as they were established in the 1970s before the Northern Territory Local Government Act gave them the option of incorporating under its provisions. Importantly, Aboriginal councils performing local government functions and which are incorporated under the Associations Act are eligible to receive financial assistance from the Northern Territory Local Government Grants Commission.

3.17 The Northern Territory Government considers other forms of incorporation to be inferior to its own Local Government Act.<sup>51</sup> It argues that there are limitations to the appropriateness and applicability of association status because the Northern Territory Associations Incorporation Act in its view is designed more for social clubs than for communities providing local government and other services. Association rules apply only to association members.<sup>52</sup> In practice councils that are incorporated under the Associations Act instead of the Local Government Act do not face any noticeable disadvantage, particularly as they are eligible to receive grants commission funding. As mentioned earlier, some communities may not prefer to incorporate under the Local Government Act as this may allow them to remain at arm's length from government control. The Committee believes that the wishes of these communities should be respected.

3.18 Aboriginal organisations may also incorporate under the Commonwealth's Aboriginal Councils and Associations Act. Although there are over 600 associations currently incorporated under this legislation, to date no community council has been incorporated. Current applications to incorporate community councils under the

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<sup>49</sup> *Visit to the Northern Territory, 15-17 May 1989.*

<sup>50</sup> *Transcript of Evidence, p. S2650-2651.*

<sup>51</sup> *Transcript of Evidence, p. S2364.*

<sup>52</sup> *Transcript of Evidence, p. S2366.*

councils provisions of the Act have not been finalised by the Registrar. Disagreement currently exists between the Territory land councils and the Northern Territory Government. The land councils argue that the Northern Territory Local Government Act conflicts with the Commonwealth Aboriginal Land Rights Act and have called upon the Commonwealth to provide assistance to communities to use the *Aboriginal Councils and Associations Act 1976* to incorporate as local government bodies. The land councils have been promoting this objective amongst various Aboriginal communities in the Northern Territory.<sup>53</sup> The Northern Territory Government rejects this position and argues strongly that its local government legislation is the most appropriate vehicle for incorporation. In its submission to the inquiry the Northern Territory Government recommended that the incorporations provisions under Part III of the Commonwealth's *Aboriginal Councils and Associations Act 1976* be repealed.<sup>54</sup> This proposal had been rejected previously by the Commonwealth Government.

3.19 The Northern and Central Land Councils argued that the Northern Territory community government legislation derogates from the powers afforded traditional owners under the Commonwealth Aboriginal Land Rights Act. Under the Land Rights Act the land councils have a statutory responsibility to represent the interests of traditional owners and other Aboriginals living in their areas. The community government legislation, it is argued, conflicts with the Land Rights Act by providing powers to community governments to develop community government schemes related to functions performed on Aboriginal land.<sup>55</sup>

3.20 At the end of 1987 the joint executives of the Northern, Central and Tiwi Land Councils and the Pitjantjatjara Council called for a moratorium on the implementation of community government schemes. The Northern Territory Government dismissed this call, insisting that the policy is not negotiable. Furthermore, the Northern Territory Government does not recognise the legitimacy of the land councils having any involvement in the field of community government.

## Queensland

3.21 The Queensland model for community management of former missions and government reserves takes two forms:

- communities constituted under the *Local Government Aboriginal Lands Act 1975* - that is, only Aurukun and Mornington Island; and

- communities which have been constituted under the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* (including some 18 Torres Strait islands and 14

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<sup>53</sup> *Transcript of Evidence*, p. S2653.

<sup>54</sup> *Transcript of Evidence*, pp. S2375-76.

<sup>55</sup> *Transcript of Evidence*, pp. S2634-2658.

mainland Aboriginal communities which are in receipt of local government grants commission funding).

3.22 In addition, a number of other Aboriginal organisations involved with self-management have used other State or Commonwealth mechanisms to incorporate as associations. There are, for example, some 125 bodies incorporated under the Commonwealth's Aboriginal Councils and Associations Act.<sup>56</sup>

3.23 During the 1970s the Queensland Government implemented the *Local Government (Aboriginal Lands) Act* and established Aurukun and Mornington Island as local government authorities, conferring upon them all of the functions, powers, duties and obligations of any other local government authority in Queensland. This step was taken to thwart Commonwealth intervention in the two communities following the withdrawal of the Uniting Church.

3.24 Since that time the previous Queensland Government enacted further legislation in relation to the control and management of land set aside for Aboriginal people through the community services legislation. The community councils established under this legislation are broadly similar in function to those created under the *Local Government Act* although the legislation also provides for land to be transferred in perpetuity to the elected Aboriginal and Island councils by way of a deed of grant in trust.

3.25 Although the detail of the two types of legislation varies, the theory and practical impact of both statutes at a community level is similar. One of the Committee's advisers noted in a seminar held in Brisbane that the community services legislation was an attempt to construct another form of local government that was equivalent in status to mainstream local government:

Both Acts seem to me to be in theory versions of a conventional local government model which is imposed by statute on Aboriginal society as though Aborigines until that point had operated in what amounts to a political, social and economic vacuum.<sup>57</sup>

3.26 Although the Community Services Act provides some scope for modification to the electoral system, in reality all Aboriginal councils are structured in precisely the same way and are selected by a uniform process. One notable distinction between the two Acts, however, is that the provisions of the services legislation allow only for Aboriginals to form the council and for an Aboriginal to hold the position of town clerk. This restriction does not exist under the *Local Government (Aboriginal Lands) Act*.

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<sup>56</sup> House of Representatives, Hansard, 24 November 1988, p. 3321

<sup>57</sup> *Brisbane Seminar*, p. 15.

3.27 The Committee notes that the two shire councils at Aurukun and Mornington Island are dominated by non-Aboriginal employees and the prospect of Aboriginals gaining control is remote. There are strong reasons for arguing that both pieces of legislation actually militate against allowing the system to become subject to local Aboriginal control. The complex accounting and administrative requirements of the Local Government Act, virtually ensure that the town clerk will be a non-Aboriginal skilled in local government administration. Although the Community Services Act does not include the onerous financial provisions of the Local Government Act its administrative provisions militate equally against the system being indigenised. Some examples include the highly bureaucratic way in which by-laws are designed and implemented and the rigid fiscal management requirements.<sup>58</sup>

3.28 The provisions of the Community Services Act include the preservation of the role of the former Department of Community Services executive officer. Although there is scope to have that person withdrawn from communities unless that person is specifically requested to stay on, it would appear that there is still an executive officer resident in every community operating what amounts to a form of companion administration to that operated by the Aboriginal council.

3.29 The ability of both types of legislation to respond to Aboriginal aspirations needs to be questioned as such legislation is essentially concerned with enabling councils to provide municipal services. The Committee was advised that the recognition of 'special functions' of Aboriginal councils seems largely confined to powers to deal with issues that the authorities operating in the wider society would prefer to avoid. These include the authority to operate a canteen or for councils to issue prohibition orders; the ability to charge Aboriginal police with the responsibility for ambulance services, fire fighting, etc; and an extremely limited ability to regulate access to Deed Of Grant In Trust (DOGIT) land.<sup>59</sup> Beyond this, councils are restricted in their ability to deal with matters of significance to their communities. This has meant that in some cases the former Queensland Government did not approve by-laws that were determined by the local councils.

3.30 The Committee's consultants emphasised the urgent need to review the deed of grant in trust arrangements.<sup>60</sup> It was the intention of the previous Queensland Government that trust land be divested to individual residents so that ultimately these lands could be held in private ownership but without alienation from the local community council. One of the major problems with trust land is that traditional land interests are not formally recognised and not secured under the DOGIT arrangements.

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<sup>58</sup> Mr Ross Rolfe, Administrative Arrangements applying to Aboriginal People in the Central Peninsula, Seminar Paper pp. 2-3

<sup>59</sup> *ibid*, p. 3.

<sup>60</sup> *Brisbane Seminar*, p. 107.

Similarly the boundaries of the trust areas do not necessarily reflect traditional ownership or traditional interests.

3.31 The recently-elected Queensland Government is to review the procedures for the management of the DOGIT arrangements and the structures operating in Aboriginal communities and is expected to include land tenure as part of this process. The Committee anticipates that there will be significant reforms in Queensland in the near future. Whilst the Committee does not consider it appropriate to prescribe particular models or arrangements that should apply in Queensland, it identifies later in this chapter a number of broad principles that ought to be taken into account.

### South Australia

3.32 When considering the issue of community management in South Australia it is necessary to distinguish between the two types of Aboriginal communities in the State:

1. People with land rights under South Australian legislation: people who continue to pursue a largely traditional existence are the Pitjantjatjara and Yankunytjara. They reside on land restored to them under the provisions of the Pitjantjatjara Land Rights Act and the Maralinga Tjarutja Land Rights Act.
2. People residing on land whose title is held by the Aboriginal Lands Trust: there are a number of discrete Aboriginal communities living on Aboriginal lands trust lands. These communities are widely dispersed and range from those living traditional or semi-traditional lifestyles (for example, Nepabunna, Yalata) to those living near country towns in a semi-urban lifestyle (Point McLeay). Many of these communities come within mainstream local government boundaries but are not provided with services by the local council. The discrete communities have a council and are funded primarily by the Department of Aboriginal Affairs to provide local government-type services.

3.33 Some Aboriginal communities in the State are incorporated under the South Australian *Associations and Incorporations Act*. The South Australian Government considers that this form of incorporation is inadequate because it does not provide for cultural considerations to be taken into account, or for by-law making powers, or access to local government funds. At present no community in South Australia is receiving grants commission funding. In the case of the Pitjantjatjara lands, the primary incorporated body is Anangu Pitjantjatjara, an organisation made up of all Pitjantjatjara, Ngaanyatjarra and Yankunytjara speakers which holds title to the Pitjantjatjara Freehold Lands under the *Pitjantjatjara Land Rights Act 1981*.

3.34 In 1988 a review of the Pitjantjatjara and Yankunytjara communities of the northwest of South Australia

conducted by Neville Bonner was released. The report, entitled *Always Anangu*, concluded that the assumption by Pitjantjatjara people of responsibility for their affairs remains illusory and that only in isolated instances can it be said that they exert authentic control over the nature and pace of change in their communities. This conclusion was rejected by Anangu Pitjantjatjara and questions were raised as to the effectiveness of the consultation process during the review leading to the report.

3.35 The review recommended that the South Australian Government pass legislation which will enable communities to design their own subordinate community government legislation in similar fashion to the scheme of the *Councils and Associations Act* (councils section) or the Northern Territory community government legislation. It is envisaged that a system of community government could replace the vast number of existing incorporations on their lands other than Anangu Pitjantjatjara, the Pitjantjatjara Council, Maraku Arts and Crafts, Anangu Winkiku Stores and other special cases, and for community government bodies to control community institutions either directly as wholly-owned subsidiaries where financial risks exist (for example, stores). Anangu Pitjantjatjara, on the other hand, has argued that new legislation for local government opens the possibility of conflicting with the Pitjantjatjara *Land Rights Act 1981*. *This Act enables Anangu Pitjantjatjara to make by-laws and perform all the functions of a local government body.*

3.36 Since the release of the Bonner report, the South Australian Government has turned its attention towards the development of culturally appropriate local administrative structures for Aboriginal communities in the Pitjantjatjara lands, the Maralinga lands and the Aboriginal Lands Trust lands. Former Premier, Don Dunstan was appointed as an adviser by the State Government to consult with these communities on the concept of community government and to report on possible approaches to the introduction of community government in South Australia. Mr Dunstan's report was tabled in the South Australian Legislative Assembly in February 1990 and is under consideration by the State Government. As noted above, Anangu Pitjantjatjara rejected the proposals for legislation put forward in Mr Dunstan's report, arguing that the *Pitjantjatjara Lands Rights Act* already enabled their body to perform local government functions.

3.37 In his report Mr Dunstan concluded that Aboriginals are not receiving local government services in South Australia in accordance with need or at a level comparable with other members of the community. Present structures for Aboriginal self-management, he said, are not satisfactory for the provision of such services.

3.38 The report argued that it is preferable to replace existing incorporated bodies with bodies incorporated under State legislation which would have wider powers including control over access to the community and the power to make by-laws controlling social behaviour. Mr Dunstan noted that Aboriginal communities in the State are generally too small and inadequately resourced to carry out the whole function of local government on their own.

Such a function would be possible in conjunction with either a central body such as a revised lands trust or in a special relationship with an existing local government authority. The report said that Commonwealth legislation would be inadequate and that an appropriate way to proceed would be by South Australian legislation after full consultation with Aboriginal communities.

3.39 Mr Dunstan identified the following possibilities for communities in South Australia, excluding those on Pitjantjatjara freehold lands:

- discrete Aboriginal community government;
- modified community government;
- a regional option under which a reconstituted Aboriginal Lands Trust and Maralinga Tjarutja would be constituted as the local governing body for their respective communities;
- incorporation of Aboriginal communities within the relevant mainstream local government authority;
- incorporation under the Commonwealth *Aboriginal Councils and Associations Act*;
- retention of the status quo but with communities being provided access to local government funds; and
- retention of the status quo with access to local government funding not provided.

3.40 Mr. Dunstan recommended that extensive consultation with Aboriginal communities take place before any decisions are made. The report also recommended that any ensuing legislation be flexible enough to allow 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.

#### Western Australia

3.41 Community management is an issue of particular concern in Western Australia. No Aboriginal community in the State has its own local government as communities are all located within mainstream local government shires. The lack of provision of services to communities by local government is a recurrent issue in evidence to the Committee and will be dealt with further in the inquiry into the needs of Urban Dwelling Aboriginal and Torres Strait Islander people. Funding responsibility for communities in Western Australia has largely been left to the former Department of Aboriginal Affairs (now ATSIC). The relatively small contribution and commitment by local and the State government in Western Australia to servicing Aboriginal communities has contributed to a lack of policy development in Aboriginal affairs at these levels.

3.42 Both DAA and the State Government emphasised the lack

of a viable community management/government system for major Aboriginal communities. Local government-type services are provided by the local Aboriginal council in discrete communities and several have limited powers to make by-laws under the *Aboriginal Communities Act 1979*. For its part, the State Government recognises that councils have failed to be effective in a number of communities and recommends that communities streamline their councils into 'a smaller, tighter management committee in which members have specific tasks'. It is unclear, however, how the State Government would achieve this.

3.43 In August 1988 the Western Australian Department of Local Government published a report on the Project on Remote Aboriginal Communities and Local Government. The objective of the project was to develop structures appropriate for the local government of Aboriginal communities in Western Australia. The central finding of the report was that separate legislation is not required to provide such structures. Rather, with minor modifications, existing legislation is sufficient to ensure the structural flexibility required to meet the needs of communities. The report also noted that any structures should recognise the cultural and traditional requirements of the communities involved.<sup>61</sup>

3.44 The following structure options were identified:

- . mainstreaming whereby communities are serviced by existing local government authorities, with ministerial approval for them to service reserve lands;
- . modified mainstreaming so that ministerial approval is not necessary;
- . a contractual structure whereby the delivery of municipal works is contracted to either the local government or remote community;
- . using community councils to deliver services;
- . the creation of separate Aboriginal shires; and
- . a regional option which is based on co-ordination and joint co-operative arrangements between a regional body and the Aboriginal community or local governments.<sup>62</sup>

#### New South Wales

3.45 In New South Wales the nature of 'community management' and support services varies according to the circumstances of the people concerned. A number of Aboriginal people are living as

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<sup>61</sup> Report on the Project on Remote Aboriginal Communities and Local Government, WA Department of Local Government August 1989, p. 4

<sup>62</sup> *ibid*, pp. 5-6.



discrete groups separately from the general community, generally on former reserve land. In these circumstances the term 'community management' would be applied to the management of housing and other bodies that deal with infrastructure by the local land council or housing association. These organisations may also have a wider role as a focus for other community activities and services, especially if the reserve is located close to or in a town where other Aboriginal people live so that, in effect, the 'community' may consist of people from both the reserve and its nearby township. In addition, where the Aboriginal 'community' consists of people scattered throughout an urban area, the 'community' may be represented by a number of different organisations that serve as a focal point for the needs of Aboriginal people. Such organisations would include medical services, legal services, preschools, etc.

3.46 New South Wales has no formally constituted Aboriginal local government and no Aboriginal community councils in the Northern Territory mould. In the absence of mainstream local government accepting responsibility for the provision of services, a relatively large number of Aboriginal organisations have assumed municipal-type responsibilities. In a very small number of cases Aboriginal management organisations have been able to negotiate with local government to provide some services, such as garbage removal, on a fee-for-service basis.

3.47 The needs of Aboriginal people living on small settlements in New South Wales are great, as can be seen from the Human Rights Commission's inquiry into the situation at Toomelah. The land on such settlements is owned by the local (regional) Aboriginal land council under inalienable freehold title and in some cases is managed by the local Aboriginal land council. In most cases, however, the responsibility for running and maintaining the settlements is left to Aboriginal housing companies, most of which do not have a formal lease or access to land council funds.

3.48 The New South Wales Government has foreshadowed significant changes in its arrangements for the administration of Aboriginal affairs and service delivery. The Government previously announced its intention to mainstream the provision of services. It has also been investigating the three-tier land council system of New South Wales Aboriginal land councils, regional land councils and local land councils. Mr Charles Perkins, former head of the Department of Aboriginal Affairs, was engaged by the State Government to advise on appropriate structures for the management of Aboriginal affairs. Although the new arrangements are to be finalised, the State Government has announced its intention to replace the NSW Aboriginal Land Council with an Aboriginal Affairs Commission which is to have an overall co-ordination, monitoring and review role.

#### Victoria and Tasmania

3.49 The Committee received only one submission from Victoria and none from Tasmania. In Victoria the State Parliament set aside 2000 hectares of land at Lake Tyers for Aboriginal people which is managed by the Lake Tyers Aboriginal Land Trust. This land is located within the shire of Tambo which

provides little in the way of services to the community. In Tasmania, the Tasmanian Aboriginal Centre is the major Aboriginal organisation representing Aboriginal people. The centre's activities are wide-ranging and include the provision of health and legal services.<sup>63</sup>

#### Commonwealth Territory (Wreck Bay)

3.50 The community of Wreck Bay is located within the Commonwealth Territory of Jervis Bay. Some 403 hectares of unalienable freehold land were vested in the Wreck Bay Aboriginal Community Council under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*. The Community Council is established under this Act and is responsible for community management. The Commonwealth is responsible for the provision of municipal services to residents, and other services, such as schooling, are provided on contract by the Australian Capital Territory Government.

#### Other structures

3.51 Throughout Australia a range of bodies are involved in the provision of support services or act as the focal point for Aboriginal people and therefore as vehicles of self-management or self-determination. These organisations include housing associations, legal services, medical services, child care agencies, alcohol rehabilitation centres, resource organisations, etc. Invariably these organisations are funded by the Commonwealth Government rather than the States and Territories.

#### Aboriginal and Torres Strait Islander Commission

3.52 Although the Committee is unable to assess the impact of the Aboriginal and Torres Strait Islander Commission which has recently come into existence, some comment is necessary, particularly in terms of Aboriginal involvement. At the local level there is to be a regional council (60 throughout Australia) with the number of members depending on the Aboriginal population of the area concerned. Membership of the regional councils will be elected on the basis of universal suffrage by Aboriginal people on the electoral roll. The regional councils coalesce to form a zone (17 throughout Australia), each of which elects one commissioner. In addition three commissioners are appointed by the Minister.

3.53 The functions of the regional councils are to formulate and implement a regional plan for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander people in the area; to put forward a proposed funding program in accordance with that plan; to represent Aboriginal interests in the region; and to do any other thing that is incidental or conducive to the performance of the preceding functions.

3.54 Regional councils will not have their own staff and

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<sup>63</sup> *Transcript of Evidence, pp. S267-268.*

will rely on the ATSIC regional offices for their needs. The relationship between the regional council and the regional office will have a significant impact on the operation of the scheme. One of the Committee's consultants pointed out that the regional offices are part of ATSIC's administrative structures and as such are responsible to their State office and the Chief Executive Officer of the Commission.<sup>64</sup> The Committee wishes to stress that the ATSIC regional offices should be responsive to the needs of the regional councils.

#### More appropriate structures

3.57 The Committee notes that local government type and other imposed structures cannot by themselves provide a basis for self-determination. Indeed, the structures available for community management in the States and the Northern Territory have less to do with self-determination than they have to do with self-management. They have also been developed by government with the expectation that Aboriginal people will accommodate their imposition. For this reason, these structures have not always been able to meet Aboriginal aspirations.

3.58 The Committee noted previously that where there is dissatisfaction with imposed structures the response of Aboriginal people has been to create their own organisations over which they can exercise greater control and which may better reflect their particular community's structures and better respond to Aboriginal priorities. For this reason, the community council model may not always be appropriate. Dr Elspeth Young argued for the examination of alternative models that more closely resemble the actual structure of the community in order to take account of the complexities of the social structure, different language groups and people from different areas.<sup>65</sup>

3.59 The structures Aboriginal people see as being appropriate to their needs do not necessarily conform to what has been made available by government. Dr Young's comments were reinforced by one of the Committee's advisers who noted:

If a matter is perceived by people as being something that is relevant to their interests, something that they themselves wish to contribute to in terms of an outcome or which they feel obliged through family or other pressures to be involved in, then they come together as a caucus which will be involved in a number of different forms of activities that will relate to the formation of an outcome which usually gets called consensus. This has a lot of bearing on the kinds of structures that it may be realistic to expect people in local communities to adopt in terms of councils that have anything to do with what might be called local government.<sup>66</sup>

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<sup>64</sup> Dr J. Bern, *Committee Consultant*, pp. 11-12.

<sup>65</sup> *Transcript of Evidence*, p. 846.

<sup>66</sup> *Brisbane Seminar*, p. 153.

3.60 The Committee believes it is important to distinguish between the two types of organisations or structures available to Aboriginal people:

- . those imposed from above, with varying degrees of consultation by government departments and agencies depending on their particular policy orientation;
- . those which emerge from within the Aboriginal communities and which reflect Aboriginal aspirations and priorities.

The first may be rejected by Aboriginal people as unsuitable to their needs. The second type may experience difficulty with funding if it does not fit into existing policy frameworks.

3.61 The Committee believes that the success of many Aboriginal organisations will depend on whether they are supported by the people for whom they operate. For the structures to be supported it is important that they emerge from Aboriginal needs and desires. They must allow the development of processes and styles that are consistent with Aboriginal needs and can be managed in their local context. This view was supported by Don Dunstan, former Premier of South Australia, who noted in his review of community government that experience has tended to show that Aboriginal communities work best where decisions are made locally. He added that if decisions come from afar Aboriginal people tend to feel neither involved nor responsible.<sup>67</sup>

3.62 In a number of areas Aboriginal organisations have been established to reflect traditional ownership of land. Land is a crucial component of Aboriginal self-identity and group identity. Currently many of the community-based structures ignore or do not reflect the land-based structures. Government funding of communities on the basis of location or residential status is a manifestation of this problem.

3.63 The distinction between an organisation that reflects traditional interests and one that does not can be seen in a number of communities. The Committee noted a community in Queensland which is constituted as a local government shire but over which the local Aboriginal people are not able to exercise control and which does not reflect traditional interests. That community also has an incorporated body to co-ordinate activities outside the scope of the council. As one of the Committee's advisers noted, at a recent annual general meeting of this organisation there was an extremely vigorous attack on the management of the organisation on the basis that there was inadequate representation of groups according to traditional land ownership.<sup>68</sup> This provides an indication of the priority attached to the question of land in the eyes of many Aboriginal people. Arguably the need to reflect land-based structures assumes a far greater importance for Aboriginal people, such as

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<sup>67</sup> *Review of Community Government, July 1989, Section One.*

<sup>68</sup> *Brisbane Seminar, p. 116.*

those in Queensland, where traditional ownership is not recognised in law or where land tenure, such as the deed of grant in trust, is not determined on the basis of traditional ownership. Given the history of Queensland communities, where many people have been shifted around, this problem may prove difficult to resolve.

3.64 The presence of a number of different community organisations may be more in tune with a community's needs. The Committee noted previously that the existence of a range of families and clan groupings can generate a range of organisations or incorporated bodies in a community. This may occur because particular groups feel their interests are not represented by the council and it is one way of ensuring that all people have access to resources. In her evidence to the Committee, Dr Elspeth Young spoke of one community that had examined its structures in the context of considering a community government scheme. In this case the directors of the various incorporated bodies and enterprises in the community were extraordinarily resistant to the notion of the community government council assuming responsibility for their operations. As a result, the community itself devised a structure more appropriate to its needs and indicated to the Northern Territory Government that it did not wish to take on community government. As Dr Young noted, this is a good example of Aboriginal people thinking about their circumstances and developing a solution that is closer to their own structure and which takes into account both service provision and their enterprises.<sup>69</sup> The existence of a range of organisations may prove more difficult for government bureaucracies to deal with, but in cases such as the community referred to above, this structure represents an attempt at self-management that is consistent with the principles of self-determination.

3.65 In the Northern Territory, Aboriginal traditional ownership is recognised in law under the *Aboriginal Land Rights Northern Territory Act 1976* and the interests of traditional owners are represented at the broader level by the respective land councils. For many communities or groups in the Northern Territory the land council structure represents an important means of support. In general terms the functions of the land councils are to ascertain and express the wishes and the opinion of Aboriginals living in the area of the land council as to the management of Aboriginal land in that area; to protect the interest of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the land council; to assist Aboriginals in the taking of measures likely to assist in the protection of sacred sites; to consult with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the land council with respect to any proposal relating to the use of that land; and to assist Aboriginals claiming to have a traditional land claim to an area of land within the area of the land council in pursuing the claim.<sup>70</sup>

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<sup>69</sup> *Transcript of Evidence*, pp. 847-848.

<sup>70</sup> *Central Land Council Annual Report, 1987-88*, pp. 4-5.

3.66 While the basis for land council activity is Aboriginal land interests, the Committee was advised that these are so pervasive in their social and political effect as to involve land councils in a very wide spectrum of affairs relating to the maintenance and development of Aboriginal social and political interests, including aspects of community decision making and management.<sup>71</sup> Increasingly the land councils are adopting a role that has been described as 'para-governmental' in nature as they provide assistance and support to communities in a range of areas such as cattle projects, tourism, etc. It has been suggested that land councils are operating more and more as guardians of Aboriginal interests and representatives of Aboriginal people's views, partly as a consequence of the inability of Australian political institutions to meet the specific needs of Aboriginal people.<sup>72</sup>

3.67 One of the other advantages of a legally-constituted body such as a land council is that it provides Aboriginal people with a body that is recognised within the broader power structure of Australian society. As one of the Committee's advisers noted, land councils are recognised bodies that lend strength to Aboriginal people in their dealings with government bureaucracies or companies, etc. It was also noted that big bodies such as bureaucracies or mining companies would<sup>73</sup> prefer to deal with a recognised body such as a land council.

3.68 Not all Aboriginal people who live in the Northern Territory and come within the ambit of the Land Rights Act believe that Land Councils as currently constituted are the most appropriate structures to provide them with a support service or represent their special interests. They are critical of them and seek the development of alternative structures.

3.69 A range of structures which are not creations of government appear to be working well. In his evidence to the Committee Dr Altman said that some unusual models for community management have been effective, such as that for the administration of programs for communities in Kakadu National Park by the Gagudju Association.<sup>74</sup> The Gagudju Association was the first association incorporated after the introduction of land rights in the Northern Territory specifically to receive mining agreement moneys (both up-front moneys and subsequent royalties). Since its inception the organisation broadened its role and assumed a quasi-municipal role as it delivers services throughout the park. Physical infrastructure has increased in accordance

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<sup>71</sup> Dr J. Bern, *Committee Consultant*, p. 5.

<sup>72</sup> Altman, J C and Dillon, M C, *Aboriginal land rights, land councils and the development of the Northern Territory*. In D Wade-Marshall and P Loveday (eds) *Contemporary Issues in Development, North Australia: Progress and Prospects*, Volume Darwin: NARU, 1988 p. 126

<sup>73</sup> *Brisbane Seminar*, p. 119.

<sup>74</sup> *Transcript of Evidence*, pp. S2219-2220.

with local wishes. Other examples of structures that have emerged from amongst Aboriginal people to meet their needs include the Tangentyere Council, Julalikari Council and bodies such as Aboriginal legal and medical services.

3.70 Another option, which was put to the Committee by a consultant, is to have regional structures complementing local structures. One of the overriding reasons for the establishment of regional structures is that local communities do not have adequate fiscal and material resources to exercise effective self-management. This option may offer greater prospects for Aboriginal people in achieving a sense of self-determination in their lives.<sup>75</sup>

### Conclusion

3.71 From the discussion in this chapter the Committee makes the general conclusion that those organisations or structures that have emerged from within the Aboriginal community and which reflect Aboriginal aspirations and priorities are functioning better than other structures that are imposed by government. As the former are more likely to have the support of Aboriginal people they have a distinct advantage over other structures.

3.72 The Committee does not consider it appropriate to be recommending specific models for community management or for Aboriginal organisational structures. In all cases Commonwealth, State and Territory Governments should negotiate appropriate structures with Aboriginal people in a co-ordinated fashion between each level of government. It is important to recognise that some structures will emerge from within the Aboriginal community and these need to be given support. It is, however, possible to identify a number of general principles that ought to be observed in the establishment by government of any structures for self-management. It is worth stating such principles at a time that State and Territory Governments are considering possible structures for Aboriginal communities.

### Recommendation

3.73 The Committee recommends that:

that a number of general principles should be observed by governments when establishing structures for Aboriginal people. These include:

- the structures should be negotiated with Aboriginal people and not imposed by an artificial process of consultation;

- when negotiating structures, governments should avoid placing undue pressure on Aboriginal people in such a way as to achieve an outcome that would conform to established government policy or to meet a government imposed timetable;

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<sup>75</sup> *Dr J. Bern, Committee Consultant, pp. 27-28.*

- . the structures must be compatible with local Aboriginal aspirations and affiliations;
- . they must recognise the term 'community' needs to be defined more broadly and should take account of social, historical and cultural linkages;
- . they should emerge from and be supported by the people for whom they operate or represent;
- . they should be recognised within the broader power structure of Australian society; and
- . governments review existing structures in accordance with the preceding principles.



## CHAPTER 4

### FROM CONSULTATION TO NEGOTIATION WITH ABORIGINAL PEOPLE

#### Introduction

4.1 Consultation with Aboriginal people is widely regarded by Commonwealth, State and Territory Governments as central to the success of the policies of self-determination and self-management and the delivery of services to Aboriginal people. Aboriginal people see consultation as important because they can often see alternative ways of delivering services or would like to see services provided in a way which suits their needs. Unfortunately the communication between government officers and Aboriginal people often fails to live up to the expectations of the community.

4.2 In its interim report the Committee identified inadequate or a lack of consultation with Aboriginal people about important decisions affecting their lives and the control they have over their affairs as a major concern of communities. In the Committee's previous report, *A Chance for the Future*, the importance of consultation with Aboriginal people over the design and delivery of education and training programs was discussed.

4.3 The committee believes that despite the statements of Commonwealth, State and Territory government departments and agencies, the consultative process is inadequate and ineffective in many cases. This chapter proposes a shift from what has been considered to constitute consultation towards the notion of negotiation. It is only through negotiation that Aboriginal people will have any real impact on outcomes and have their demands met.

#### What does 'consultation' mean?

4.4 However genuinely or generously consultation is conducted, it is a process in which initiative and power lies almost wholly on one side; that side proposes, listens to responses and then decides by itself.

4.5 Consultation is a term which first appeared in Aboriginal affairs policy during the Whitlam Government.<sup>76</sup> At no stage does it appear to have been clearly defined in policy. However advice sought from the former DAA is that consultation in practice adheres to the *Macquarie Dictionary* definition usage: (1) to seek counsel from; ask advice of (2) to refer for information and (3) to have regard for (a person's interest, convenience, etc.) in making plans.

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<sup>76</sup> DAA Report of activities for the period 19 December 1972 to 30 June 1974, p.7

4.6 Consultation in the context of Aboriginal affairs is usually descriptive of involving Aboriginal people in decision making. Aboriginal people have also come to use terminology such as 'consultation' as a yardstick to measure the level of their involvement. It is the loose usage of the term 'consultation' without a clear working definition of the process which has created confusion. The word 'negotiation' is sometimes used interchangeably with 'consultation' but the two are very different processes. The process of negotiation is 'to bring about by discussion and settlement of terms'.<sup>77</sup>

4.7 Consultation as it has been practised is a process of involving Aboriginal people in decision making but negotiation infers that involvement is taken one step further to settlement of an issue. It is the level of Aboriginal involvement in policy development and delivery that is at the heart of self-determination and self-management. When Aboriginal views are 'sought' and 'had regard to' without being integral to the 'settlement of terms' then it is no wonder that Aboriginal people can be dissatisfied with the process.

4.8 In resolving how self-determination and self-management can be implemented effectively, the role and level of consultation must be defined and clearly understood by all people to maximise what the Committee understands to be a process by which Aboriginal people's views and needs are injected into policy development and delivery. The Committee believes that such a clarification would, if not improve the process, at least minimise complaints from Aboriginal people 'that they have not been fully consulted' or that 'they (government officers) will make up their own mind anyway'. Statements by Aboriginal people to this effect usually mean that the policy or service does not mirror the ideas proposed by the community.

4.9 The Committee believes that consultation between government departments and Aboriginal people as it is currently practised is not a case of equal partners negotiating an outcome. It is by precedent, and within legal and political constraints, a communication process which at best offers a choice within a given set of parameters and at worst permits Aboriginal people to give assent to plans made for them.<sup>78</sup>

4.10 This is however not a situation which is readily accepted by Aboriginal people. If in fact the intention is to involve Aboriginal people in decision making to facilitate self-determination and self-management then the process must be improved.

#### The recognised importance of consultation

4.11 The importance of consultation was referred to by Commonwealth, State and Territory Governments in their respective submissions to the inquiry. These statements can be taken as self-imposed standards for measuring the need for and success or

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<sup>77</sup> Macquarie Dictionary

<sup>78</sup> H. Ross, *Just for Living*, pp.152-153

otherwise of the consultative process yet there is cause to question how often these standards are met. They emphasise, quite rightly, that the effective delivery of services to communities is dependent on the use of satisfactory consultative processes, enabling the articulation of needs to be properly conveyed. The DAA submission, for example, considers it has a responsibility to ensure that effective consultation takes place.<sup>79</sup>

4.12 The South Australian Government listed consultation as one of the three principal elements involved in the delivery of services to Aboriginals, a notion with which the Committee agrees. The other two important aspects it saw were Aboriginal community control and self-management. The South Australian Government argued strongly in favour of consultation with Aboriginal communities saying that:

It is essential that Aboriginal people, communities and organisations are properly informed about government policies and programs, and know what opportunities are available to them and what their options are as it is only in this way that they can gain effective control of their own affairs and of basic services such as health, education and housing so that those services are provided in a form and at a standard that meets Aboriginal needs as defined by the Aboriginal people themselves.<sup>80</sup>

4.13 The above quote clearly recognises the process of consultation as it is usually practised. In other words, it recognises that the discussion with Aboriginal people is conducted within the parameters of government policies and programs. However, the Committee believes that consultation with Aboriginal people should go far beyond access to information. Consultation represents a crucial bridge between Aboriginal people and non-Aboriginal values, between Aboriginal structures and the non-Aboriginal providers of services. As a process it therefore assumes great importance because it is intended to bridge the cultural gap between Aboriginal communities and the broader society. But consultation without the elements of negotiation has contributed to the ambiguity and multiplicity of services and organisations identified in the previous chapter. A more thorough process of negotiation would be an improved mechanism towards ensuring that the sorts of services provided to Aboriginal communities are actually wanted by the community and are delivered in a way that is appropriate to their circumstances, expectations and values and alleviates current duplications.

#### How consultation has been conducted

4.14 The way in which Aboriginal people are involved in the planning process has a direct bearing on the ultimate success of program delivery. Although the process differs depending on the

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<sup>79</sup> Transcript for Evidence, pp.S229-280

<sup>80</sup> Transcript of Evidence, p.S2202.

issue involved and the people concerned, typically Aboriginal involvement is via community meetings, with the community council or individual councillors, talking to administrative and other key staff such as the community adviser, health workers, CDEP co-ordinator, etc. or by holding discussions with the various incorporated bodies in a community.

4.15 The DAA stated that it conducted its 'consultation' in a number of ways: on an informal basis through regular and ongoing contact by departmental field staff; the establishment of working groups, committees and other forums; special ad hoc meetings covering particular functional interests; frequent community meetings with departmental officers; and through the sponsorship of Aboriginal advisory organisations, committees and groups. This process is common to other government departments and agencies.<sup>81</sup>

4.16 The establishment of community councils has assisted greatly the work of government agencies. Community councils are seen as the primary point of contact within a community and, as such, provide the basis for Aboriginal involvement. As Sullivan noted, community councils are assumed to occupy a point of convergence between non-Aboriginal and Aboriginal culture and, as such, lend themselves to being the focus of involvement and gaining agreement in the eyes of government agencies.<sup>82</sup>

4.17 Community advisers also can be useful to government departments when seeking to consult with communities. Their personal experience is extremely valuable to outsiders. Community advisers are more readily able to make direct contact with community members and should be able to identify splits and factions in the community. From the community's perspective a good community adviser can be used to explain the options available in regard to a particular issue.

4.18 It is important to bear in mind, however, that discussions conducted primarily through the council or adviser may have their limitations. As the Committee noted in Chapter 2, the council may not represent all groups in the community and may, in fact, lack the authority in the eyes of community members to speak on its behalf. Similarly, if discussions are conducted largely with the community adviser the genuineness of the process needs to be questioned as it is hard to see the adviser 'representing' the community. There also exists the danger of having non-Aboriginal staff controlling visits or information for their own purposes.

4.19 It is difficult for government departments and agencies to assess the effectiveness of their 'consultative' mechanisms with Aboriginal people particularly because many operate on an informal basis at the community level. It should be noted that, in submissions to the inquiry by government departments with direct dealings with Aboriginal communities, few misgivings were expressed about their processes of 'consultation'. Given the criticisms from Aboriginal people and others about the processes,

<sup>81</sup> Transcript of Evidence, p.S232.

<sup>82</sup> P. Sullivan, 1987, P.5

this complacency reflects either a quite different perspective on consultation from that taken by Aboriginal people or a lack of self-criticism by government agencies about their own processes.

#### Criticisms of the consultative process

4.20 In her study of the East Kimberley, Audrey Bolger was strongly critical of consultation in the region and stated that:

At present it is doubtful if anyone knows what communities really want<sup>83</sup> because the process of consultation is so poor.

4.21 A number of major problems exist which prevent successful communication with Aboriginal communities including:

- . Aboriginal perceptions and suspicions of the process of consultation;
- . the failure of government to accept that consultation should involve negotiation;
- . the failure of government departments to consult broadly enough in a community, to take into account the structural nature of the community or the various factional views;
- . the ad hoc nature of consultations and the frequent demands placed on communities by government to consult;
- . poor communication on the part of government agencies which is compounded by a lack of understanding of issues and the implications of particular decisions on the part of the community;
- . lack of training, commitment to and awareness of Aboriginal needs on the part of department or agency personnel; and
- . certain government agencies basically have their agendas set before they go into communities and, as a result, they only hear what they want to hear.

4.22 The Committee has encountered numerous examples of attempts at consultation that illustrate the shortcomings of the process. In his study of the East Kimberley, Sullivan provided the following example:

... In this instance a white adviser was sitting outside having a delicate conversation with a number of influential Aboriginal men on how to arrange the sending of supplies to the site of an initiation

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<sup>83</sup> Transcript of Evidence, p.S970.

ceremony. This entailed imparting some sensitive information about the ceremony which was discussed in hushed voices with some reticence. Into the middle of this gathering strode a stranger, later identified as the managing director of a mining company, accompanied by his liaison person. The miner then held out a hand to the most amenable looking Aborigine and 'elicited a grinning display of excessive goodwill' whilst the others looked away. He then asked a series of direct questions - 'What is your name? Who is your boss? Where is he?' The group of Aborigines got up and drifted away. The miner explained to the adviser he wanted to consult the community about a drilling program already under way in the vicinity. The adviser was able to point out a series of mistakes made in the first few minutes of this attempt at consultation.

The man approached was a town drinker, not a member of the community assembled. The miner had recorded his name, the name of the community, and its chairman incorrectly. Apart from the name, the leadership had recently changed. The present chairman had been sitting silent in front of him. In any case these Aborigines had no connection with the site of the miner's operations, and were from a different language group:

According to Sullivan, an impasse was reached from which future discussions never recovered.<sup>84</sup>

4.23 The Committee was also told of an occasion when a community was to have been consulted about its education needs. The person responsible for the conduct of the consultations visited the community and asked the local school principal to fill out a short questionnaire. The principal suggested that broader discussions were required with council members, some young unemployed people and school leavers, but his offer was declined and the officer quickly left the community.<sup>85</sup>

#### Aboriginal perceptions

4.24 At the community level the perceptions of the consultation process are different from those of governments. Almost invariably they reflected dissatisfaction. When the subject was raised by the Committee during informal discussions, Aboriginal communities were repeatedly dismissive and sometimes even derisive about attempts at 'consultation' by all levels of government as their previous experiences had led them to believe that it would achieve very little. There was a strong perception that whenever consultation occurred it was inadequate.

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<sup>84</sup> P. Sullivan, Aboriginal Community Representative Organisations: Intermediate Cultural Processes in the Kimberley Region, Western Australia, CRES, p.13

<sup>85</sup> Transcript of Evidence, p.S2596.

4.25 For some communities, after years of having decisions taken for them by outsiders, to be suddenly allowed to be involved in matters affecting the community was a novel experience and viewed with some surprise and scepticism. Decisions on matters such as whether to provide a bore, health services, or whether to upgrade a road, etc. were previously made far away from the community in Darwin, Brisbane or Canberra, etc. or by a superintendent or mission manager without reference to the community. Now the Aboriginal people were being involved in the discussions but still felt that the decisions were being taken far away.

4.26 The submission from Home Care Services (NSW) noted that Aboriginal people with little experience of government services in the State were not used to coping with outside assistance. Some of these communities, which the Committee visited in its trip to New South Wales, were so lacking in basic services and amenities that the prevailing community attitude was one of frustration. The communities had been neglected for so long that the people did not know where to begin seeking assistance because their needs were so great.<sup>86</sup>

4.27 Despite this, Aboriginal people valued the opportunity to consult with government departments and saw it as vital if self-determination and self-management were to mean anything. As one submission noted:

I cannot say strongly enough that by 'consultation' we mean that we need to actually participate and allow the whole community ... to participate in decisions about what will happen. Telling us what will happen after the decision is made is quite useless.

... anything else than a recognition of our right to be a fully self-determining people in our own right is just another attempt to manage us.<sup>87</sup>

4.28 Aboriginal communities were also critical of government departments that used consultation with them to ratify decisions that had already been made. With only limited time available at community or council meetings and with departments often having developed 'preferred outcomes' in advance it is not difficult to guide a meeting towards agreeing to a particular proposal. To illustrate with an example, the Committee was given an instance of a timetable for the introduction of a CDEP scheme having been determined before the community had even been approached about it.<sup>88</sup> The Committee notes that similar and even more concerning allegations of manipulation are not uncommon.

4.29 In its submission the Aboriginal Cultural and Training Institute referred to dissatisfaction with consultation processes

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<sup>86</sup> Visit to NSW, Namoi Aboriginal Community, 13 February 1989

<sup>87</sup> Transcript of Evidence, p.S863

<sup>88</sup> Transcript of Evidence, p.S970

in the following terms:

It has been our experience that while some staff at middle management and field level do endeavour to consult with their client groups - the decision makers in Government show little skill in this area.

It is noticeable that when visiting in remote communities Government staff frequently avoid speaking with Council members, preferring to speak only with administrative staff.<sup>89</sup>

The submission went on to say that it was also noticeable that government staff rarely meet or speak with target client groups in a community such as women or youth.

4.30 Some communities prefer government officers to come to community meetings so that everyone can receive information. This goes some way towards passing information on to relevant groups in the community but does not guarantee effective involvement in decision making. Although the community meeting can be a useful forum, not all members are able to be present. Young people, for example, may be away at work around the community. Many people will be inhibited about speaking up at these meetings which may be dominated by older people. The roles played by people at a non-Aboriginal structured meeting are often very different from the role and power they hold in the community.

4.31 The size of some communities or the number of distinct groups involved also makes it difficult to assess community feeling. Officials need to be sensitive to the various factions in a community and to take more time obtaining the views of all groups.

4.32 The failure to consult broadly in a community and to take into account the range of views on a given subject ensures that a balanced overall view may not be obtained and that the outcome does not reflect Aboriginal views or receive local commitment. Many officials see consultation as a one-stop process, talking solely with the council or with only administrative staff or the community adviser and then going away to write the program. If self-determination is the goal it requires maximum involvement in discussions and negotiation on the acceptable outcomes from both an Aboriginal and government perspective.

#### Quality or quantity

4.33 A further problem with the consultation process is that agencies do not seem to have arrived at a reasonable balance in the frequency of consultations. No other group in Australia is expected to actively participate in the consultative process as much as Aboriginal communities. The large number of agencies providing services to Aboriginal communities translates into a large number of visits by government officials, most of whom have

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<sup>89</sup> Transcript of Evidence, p.S2596.



adopted the approach that the policy implementation contains an element of contact with the client group in some shape or form.

4.34 On the other hand, a community in western New South Wales told the Committee that consultation was a rare phenomenon and when it occurred the people were not sure what was expected of them. When they were consulted about their housing project, for example, they did not know what they could achieve or what options they could consider. The people said that they looked at the plans for houses but were not sure about what they were meant to be discussing. For this community the main priority was just to get new houses, given the poor conditions in the community.

4.35 Bolger noted that one of the problems seems to be that visits are erratic and badly planned thereby placing unnecessary pressure on the communities.

There may be none for several months, three in quick succession which, it sometimes seems, could have been reduced to one with better planning. In the dry season visits are often planned to take along visiting senior officers from Perth or Canberra. These visits often seem to be unnecessary or about trivial matters and are often seen as more in the nature of a jaunt, to take advantage of the pleasant conditions in the East Kimberley at that time of the year, than as serious consultation.<sup>90</sup>

4.36 These examples highlight the need for quality rather than quantity in arranging consultation with Aboriginal people. Bolger argues that ideally each community should be visited at six-weekly intervals by the DAA (now ATSIC) field officer and twice yearly by the area officer. Less frequent but co-ordinated purposeful visits should in no way diminish the quality of contact with Aboriginal clients and in fact may well improve it.

4.37 The often erratic nature of visits and the frequent requests from different departments to meet with communities points to the failure of departments to co-ordinate information provision and collection with communities. More often than not matters would be better dealt with by having officers from several departments travelling together. The same applies to having joint State/Territory/Commonwealth visits to communities. Government agencies need to co-ordinate issues better and set priorities so that routine matters are not constantly treated as urgent and communities constantly badgered for their assent or comments. This issue is discussed further in Chapter 6 where the Committee makes appropriate recommendations on the rationalisation of field visits to communities.

4.38 As Bolger noted, real consultation requires a longer process of discussion allowing time for feedback and internal

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<sup>90</sup> Transcript of Evidence, p.S970

debate. However, in practice officers tend not to allow enough time for proper consultation and expect to have an answer provided to their requests in the course of a single visit. Officials have a tendency to rush through communities in short visits trying to cram in as much 'consultation'<sup>91</sup> as possible on the day.

4.39 Visitors should give communities as much notice as possible before arrival and advise on the areas likely to be discussed. It is unreasonable for government officials to announce that they are to visit and that they expect key figures to be available on a particular day, morning or afternoon to talk about matters. A community in Western Australia, for example, has a policy of formal visitor requests and the preparation of agendas in advance. This approach has been largely ignored by government departments who continue to arrive without formal permission and who fail to advise the community of possible discussion items.<sup>92</sup> The result is communities preparing for meetings without knowing what is expected of them.

4.40 It is important for communities to understand exactly what they are being consulted about and the full range of options available. One of the major problems today is that the range of programs and resources about which Aboriginal people are asked to make decisions is so great that few people understand the implications of their choices.

4.41 Some Aboriginal people have become adept at the non-Aboriginal process of communication and decision making which forms the basis of consultation. But there are many more who have not. The Committee has observed a reluctance of Aboriginal people to speak openly at meetings with departmental officers present. This reluctance may be due to a number of reasons including lack of confidence, language problems, not being used to asserting their claims to non-Aboriginal people, or regarding the process as a waste of time. It is also important to understand that some communities are unwilling to be seen to criticise government departments for fear of having funding cut.

4.42 Aboriginal people often ascribe knowledge to positions held when dealing with government personnel in the same way they are linked in Aboriginal cultures. Therefore they seldom demand a widening of the terms of reference for consultation believing they have been told all they need to know. Secondly, they have become accustomed to non-Aboriginal people exerting control over the decisions and as a result they defer to their supposed superior knowledge and power.

4.43 The Committee acknowledges that its own communication process with Aboriginal people in some cases needs to be improved. The Committee will examine its methods of consultation with Aboriginal people with a view to developing a more comprehensive process for Aboriginal involvement.

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<sup>91</sup> ibid

<sup>92</sup> Transcript of Evidence, p.S1992

## Poor communication

4.44 The Committee believes that communication between some government departments and Aboriginal people is a problem. Many of the complaints and misunderstandings about the roles and activities of various agencies seem to arise because of poor communications. In addition the volume of correspondence and documentation flowing into communities is now increasing.<sup>93</sup>

4.45 In many cases the problem comes down to the type of language used in letters and documents which can often be incomprehensible to communities. The problem of complicated and unfamiliar language in correspondence and documents was referred to by Bolger in her study of the East Kimberley. She noted, somewhat ironically, that the language used in correspondence tended to get more complicated the further away from the community they come so that letters from Perth or Canberra tended to be more difficult to understand than those from Kununurra. She argued that the government departments would do well to look at the correspondence from non-government agencies that have daily dealings with Aboriginal people and which is visually simplified and comprehensive.<sup>94</sup>

4.46 Government departments and agencies should make more effort to ensure that material is comprehensible to Aboriginal communities. This includes the use of simplified language or 'plain English' versions in documentation and correspondence. Some good examples of this already exist such as material relating to health problems, etc.

4.47 The use of complicated language assumes that there will be someone available to read and interpret correspondence to the broader community which is not always the case. Ideally this person should be someone who is conversant with non-Aboriginal institutions. In remote communities, however, the people most likely to have this knowledge and a grasp of such language would be younger people who may not have sufficient standing in the eyes of the community.<sup>95</sup>

4.48 If letters are hard to understand then documents from government departments which contain funding rules and regulations are almost incomprehensible. To illustrate this problem Bolger discussed the case of an agreement which needed to be signed by a number of communities in order to participate in a training program. Even though the program had been discussed in advance, one community leader refused to sign the necessary documentation because when it arrived it contained many pages of legal terminology which were not understood. Eventually the matter was resolved but it is a good example of communities being asked to commit themselves in writing to obligations they are not familiar with.

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<sup>93</sup> Transcript of Evidence, p.S944

<sup>94</sup> *ibid*

<sup>95</sup> Transcript of Evidence, p.S969

4.49 The Committee is concerned that communities throughout Australia enter into agreements or commitments that they do not understand with government departments and agencies. On occasions it may be necessary for government officials to make use of qualified interpreters if they are to have effective dealings with Aboriginal people and if Aboriginal people are to have a full understanding of the implications of what is being put to them. Similarly there is also a strong argument in favour of the promotion of fluency in Aboriginal languages amongst departmental and agency staff. Where appropriate agency and departmental personnel should be encouraged to study relevant Aboriginal languages. At the very least these staff should undertake cross-cultural awareness courses. These should be provided through their employing agency if not otherwise available.

4.50 Logistical problems, particularly in the case of more remote communities, do not help consultation. Some communities do not have mail services and may only be contacted by radiotelephone. Bolger reported instances of communities being written to by departments and asked to respond by telephone when no facility existed.<sup>96</sup>

4.51 The Committee recommends that:

Government departments and agencies examine their processes of communication with Aboriginal people to:

- . to make greater use of a 'plain English' style in documents and correspondence in their dealings with Aboriginal communities;
- . to make greater use of radio and the range of visual media such as video, television, comics, posters etc;
- . where possible government departments engage qualified interpreters as appropriate; and
- . where appropriate encourage staff to study Aboriginal languages and, as a minimum, make a cross cultural awareness a precondition for appointment.

#### Towards Negotiation

4.52 It is clear from this chapter that Commonwealth, State and Territory agencies need to clarify the purpose of, and improve drastically, their processes for involving Aboriginal people in decision making. Despite statements about the importance of 'consultation' as a part of service delivery to Aboriginal communities, it is mainly carried out on an ad hoc basis and does not always assume the importance which is ascribed to it.

4.53 Part of the problem has been the lack of clear guidance

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<sup>96</sup> Transcript of Evidence, p.S969

and purpose of consultation. The Committee believes that, as a matter of priority, departments and agencies involved with Aboriginal communities need to review how they relate to Aboriginal people and how policies are formulated. As part of such a review some broad guidelines need to be developed that would assist staff operating in the field. The benefits of such guidelines would be to acquaint staff with the reasons for involving Aboriginal people and to develop an awareness of some of the difficulties involved with a view to improving the quality of future discussions and policy and program delivery.

4.54 It is not just a matter, though, of setting guidelines. There is also a need to change the emphasis in the consultative processes from one of listening to, and advising, communities to one where communities have a more direct say in deciding final outcomes. Instead of merely being involved, Aboriginal people must be integral to deciding policy and programs which directly affect their lives. This is the difference between consultation and negotiation as discussed earlier in the chapter.

4.55 The Committee believes that the complete and extensive involvement of Aboriginal people in decision making must become a requirement, not an option. Instead of Aboriginal involvement being one element of the process of policy development and service delivery, it must pervade the whole process and be crucial to the final outcomes.

4.56 The Committee concluded from the evidence provided to it that the practice of 'consultation' does not support the level of Aboriginal involvement required to realise the policies of self-determination and self-management. Aboriginal people need to be actively involved in the settlement of the terms of the policies and programs as they apply to them and at a level which is more accurately described as 'negotiation'.

4.57 The Committee recommends:

- . negotiations on policies and programs must involve Aboriginal people at the appropriate national through to local level in all discussions towards a settlements of terms.
- . the Aboriginal and Torres Strait Islander Commission develop guidelines for negotiation that can be used by the range of departments and agencies that have dealing with Aboriginal communities and organisations; and
- . reference to negotiation be included in the corporate plans of Commonwealth departments and agencies which have contact with Aboriginal communities.

4.58 The existence of guidelines, though, will have little impact unless they are supported by departmental action. One approach favoured by the Committee is the development of training packages for officials involved in negotiation with communities. Clearly the capacity to develop such packages already exists

within departments. The DAA annual report for 1988-89 noted that staff resources had been deployed to formulate ATSIC training strategies and to design, develop and deliver programs so that staff were able to operate efficiently when ATSIC commenced.<sup>97</sup> An emphasis on the importance of negotiation should be an important part of this process.

4.59 The Committee recommends that:

the Aboriginal and Torres Strait Islander Commission develop appropriate training packages for the range of staff involved in negotiation with Aboriginal communities; and

that any training packages developed by the Aboriginal and Torres Strait Islander Commission be distributed for use by other agencies involved with Aboriginal communities.

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<sup>97</sup> DAA Annual Report, 1988-89, p.162

## CHAPTER 5

### WOMEN

#### Introduction

5.1 The Committee wishes to make special reference to the needs of Aboriginal women because it believes that their views are not always sought or taken into account. This occurs even though the views of Aboriginal women are crucial in determining whether particular services will meet the needs of the community.

5.2 The first comprehensive inquiry into the needs and aspirations of Aboriginal women across Australia was undertaken by the Office of the Status of Women in the Department of the Prime Minister and Cabinet. The report of their Aboriginal Womens's Task Force, *Women's Business*, was completed in July 1985. *Women's Business* firmly placed Aboriginal women's needs on the political agenda, emphasising the necessity of their recognition in policy and program development.

5.3 The Task Force, speaking of the role of Aboriginal women today, said:

Despite all the vicissitudes of the last 200 years they remain the nurturers and teachers of the young, both their own and those they foster. In particular it is the women who are responsible for teaching young children about their Aboriginal identity.

In traditional times both parents (and the extended family) shared the responsibilities for raising the young children. As the children grew older ceremonial education of young girls was organised by the women according to kinship ties: that of the boys, by the men. The parallel roles of food providers and child raisers and the separate ceremonies and land ownership of women and men formed the basis of a complementary and balanced social structure.<sup>98</sup>

Where ceremonial practices no longer exist the major responsibility for the children of both sexes and all ages has fallen on the women, though both sexes still retain some of their traditional values and practices.

5.4 Women's roles in the extended Aboriginal family are described as:

... vitally significant and much respected. Their roles as mothers, aunts, sisters and grandmothers encompass the responsibility for the raising, care and discipline of children. Families revolve around the women and depend upon them to counter outside influences and maintain the

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<sup>98</sup> Report of the Aboriginal Women's Task Force, *Women's Business*, Office of the Status of Women, 1986, pp.1-2

strength and togetherness of their families.<sup>99</sup>

5.5 The environment within which the women live and work is also seen as a major consideration:

They must carry out their difficult tasks within an overall environment which exacts heavy tolls on their health, strength, dignity and self esteem. For many, overcrowded living conditions are a way of life. There are never enough houses and it is not unusual to find family members spanning three or four generations under the one small roof. Given the rights, obligations and reciprocal expectations of the family, the small and substandard housing that most Aboriginal people are forced to occupy is inappropriate. Bigger and more costly accommodation is generally not an option since most exist on low incomes whether they have a job or not.

Women ensure that clothes, food and sleeping arrangements are provided for all the family members residing with them. Stress and tension are ever present because the struggle is accompanied by low incomes, little education or training, and unemployment. Drug and alcohol abuse, poor health and early deaths are all too often the result for those who cannot cope with the continual pressure which affects all members of the family.<sup>100</sup>

5.6 The major recommendation of *Women's Business* is that consultation with Aboriginal and Islander women needs to be an integral part of any governmental consultation with Aboriginal communities. The report states:

... Women's position within their own communities is such that to ignore their input would be to ignore a whole range of experience and knowledge.<sup>101</sup>

5.7 Aboriginal women are reluctant to speak freely in mixed groups of white and Aboriginal, men and women. In the absence of dissent their silence is often wrongly taken as agreement with what has been said. Of particular concern are women's rights in land which should be clearly recognised and respected.

5.8 Women are individually reticent about their own personal needs and are more likely to raise the needs of others. In matters such as nutrition, food preparation, sex education, contraception and childbirth women believe their needs are not being met. A recent Queensland Health Department report shows that Aboriginal and Torres Strait Islander women are 17 times more likely to die from diabetes than white women in Australia. They are 13 times more likely to die from pneumonia, 9 times more likely to die of cervical cancer and 7 times more likely to die from bronchitis, emphysema and asthma. Many women are still being removed from communities weeks before childbirth. They and their families often do not have suitable accommodation near the hospital. Giving birth in a non-Aboriginal

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<sup>99</sup> *ibid*

<sup>100</sup> *ibid*

<sup>101</sup> *ibid*



environment with males present disrupts traditional practices and often leaves the woman with little or no personal support.

5.9 Women and children are frequently the victims of domestic violence stimulated by alcohol. A recent report shows that one in four deaths of women in Alice Springs town camps resulted from alcohol related violence.<sup>102</sup> Women have been at the forefront in seeking mechanisms to ameliorate the impact of alcohol on Aboriginal communities.

5.10 The report of the Aboriginal Women's Task Force found that amongst Aboriginal women there was an overall lack of detailed information about existing government services and programs. The task force noted that women were unsure of how to deal with governments - that is, where or how to secure funding for projects; where or how to gather information about and to apply for benefits; and the relationship between Commonwealth and State bodies. The report observed a lack of awareness and sensitivity towards Aboriginal women on the part of public servants and a lack of confidence among Aboriginal women in making inquiries of non-Aboriginal staff.<sup>103</sup>

#### The need for women's services

5.11 Historically Aboriginal women have been ignored by visiting government officials, field workers and anthropologists. These visitors were most often non-Aboriginal males and related with and listened to the Aboriginal men and their needs. The subsequent formal structures which were established to bridge Aboriginal and non-Aboriginal people and culture have generally not included women.<sup>104</sup>

5.12 Just as Aboriginal people generally formed resource agencies to provide for otherwise unmet needs and services, so have Aboriginal women have formed their own gender specific services. Aboriginal women found that the existing Aboriginal and non-Aboriginal mechanisms were not providing adequate access to services. The Committee was told that women feel strongly that they are ignored by government officers. Women feel reluctant to speak in front of a male government official even if they are on the community council (where few women hold executive or official positions anyway). It was also put to the Committee that men may fail to represent the views of women to outsiders even though they may take notice of them within a community.<sup>105</sup>

5.13 One of the earliest formally established women's organisations was the Ngaanyatjarra, Pitjantjatjara, Yankanytjatjara Women's Council in 1980. This council was formed because the Anangu

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<sup>102</sup> *What everybody knows about Alice*, Tangentyere Council, June 1990, p.1

<sup>103</sup> *Women's Business*, p.3

<sup>104</sup> Ngaanyatjarra, Pitjantjatjara, Yankanytjatjara Women's Council, 1990, p.1

<sup>105</sup> Transcript of Evidence, p.S946

women believed that their '... issues were not being properly considered ...'.<sup>106</sup> The women's council is not in competition with other services; it has a separate yet complementary role to the Pitjantjatjara Resource Centre.

#### The role of women's officers and organisations

5.14 In 1986 the then Department of Aboriginal Affairs (DAA) established '... an Office of Aboriginal Women (OAW) and its network of women's co-ordinators at the State office level and women's issues officers at the regional office level.'<sup>107</sup> The OAW and its network of officers, which is now part of ATSIC, has the role of advising the government and ensuring that the commission considers the impact and effectiveness of their programs on Aboriginal women.

5.15 The Ngaanyatjarra, Pitjantjatjara, Yankunytjatjara Women's Council pointed out to the Committee that their horizons were not limited to the domestic sphere; that the council has empowered the women and provided access to information and decision-making processes to the point that they now feel confident to present their opinions on issues such as land, politics, education, law and culture, to both Aboriginal and non-Aboriginal forums and agencies.<sup>108</sup>

5.16 Aboriginal women's services are also being provided by additional positions being attached to Aboriginal service organisations and resource agencies. These positions usually exist to provide services in the domestic sphere, such as homemakers, childcare services, domestic violence outreach, etc. This is not to demean these programs but simply to comment that there has been a wider divergence of issues being addressed when separate organisations are formed by the women.

#### Funding

5.17 The Office of Aboriginal Women has an annual appropriation to fund '... community-based services for Aboriginal women with an emphasis on the needs of women from rural and remote areas who have limited access to mainstream services.'<sup>109</sup> Funds are provided for program development and administrative initiatives - for example, women's resource centres, conferences, transport, shelters, exhibitions, history and culture.

5.18 Budget constraints have prevented the payment of women for some ongoing programs and the Committee found instances where the women have continued to provide the services regardless of payment. For example, a group of women in one community in the Northern Territory is continuing to carry out '... camp patrols to help overcome the domestic violence and alcohol-related problems that occur

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<sup>106</sup> *ibid*

<sup>107</sup> DAA Annual Report 1987-88, p.6

<sup>108</sup> Ngaanyatjarra, Pitjantjatjara, Yankunytjatjara Women's Council, 1990, p.1

<sup>109</sup> *ibid*

in the town camps.<sup>110</sup> The group was funded in 1987 to purchase a vehicle but has not been successful in receiving ongoing recurrent funding. The local women are currently rostering themselves on a voluntary basis to undertake the patrols which commence at 3.00 pm and go through until 4.00 am - 5.00 am.

## Conclusion

5.19 Unless particular approaches are developed to listen to Aboriginal women, there is a risk that the consultation process, and consequent policies and programs in Aboriginal affairs, will be ineffective in relation to Aboriginal women. Strategies need to be developed to ensure that Aboriginal women are listened to and actively involved in decision making processes. Any approach should include:

- adequate representation of Aboriginal women in policy/decision making forums;
- the establishment of specific mechanisms in which Aboriginal women co-ordinate and define the services required to meet their needs.

5.20 The Committee recommends that:

- the report *Women's Business* be the subject of a follow-up review to update its findings and determine the extent to which its recommendations have been adopted
- there be at least one Aboriginal woman appointed to the Office of the Status of Women to ensure representation of all Australian women
- the Aboriginal and Torres Strait Islander Commission pay greater attention to the needs of women and ensure that their views are actively sought
- the Office of Aboriginal Women develop guidelines -
  - for ensuring adequate representation of Aboriginal women in decision-making forums;
  - for ensuring that all new policies and programs are reflective of the needs of Aboriginal women; and
  - against which all current policies can be reviewed for their effectiveness and implications for Aboriginal women; and
- These guidelines should then be circulated to all agencies involved in service delivery to Aboriginal people.

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<sup>110</sup> Hansard Precis, Visit to the Northern Territory 29-31 January 1990

5.21 The Committee notes that OAW has a network of women's co-ordinators and women's issues officers located in State and regional offices; however, it is concerned that OAW may not be achieving its full potential. For example, on Cape York Peninsula there are two female project officers to 500 women in ten or more communities. The expectation that these officers can fly into communities for two or three days and adequately respond to the needs of the women is unrealistic.<sup>111</sup>

#### Recommendation

5.22 The Committee recommends that:

- . the Aboriginal and Torres Strait Islander Commission immediately undertake a review of resources required to adequately co-ordinate and monitor programs and policies for their effectiveness and impact on Aboriginal women; and
- . that the findings of the review be implemented and adequately funded to facilitate improvements in service delivery where identified.

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<sup>111</sup> Transcript of Proceedings of Seminar, Brisbane, 11-12 January 1990, p.133