

**Report to Parliamentary Joint Committee on
Native Title and the Aboriginal and Torres Strait
Islander Land Fund**

***Relationships with Funding Bodies –
Pitjantjatjara Council Incorporated***

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Introduction

The purpose of this submission is to convey to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund the experience of the Pitjantjatjara Council in relation to funding traditionally sourced from ATSIC Port Augusta and AT SIS.

It is the opinion of the Pitjantjatjara Council Executive that the Council has been unfairly excluded from funding to continue its traditional role because of its support to retain a service delivery model that it believed served the interest of its constituents well.

To achieve this purpose I will concentrate on the experience of one of our service delivery divisions known as "Projects". The experience of the Council in relation to funding goes far beyond this but what has happened to projects will give the committee an example of how these statutory authorities have used funding as a tool to give effect to policies of their own making. Worse, it is often used a tool to punish and ultimately destroy organisations that oppose it, even if that opposition is only in the interests of the constituents they serve.

What is Pitjantjatjara Council?

The Pitjantjatjara Council is an organisation of all Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara people and their communities and outstations in Western Australia, South Australia and the Northern Territory, covering an area of around 350,000 square kilometres. Communities and homelands extend from Coober Pedy in South Australia to west of Warburton in Western Australia, and include Docker River, Mutitjulu, Imanpa and Finke in the Northern Territory. The collective name for these people is "Anangu".

The Council became the focal point for political and land-based discussions and negotiations with governments and the mining industry in the 1970s. It was the group through which decisions were made and negotiations conducted with the South Australian Government in relation to the Pitjantjatjara Land Rights Act (1981).

Pitjantjatjara Council's Role up to December 2001

After the proclamation of the Pitjantjatjara Land Rights Act (1981) the role and function of Pitjantjatjara Council changed.

A body corporate known as Anangu Pitjantjatjara (AP) was established under the Act in 1981. AP is the landholding body and is responsible for the administration of the Act. It was anticipated that AP would carry out the strict legal and administrative requirements under the Act with substantial support from the Pitjantjatjara Council. A number of other groups (both incorporated and unincorporated) operate under the auspices of AP. These include Nganampa Health Council Inc., PY Education Committee, PY Media, AP Services, AP Heritage Committee, and PY Air.

The Pitjantjatjara Council then refocussed its role to that of a Resource Centre, taking direction from Anangu and providing assistance and advice to all who sought it, if possible, but mainly working with Anangu Pitjantjatjara to help it fulfil its statutory obligations in relation to management of the Anangu Pitjantjatjara Lands. It played a significant role in support of AP with Council staff providing professional services to the AP Executive, community organisations and Anangu individuals.

The Council also fulfilled an important legal and anthropological function for AP, being the trustee of some of its operations and fulfilling roles, which AP was (in the opinion of both Councils then) statutorily unable to carry out on its own.

Divisions of Council - 2001

Legal

Council maintained a legal team to provide assistance and advice to members of the Pitjantjatjara Council Inc. on the following basis:

- Assist Anangu Pitjantjatjara in carrying out its powers and functions pursuant to Section 6 of the Pitjantjatjara Land Rights Act 1981 (SA) (the Act) and in particular Section 6(I) (d) regarding the administration of the Pitjantjatjara Lands vested in Anangu Pitjantjatjara.
- Provide advice and representation to Traditional Owners pursuant to sections 6 and 7 of the Act in relation to all legal matters with the exception of criminal offences.
- Provide advice and representation on behalf of each and every Pitjantjatjara Council Inc. member, Aboriginal organisations and communities located on the Pitjantjatjara Lands in South Australia and the Northern Territory on all legal matters with the exception of criminal offences; and will
- Provide legal assistance and advice to Anangu Pitjantjatjara, Maralinga Tjarutja and Aboriginal Lands Trust (SA) regarding Native Title rights and Law Reform generally

Anthropology

The Pitjantjatjara Council Anthropologists' stated objectives were to work to uphold the interests of the Pitjantjatjara/Yankunytjatjara/Ngaanyatjarra people of South Australia, Western Australia and the Northern Territory. The Anthropology Department staff consulted with the Traditional Owners and acted in accordance with their wishes as regards access to their land and cultural heritage. The Anthropology Department operated according to Sections 6 and 7 of the Pitjantjatjara Land Rights Act (1981).

Financial Services

Pitjantjatjara Council Financial Services Division is an Aboriginal-based accounting service developed in the early 80s to provide a service to the Pitjantjatjara Council Resource Centre. A number of years later the service was extended to meet the needs of Pitjantjatjara and Yankunytjatjara people and their communities and homelands.

The Pitjantjatjara Council Financial Service has now been developed into a team of highly skilled accountants and bookkeepers who understand how affairs are managed on Aboriginal lands. The service has extended to corporate bodies operating on the Pitjantjatjara Lands and to NT Local Government Authorities.

Ara Irititja (Social History)

Ara Irititja identifies, copies and electronically records historical materials about Anangu (Pitjantjatjara/Yankunytjatjara people). Ara Irititja, a project of the Pitjantjatjara Council, commenced in 1994 when it was realised that a large amount of archival material about Anangu was not controlled by or accessible to them. This material was held in museums, libraries and private collections. Items held by private individuals were often at risk of being damaged or irretrievably lost. To date, a major focus of Ara Irititja's work has been retrieving and securing such records for the benefit of Anangu and the broader Australian community.

Projects

"Projects" was a department within the Pitjantjatjara Council Resource Centre that had been operating for more than 20 years. During this time it worked in the Northern Territory, South Australia and Western Australia mainly in the region where those borders meet. The functions of projects were: -

- Provide Advice and aid in relation to Community Projects, (regularly used by ATSIC / DoSAA as a free consultancy service)
- Essential Services (water, power) Equipment design
- Project management (Power Stations)
- Supply and installation of water and power supplies to communities & homelands
- Ongoing maintenance of essential services infrastructure
- Data collection and recording
- Special Projects (eg Large scale Solar Power Collectors – “The Sun Farm”)

Changes in Service delivery Funding Arrangements in December 2001

Up until the financial year ended 30th June 2001 the operations of Pitjantjatjara Council continued in the same format as described above. Funding sourced from ATSIC Port Augusta for the main funded divisions of the Council for that year were: -

• Anthological	\$ 169,735 (via AP)
• Legal	\$ 302,587 (via AP)
• Projects	\$ 1,889,932

In October 2001 the Legal and Anthropological divisions received funding from ATSIC Port Augusta via AP, for the December Quarter. This was the last round of funding to be provided by ATSIC for these functions. In December 2001 the Council was abruptly advised that AP would no longer be passing these funds to Pitjantjatjara Council but would be employing its own lawyers and anthropologists (despite a provider agreement to the contrary between both parties). ATSIC Port Augusta advised that it fully supported the decision of AP.

This action ignited a political debate that I won't go into in great detail in this submission. However the debate centres around the function of AP as set out in the Act, being: -

“To ascertain the wishes and opinions of traditional owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions;”

The Pitjantjatjara Council's position was that AP (being the land holding entity) could not be the organisation that provides administrative support to this function and be the body that gives effect to the wishes of traditional owners without the potential for a conflict of interest arising.

The Legal and Anthropological divisions of Council closed on the 30th June 2002.

Effect on Pitjantjatjara Council Projects

It is worth stating from the outset that the Projects Division and its models of service delivery were not under question by any of the participants in the debate over legal and anthropological service delivery.

Projects in fact had established a reputation as being the most effective provider of essential water and power services on Aboriginal Lands in Australia. Its operations had been developed over twenty years of trial and error into a team of people who were adept at travelling over the most remote areas of Australia for sometimes months at a time, setting up and maintaining basic services regardless of climatic conditions or terrain.

It was in particular held in high regard for its expertise in developing, installing and maintaining alternative (solar) energy systems in remote aboriginal communities.

As an example of its standing, the Australian Greenhouse Office in 2000 selected Pitjantjatjara Council Projects to project manage its prestigious \$2.5 million alternative energy development on the Pitjantjatjara lands known as the “Sun Farm”.

While legal and anthropological funding ceased in December 2001 Projects remained fully funded until 30th June 2002 receiving \$1,245,662 in that financial year.

In September 2002 Projects received \$273,577 funding for the first quarter of the Financial Year. This was the last time that Projects received any direct funding from ATSIC and it also marked the beginning of a process of the systematic setting up of obstacles for the Council to get over in order to retain Projects as a division. It was certainly the Executive's opinion at this time that the Council was to be severely restricted if not destroyed for taking a stand contrary to ATSIC in a dispute, which should have been left to Anangu to sort out.

The first hurdle Projects was presented with was an ATSIC Port Augusta managed forensic audit. This occurred in December of 2002. This was despite there being no concerns with our accounting for funds ever being raised before. Indeed ATSIC Port August would often drop funding in our laps at the end of a financial year if it could not be effectively spent elsewhere (e.g., \$300,000 in June 2001).

The audit basically found that although we did not always go by strict ATSIC guidelines (waivers were always obtained), Pitjantjatjara Council provided an excellent, cost effective service and even commented that: - *"this should become the benchmark for all similar services in Australia"*.

ATSIC Port Augusta basically ignored these findings and continued to withhold funds.

Pitjantjatjara Council was then advised that the funding was now to go to AP the body then in dispute with the Council over the delivery of Legal and Anthropological Services. The Council had never disagreed with the right of AP to control infrastructure funding but believed at that time the administration was in such turmoil that the funds should continue to go direct to Pitjantjatjara Council. However, Council agreed that AP was the right organisation to receive the funds and it was confident that the Pitjantjatjara Council Projects division would be the service provider. AP in fact at an Executive Meeting held in Indulkana in December 2002 supported Pit Projects being the service provider.

You would have thought that common sense would prevail and the service delivery would resume. However, in November of 2002 an election was held for the office of Chairperson of AP (supervised for the first time by the SA Electoral Commission). Who should win this election? The person elected Chairperson of AP was the then Chairperson of Pitjantjatjara Council, Mr. Gary Lewis. This of course changed the opinion of ATSIC overnight. AP was now no longer the appropriate organisation to receive essential services funding. Anangu had exercised their democratic rights and cast judgment in favour of the traditional methods of service delivery but this did not matter to ATSIC. As soon as the new AP Executive took office the funding uncertainty for that organisation began via threats from ATSIC Port Augusta.

In Mid-December 2002 ATSIC contacted Pitjantjatjara Council and advised it was now re-routing its essential services funding through the Department of State Aboriginal Affairs in South Australia (DoSAA).

Pitjantjatjara Council advised that it would not cooperate because this was subverting Anangu aspirations and was contrary to the recently stated policy of ATSIC itself, AP and Pitjantjatjara Council. This should also be considered in the light of problems Pitjantjatjara Council Projects was having re the Sun farm project – Inability of DoSAA to make decisions and payments in any realistic time frame.

At this point in time no funds had been received for essential services since September 2002. It was not until February 2003 when, after the hot summer months, infrastructure supporting power and water on the lands was breaking down were limited funds released for maintenance. This was only after pressure was applied to ATSIC by the Federal Government Departments responsible for Health Services.

At the end of February most of the Projects Division of Council was retrenched although Council retained a skeleton staff and the manger on a casual basis in the hope that the service could be revived if and when funds started flowing again.

Of Course the enviabale happened; toward the end of the financial year ATSIC Port Augusta found itself with about three quarters of a million dollars allocated to spend on essential services on the lands that they had not disposed of. Rather than just do the obvious and practical thing and give it directly to Projects they finally contracted with AP to manage the program. AP had no resources to do this so they had to hire a program manager (with a leakage of around 10% to pay for this). As the program manager could not project manage essential services (according to ATSIC) AP contracted with Anangu Pitjantjatjara Services (APS) to do this. APS is another Anangu Service Provider, which deals mainly with road construction and maintenance, Housing and Waste Management on Pitjantjatjara Lands.

Of course AP Services had no resources in place to carry out the program so they sub-contracted to (you guessed it) the remnants of Pitjantjatjara Council's Projects Division. All of this resulted in increased costs and reduced levels of services, due to the costs incurred for Project Management and multiple tiers of bureaucracy.

The work was recommenced in April of 2003 and was not completed until January 2004.

By this time the management of Pitjantjatjara Council had been exhausted by the process and preceded to wind down the division. Pitjantjatjara Council Projects Division officially closed on the 30th June 2004.

AP/AP SERVICES & ATSI ESSENTIAL SERVICES FUNDING 2003–2004

Until now we have been discussing the spending of funds available for release up until the 30th June 2003. There is also the issue of the funding of Essential Services, (capital and maintenance), for the year ended 30th of June 2004. AP Services decided to put itself forward as the body to take over the role from Pitjantjatjara Council's Projects Division. An almost endless round of negotiations and shifting of goal posts have characterized AP Services' attempts to secure funding (mirroring Pitjantjatjara Council's experience).

The detail of this protracted process is quite complex and is presented as **attachment A**.

Funding for 2004/2005

The Committee is advised that at the time of writing this submission nether AP or AP Services has any advice of the funding it will receive in the year ending 30th June 2005, despite it now being two (2) weeks into that financial year.

With the demise of ATSI we were hopeful of some change in the attitude of funding providers but we note that the same staff we dealt with in ATSI Port Augusta will be managing the funding for the bulk our programs (including essential service) from within the Department of Family and Community Services.

Suffice to say that we don't see a light at the end of the tunnel.

Pitjantjatjara Council now consists of two (2) divisions, Financial Services and Ara Irititja (Social History).

No external funding is received apart from a promised grant for Ara Irititja from the State Government which is yet to materialise. Pitjantjatjara Council is now a fee for service organisation.

Conclusions

Returning to the purpose of this submission Pitjantjatjara Council is hopeful that it has given the committee an insight into the difficulties that Aboriginal owned organizations experience through their relationships with funding bodies

The Pitjantjatjara Council does not deny that funding providers have a responsibility to ensure that funding purposes are achieved and that there is effective control over funds.

However, in the case of Pitjantjatjara Council and related organizations, funding has been used as a tool to achieve political outcomes that funding bodies may desire. The Pitjantjatjara Council believes that Politics on the Pitjantjatjara Lands is Anangu business and that bureaucrats in Canberra, Adelaide and Port Augusta should not support one faction against another. They should also not continue to harass these organizations because they do not achieve the outcomes they desire.

The Pitjantjatjara Land Rights Act 1981 was supposed to deliver self-determination to Anangu; in fact what has happened is the opposite. Anangu have been battling for self-determination ever since.

We should also not forget that the ultimate result of these types of conflicts is reduced service for some of the most disadvantaged persons on this planet. We are after all talking about clean potable water, lights and power for Traditional Owners & their Homelands. Given the current focus on the problems within large communities, surely any activities or practices that reduce the ability for these Homelands to remain functional and occupied need to be most strenuously questioned.