

Aboriginal and Torres Strait Islander Commission (ATSIC) Northern Territory

**Submission to the Standing Committee on Economics, Finance and
Public Administration
Inquiry into Local Government and Cost Shifting**

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1 Executive Summary

Challenges, threats and opportunities characterise local government in the Northern Territory (NT). The capacity of councils to deliver services is not consistent and this is augmented by a complexity of funding arrangements and range of incorporation categories. Inequities abound as most organisations, particularly in remote areas, struggle to provide services often markedly below standards enjoyed by their southern counterparts. Cost shifting of services from the Commonwealth and NT Governments has become more common in recent years not always to the benefit of communities due primarily to a lack of funding.

Time and time again reviews, reports, audits, inquiries and studies loudly broadcast the imbalances, discrimination, and inequality in arrangements for the delivery of services to Aboriginal and Torres Strait Islander people throughout the nation. Governments respond by making minor changes that merely nibble at the edges of the problem. What is needed is a concerted and collaborative approach by all spheres of government. A 'whole of government' approach must focus on capacity building for communities in the quest to break the cycle of dependence and instigate true self-determination.

This submission concentrates on the provision of services to Aboriginal and Torres Strait Islander people mainly in remote communities, where most organisations delivering local government services are based, but also refers to urban settings. The submission will relate:

- Trends for Aboriginal communities to attain more flexible governance systems are impeded by limitations of the *NT Local Government Act*;
- The Commonwealth and NT Governments are not supporting many Aboriginal organisations with the provision of local government funding despite those organisations delivering local government services or agency contracts;
- Provisions exist within the *Commonwealth Aboriginal Land Rights (NT) Act* which councils should utilise to promote service provision on Aboriginal land;
- Mainstream services have largely failed to improve the lives of Aboriginal and Torres Strait Islander people as shown in a number of social indicators;
- Despite its status as a supplementary provider of funding ATSIC is in fact a primary financier of local government services, often exceeding that of the Commonwealth and NT Governments;
- ATSIC funds are often used to cover the shortfalls in council agency contracts from the NT and Commonwealth Governments. For contracts with NT agencies, in effect the NT Government is cost shifting to the Commonwealth through ATSIC; and
- Regional collaboration is to be encouraged amongst councils and associations and ATSIC Regional Council Plans should be regarded as a primary source for planning and policy development.

The submission is structured around the Inquiry's terms of reference. Recommendations are provided where relevant and are summarised in part 8.

It should be noted that ATSIC NT will be providing a submission for the current House of Representatives Standing Committee's *Inquiry into Capacity Building in Aboriginal Communities*. The Committee is encouraged to consider that submission as there are areas of mutual interest to both Inquiries.

2 Local government's current roles and responsibilities

Local Government in the NT is a complex mixture of Commonwealth and NT legislations covering a variety of organisations that provide local government-type services. Outside urban centres councils and associations are usually the only administrative centre in the community and, as such, are often the main, or sometimes the sole, employer. These organisations have to contend with many more challenges than their southern counterparts such as limited resources, the 'tyranny of distance', and the high cost of service delivery in remote areas. Whilst the range of incorporation options offers flexibility for the provision of services in these unique circumstances it has also led to funding and resource inequities.

2.1 Service provision in the NT

Strictly speaking, the NT Government only regards Municipal and Community Government Councils as 'local government' as they are the only councils registered under the NT *Local Government Act (LGA)*. Twenty-seven of the thirty Community Government Councils are in Aboriginal communities. The *LGA* contains a 'general competence' clause where a council may undertake 'all things necessary' in performing functions (s.115). This clause accommodates the difficulties in providing services throughout the NT. However, in reality the Commonwealth and NT Governments have progressively devolved or cost-shifted some of their responsibilities to councils, and some councils have expanded their service provision network either voluntarily or due to service gaps. The heart of the issue is that with such expansion of services, through whatever means, many councils are either not able to raise revenue to finance the services or are not adequately funded by the Commonwealth or NT Governments.

Association Councils are incorporated under either the NT *Associations Incorporation Act* or the Commonwealth *Aboriginal Councils and Associations Act*¹. All twenty-nine of these Associations are in Aboriginal communities and have a set membership with a constitution that, in theory, applies only to members but in practice, as a local governing body, they deliver local government services to the entire community. Association Councils must be declared a local governing body by the NT Local Government Minister to be eligible for local government funding but they are not eligible for the 30% extra incentive funding provided to Community Government Councils by the NT Local Government Grants Commission (NTLGGC). Amendments made in 1995 to the NT *Associations Incorporation Act* made Association Councils comply with the financial regulations of the *LGA*. At the same time the NT Government decreed that the four Association Councils under the Commonwealth Act had to enter into an agreement with the Government regarding financial compliance because they were in receipt of NT funding.

Besides Community Government and Association Councils there are scores of resource and outstation centres incorporated under the *Aboriginal Councils and Associations Act*. Membership is only available to Aboriginal people and organisations have a greater degree of flexibility in functions than local government. The chief funding source is ATSIC as they provide services to outstations although often they are the sole provider for some local government services in townships, such as road maintenance and repair. For example, for many years Bawinanga Aboriginal Corporation has provided road services in Maningrida and roads to, and within, outstations as well as the major roads to Kunbarllanjnja and Ramingining. Unable to be designated a local governing body means the Corporation is dependent on Maningrida Council for road contracts yet provides the first of the three 'R's of local government. This is a common situation throughout the Territory.

There are also other smaller communities and town camp organisations which deliver some local government services but they are not considered by the NT Government to have local government status, again because they are not incorporated under the *LGA*.

It should also be remembered that much of the Territory is unincorporated. This means that Aboriginal organisations are often the sole provider of services.

Being located in Aboriginal communities means the task for organisations of delivering local government services is compounded by particular social indicators: high unemployment, lack of alternative revenue-raising sources, and a high degree of social and health problems. The provision of services to Aboriginal people in remote regions rides on the backs of these organisations. In varying degrees they have been required to take on health care, education, policing, power and water supplies, and other agency services such as postage, banking, and Centrelink. As will be seen later in Part 4 financial and resource support from governments has not been commensurate with the extra services these organisations must now provide.

In urban areas the expectation is that mainstream services outside of local government are adequate to meet the needs of Aboriginal and Torres Strait Islander people. However, as will be seen in Part 3, the *Commonwealth Grants Commission Inquiry into Indigenous Funding* found that mainstream services have generally failed Aboriginal and Torres Strait Islander people, no matter the setting.

2.2 Aiming for flexible governance systems

The variety of organisations which provide local government services was highlighted in the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). This Inquiry commented on the then-NT Government's emphasis on community government as a detriment to self government and the inappropriate coercion by the Government that ultimately impacted on Aboriginal and Torres Strait Islander communities and affected service delivery². The Inquiry recommended:

'That governments recognise that a variety of organisational structures have developed or been adapted by Aboriginal people to deliver services, including local government-type services to Aboriginal communities...[such as] community councils [that are not local government], outstation resource centres...and other bodies incorporated under Commonwealth, State and Territory legislations as councils or associations...The Commission recommends that government should recognise such diversity in organisational structures and that funding for the delivery of services should not be dependent upon the structures of organisation which is adopted by Aboriginal communities for the delivery of such services'. (recommendation 199)

The NT Government supported this recommendation stating 'organisational structures and the methods [communities] use to deliver services is up to each organisation'³. However, within two years the NT Local Government Reform Agenda was developed and the Government's view was that Association Councils did not suit the framework for local government as community government was the prime option⁴. This approach contradicted the RCIADIC recommendation to the detriment of Associations and similar organisations. The present NT Government has not indicated whether it intends to fully implement the recommendation, rather, the Government favours the development of regional agreements for service delivery.

In an historic speech to the NT Parliament in March 2002 the new Minister for Community Development, Mr John Ah Kit, slammed the former Government's emphasis on community government and claimed it was almost impossible to find a well-functioning community in the

NT⁵. During his speech the Minister announced the new direction with regional agreements and community capacity building at the core.

Some years ago ATSIC embarked on developing regional autonomy options for communities that many not necessarily involve incorporation under the *LGA*. Examples in the Territory are the Miwatj Regional Government and West MacDonnells models. These proposals have received wide and significant support throughout the nation and recommendations should be forwarded to the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs in the near future. At the same time, the *LGA* does not allow local government councils to transfer to alternative governance models if so desired and this needs to be addressed.

As well, ATSIC in the NT has proactively promoted partnership arrangements with governments and non-government organisations particularly for health, housing and educational matters. This approach is also being utilised to develop a productive relationship with the Local Government Association of NT in a joint effort to improve conditions in remote communities and sponsor capacity building on the road to self-reliance.

National ATSIC co-hosted the recent Indigenous Governance Conference held in Canberra. Speakers from United States, New Zealand and Canadian indigenous communities discussed options and processes for achieving self-governance, as well as the need for leadership and capacity building. The Conference stressed the need to ensure traditional law is inherent in governance systems. It was recognised that a variety of international models could be adapted for the Territory, including tribal and band governments under Indian treaties in the USA and Canada. Closer to home, the Torres Strait Regional Authority spoke about its plans for structural changes that will enhance self-governance. Given the Territory's particular circumstances with regard to local government, the Commonwealth and NT Governments should consider sponsoring local discussions for communities to explore lessons learned from the Conference.

The current review of the Commonwealth's *Aboriginal Councils and Associations Act*⁶ may have significant impact on Territory remote organisations incorporated under that Act. The aim of the review is to liberate some of the restricting and contradictory aspects of the legislation that have constrained communities and organisations. This review is long overdue and it is hoped the recommendations will serve to offer NT communities a viable platform from which to launch and develop self-determination ambitions.

In 1998 two milestone conferences were held in Kalkaringi, in central Australia, and Batchelor, in the Top End. The conferences produced the Kalkaringi Statement and the Indigenous Constitutional Strategy (which incorporated the Kalkaringi Statement), respectively. Important excerpts from the latter, in relation to Aboriginal Self-Determination and Self-Government are:

- That Aboriginal peoples, being the first peoples to own and govern this land, have the right to self-determination and that our inherent right of self-government must be recognised and protected in any Constitution of the Northern Territory;
- That Aboriginal self-government shall be recognised as a fundamental right and a solution to the present disempowerment of the people of the Aboriginal nations of the NT; and
- That this Convention notes that there is a range of options from domestic and international jurisdictions that provide concrete expressions of the right of all peoples, including Indigenous peoples, to freely determine their political status, and further notes that, as a form of self-determination, Indigenous peoples have the right to self-government in relation to their own affairs. These include culture, religion, education, information, media, health, housing,

employment, social security, economic activities, land, water and resources management, environment and entry by non-members.

Both the Kalkaringi Statement and the Indigenous Constitutional Strategy have been supported by ATSIC, Land Councils, and many NT Aboriginal and Torres Strait Islander organisations. With the latest census statistics showing almost a third of the NT's population is Indigenous, governments should incorporate these important declarations into their policies.

Looking at the 'big picture' it can be seen there is a definite trend amongst the Commonwealth and NT Governments, ATSIC, and communities towards more flexible governance systems. The momentum for these moves should be supported by all governments as a means of not only improving service delivery but of moving communities away from dependence on government funding. This will benefit not only Aboriginal and Torres Strait Islander people and their communities but ultimately both the NT and Commonwealth Governments and the nation as a whole.

2.3 Local Government and the *Aboriginal Land Rights (NT) Act*

Since the introduction of the *LGA* in 1978 Land Councils have been suspicious of local government primarily due to conflicts between that Act and the *Aboriginal Land Rights (NT) Act (ALRA)*. The RCIADIC heard addresses from many communities and land councils about the 'fears' of local government incorporation in relation to its impact on autonomy⁷. Land Councils have repeatedly argued that the *LGA*:

- does not contain reference to traditional owners and, as such, does not recognise the right of Aboriginal landowners to be consulted over use of their land or for the establishment of new councils and by-laws;
- emphasises residential status of community people rather than their traditional links resulting in non-Indigenous people making decisions about Aboriginal land and often attaining senior positions on councils without the support of traditional owners; and
- contains many clauses which are incompatible with the *ALRA*⁸.

The Central and Northern Land Councils provided submissions about the above points to the 1998 review into *ALRA* but these were dismissed by the consultant John Reeves⁹. In recent years the approach of the Northern Land Council has been to assist traditional owners to negotiate land use agreements with their local council under S.19 of *ALRA*. These Council Agreements aim to give the council a licence to deliver services on Aboriginal land, such as rubbish pick-ups, and a lease over certain land areas, such as a gravel pit. The intention is to allow the council to carry out its regular operations as agreed between the council and the traditional owners but to also stipulate circumstances where traditional owners must be consulted prior to operations, such as new housing developments, new roadworks, or a proposal which may affect Aboriginal land in any way. At present there is only one such agreement in place at Minjilang and the Northern Land Council is hosting negotiations for a similar agreement at Wadeye. As part of the Local Government Reform Agenda the NT Government supported such agreements as a means of overcoming the difficulties between the *LGA* and the *ALRA*¹⁰. The present NT Government should resuscitate this stand within its promotion of regional agreements for service delivery and capacity building for Aboriginal communities.

Recommendations

That

1. The NT Government amends the *Local Government Act* to:
 - recognise all those organisations that provide local government services, in line with the Royal Commission into Aboriginal Deaths in Custody recommendation 199 and provide due funding and resource support;
 - allow for councils to transfer their status to another legislation if they wish to change their incorporation status;
 - make reference to the *Aboriginal Land Rights (NT) Act* in that many councils operate on Aboriginal land;
 - recognise Aboriginal traditional owners and their rightful authority to be consulted for all matters affecting their land;
 - state that Community Government Council Schemes must include the need for councils to consult with Aboriginal traditional owners for any council activities on Aboriginal land; and
 - accommodate traditional decision-making.
2. The Commonwealth and NT Governments actively encourage and provide support for council agreements for use of Aboriginal land under the *Aboriginal Land Rights (NT) Act*.
3. The Commonwealth and NT Governments sponsor an Indigenous Governance Summit where Aboriginal people and organisations, along with the Government, can explore, develop and negotiate options for alternative governance systems.
4. Any Partnership Agreement negotiated between ATSIC and the NT Government to emphasise mechanisms to advance Indigenous self-governance.
5. The Commonwealth and NT Governments endorse and actively support the Kalkaringi Statement as a means of a partnership approach to improving the lives of Aboriginal and Torres Strait Islander peoples in the NT.

3. Current funding arrangements for local government, including allocation of funding from other levels of government and utilisation of alternative funding sources by local government

A plethora of reviews and reports into local government funding over recent decades repeatedly comment upon, or recommend, the need for altered funding arrangements between the Commonwealth and NT Governments, or more funding for Aboriginal communities.

3.1 Inequity of the current funding structure

Complexity rules the current system of local government funding by the Commonwealth and NT Governments. Under the Commonwealth *Local Government (Financial Assistance) Act 1995* (FAGs) allocations are made by the Commonwealth Local Government Grants Commission to State and Territory Local Government Grants Commissions on the basis of horizontal equalisation. This is a per-capita funding arrangement on the principle of providing councils with an equal capacity to provide services. This system has repeatedly been found to be inequitable to those jurisdictions where the delivery of services carries added burden due to

unique circumstances, such as in the NT. The system is further complicated by the NTLGGC distributing funds by its own formula which includes 'Aboriginality' as a 'disability' in earmarking funds for certain communities.

Despite the NT Government and NT Councils receiving funding either specifically for the provision of services to Aboriginal and Torres Strait Islander people, or in recognition of the 'Aboriginality' disability factor, there is a lack of accountability for the measurement of outcomes. There is an argument that funds intended to specifically overcome the disadvantage experienced by Aboriginal and Torres Strait Islander peoples are channelled into other needs which effectively puts the NT Government or councils/associations in breach. This lack of transparency was highlighted in the recent Commonwealth Grants Commission review, as discussed later in Part 7. Grants made to the NTLGGC by the Commonwealth are untied and there is no system of monitoring or assuring that equitable levels of service are applied. Measures to overcome this inequity could see the NT Government report on outcomes, and direct funding to communities by the Commonwealth which would not only promote self-determination but also ensure resources are actually spent where they are intended and needed. Indigenous Impact Statements should also be implemented for all policies and programs likely to affect Aboriginal and Torres Strait Islander people.

Inequities in road funding to councils has long been a vexed issue. More than 20,000 kilometres of unsealed roads¹¹ outside of urban areas are maintained by local governing bodies. Funding for roads is grossly inadequate with a number of reports in recent decades recommending a substantial influx of funds in order to bring local roads in Aboriginal communities up to basic Australian standards. The NT Department of Transport and Works estimate that around \$25 million is required for asset preservation of sealed roads and a further \$50-55 million for unsealed roads. Another concern is the fact that road funding is untied. Given competing interests in service provision, coupled with lack of funding, it is not unusual that councils will direct funds to other urgent priorities.

The problem of inequitable funding has long been recognised as inadequate and discriminatory by Aboriginal and Torres Strait Islander people in the NT. Within the theme of a breach of human rights, the 1998 Kalkaringi Statement and the Indigenous Constitutional Strategy - both supported by thousands of Aboriginal and Torres Strait Islander people in the Territory - made this assertion:

Recognising the problems and inadequacies with the current financial arrangements for the provision of services to Aboriginal communities in the Northern Territory:

That there must be direct Commonwealth funding of Aboriginal communities and organisations and a process of review, in particular an investigation into NT Government handling of Commonwealth funds intended for the benefit of Aboriginal people'.

As mentioned in the previous section there is a considerable number of organisations not considered local governing bodies which deliver local government-type services, namely Aboriginal Corporations. As well, Association Councils, which are all in Aboriginal communities, and which number more than Community Government and Municipal Councils combined, are ineligible for status weighting funding (an extra 30% grant) because they are not incorporated under the *LGA*. Both the Commonwealth and NT Governments have an obligation under the Australian Constitution to provide services for citizens and they also have a moral responsibility to ensure such services are at least to levels supporting basic human rights. Consequently, governments need to provide requisite funding to those organisations which provide local government services regardless of their incorporation status.

3.2 Commonwealth Grants Commission Indigenous Funding Inquiry 2001

This Inquiry was touted as a watershed to improve the lives of Aboriginal and Torres Strait Islander people. It was hoped the Inquiry would be an opportunity to reform Commonwealth-State financial relations. At the outset ATSIC was concerned with the narrow focus of the Inquiry's terms of reference. It was soon made clear by the Inquiry that no further funding would be offered for the provision of services. This could only result in a shuffling of funding within existing program areas. Clearly this will simply add complexity to programs, compound existing funding shortages, and intensify confusion over responsibilities.

ATSIC preferred the Inquiry to focus on absolute needs and the budget requirements to meet these needs. Instead, the Inquiry reviewed relative needs which limited the scope to functional areas of housing and infrastructure, employment and training, and health and education. In doing so, other priorities essential for the advancement of Aboriginal and Torres Strait Islander people were neglected. Such areas included the provision of specialised legal services, economic development strategies, addressing the unique needs of the Stolen Generations, supporting culture and language, and pursuing land and other rights. The Commonwealth Government's theme of 'practical reconciliation' to improve services - namely, health, education, employment, training - ignores these other factors essential to improving quality in the lives of Aboriginal and Torres Strait Islander people.

The Inquiry's recommended Index of Indigenous Socio-Economic Disadvantage was not supported by the Commonwealth yet the tragic social and economic indicators amongst Aboriginal and Torres Strait Islander people in the NT are well-known to governments, to name just a few:

- *Health* statistics mirror those in third and fourth world countries. In comparison to the non-Indigenous population, Indigenous people have a significantly lower life expectancy, high rates of sexually-transmitted diseases, renal disease, diabetes, cardiac and respiratory problems, and are afflicted by other lifestyle-related problems such as substance abuse.
- *Housing* shortages are evident with the housing needs of Indigenous people in the NT representing 34% of the total national need. About 5,000 more houses are needed, costing \$820 million, to cover the backlog.
- *Education* is marred by low literacy and numeracy skills and poor retention rates. Unemployment amongst Indigenous people in the NT is 17.8% compared with the overall NT rate of 5.8%. With CDEP assigned as unemployment, this figure skyrockets to 53%.
- *Water* quality in many Aboriginal communities has been poor for decades and many others do not have an adequate or reliable supply. Only in recent weeks has the NT Government commenced a program to tackle the issue of tainted water supplies.

The recently released *Atlas of Health-Related Infrastructure in Discrete Indigenous Communities* (ATSIC 2002) paints a picture of severe shortfalls in almost every Aboriginal community in the NT.

The findings in the Inquiry's Final Report were not new to ATSIC. A key finding was that throughout Australia in all the functional areas under scrutiny by the Inquiry Aboriginal and Torres Strait Islander people experienced 'entrenched levels of disadvantage compared to non-

Indigenous people' and that this disadvantage was much higher in remote areas¹². Further findings included:

'mainstream services do not meet the needs of Indigenous people to the same extent as they met the needs of non-Indigenous people' (page 43)

'There is no obvious and simple proportional relationship between measures of needs and the funds required to achieve outcomes' (page 52); and

'Indigenous people in all regions have high needs relative to the non-Indigenous population' (page 52).

The Commonwealth's response¹³ to this Final Report reiterated its policy of practical reconciliation and re-emphasised mainstreaming of services. Ten principles were developed 'for equitable provision of services to Indigenous people'. Some of these principles are commendable, such as the need for: capacity building for communities; flexibility in providing services; development of long-term plans and goals, and recognising that resource needs are greater in remote communities. However, the 2002/2003 budget contained no significant funding increases to support implementation of these principles. As well, the Government's response disregards the Inquiry's finding that mainstream services have failed Aboriginal and Torres Strait Islander people.

3.3 ATSIIC used as a primary funding source

It is a common belief that ATSIIC is accountable for all services and funding for Aboriginal and Torres Strait Islander people. Thus, ATSIIC is often blamed for the continuing disadvantage, poverty and welfare dependency experienced by Aboriginal and Torres Strait Islander people. The fact is that the Commonwealth and State/Territory Governments have primary responsibility for service provision and ATSIIC's budget has always been considered as supplementary. In reality, often government programs are either under-resourced or withdrawn and ATSIIC fills the gap.

With regard to local government funding, ATSIIC provides a significant contribution. Table 1 shows funding allocations for local government services to remote councils by ATSIIC, the NT Division of Local Government (DLG) and the Commonwealth. Even excluding CDEP, the table reveals ATSIIC funding support exceeds that of the Commonwealth by several million dollars, and is not far behind the NT Government's contribution.

ATSIIC offers a Municipal Services program designed to *supplement* other funding received by councils. This program is only available for organisations that provide local government-type services. Services which may be funded include:

- Repairs and maintenance to infrastructure, such as running costs of council vehicles;
- Administration operational costs;
- Repairs and maintenance of community non-housing assets;
- Dog health programs;
- Environmental health workers;
- Rubbish disposals, such as maintenance of a rubbish tip;
- Landscaping, such as community parks;
- Community fire prevention and upkeep of control equipment;
- Leasing of essential services vehicles;
- Rates and taxes for buildings used for administration of council services; and
- Insurance for council assets, such as graders or office buildings.

This role of ATSIIC as a primary provider of local government funding was highlighted in a recent ANAO Performance Audit of ATSIIC's Municipal Services funding. The Report declared 'At the heart of ATSIIC's role in 'municipal services' is the fact that mainstream services are not being made available to some Indigenous communities by State or local government bodies'¹⁴.

Table 1: Funding for NT Remote Area Communities for Local Government Services (1) in \$				
		1998-99	1999-00	2000-01
ATSIIC	Municipal (2)	11,350,644	11,425,234	11,866,356
	CDEP to LGBs (3)	39,537,788	38,486,812 (6)	43,789,828
	Other funds to LGBs (4)	819,101	681,819 (6)	1,099,694
	Other funds to non-LGBs (5)	396,581	340,054	1,931,849
	Total	52,104,114	50,933,919	58,687,727
Commonwealth	FAGs General Purpose	4,480,496	4,576,297	4,778,317
	FAGs Roads	4,874,154	5,098,431	5,326,021
	Total	9,354,650	9,674,728	10,104,338
NT	NT Operational Subsidy	14,178,478	14,379,482	14,879,482
	Minor Community	634,671	634,671	634,671
	AULA - town camps	800,000	800,000	800,000
	Dump	570,970	570,970	570,970
	Capital	2,500,535	2,500,535	2,466,535
	Total	18,684,654	18,885,658	19,351,658
<i>Notes</i>				
(1) Includes Community Government Councils, Association Councils, and Aboriginal Corporations (outstation/homeland centres); excludes Municipal Councils.				
(2) About half the recipients were Aboriginal Corporations and the rest were Community Government and Association Councils.				
(3) Covers wages, on-costs and operational costs. Recipients were Community Government and Association Councils.				
(4) Does not include funds for: women's centres and programs, broadcasting, CHIP, NAHS, festivals, family violence prevention programs, law and cultural programs, arts and crafts, conferences, legal services, or public affairs.				
(5) Covers services such as grounds maintenance, roadworks, sports equipment and facilities, power and sewerage upgrades, barge land upgrades, development of council plans, rubbish collection and disposal, and night or community patrols. Recipients were Aboriginal Corporations.				
(6) Figures for one Regional Council were unavailable so the previous year's allocation has been used as an estimate.				
<i>Legend</i>				
LGBs = local governing bodies; FAGs = Financial Assistance Grants; AULA = Aboriginal Urban Living Areas				
<i>Sources</i>				
ATSIIC Regional Council Annual Reports; NT Grants Commission Annual Reports; Reports on Local Government Grant Programs, (NT Department of Local Government)				

Besides this Municipal Services funding ATSIK's Community Development Employment Program (CDEP) is heavily utilised by local government. This was discussed in a recent report, reviewing local government's capacity to implement the *National Commitment to Improve Outcomes for Indigenous Peoples*, which found that CDEP was used for services such as administration, airport maintenance, construction, fencing, health, landscaping, recycling, security, sport and recreation, and community aged, youth and children services¹⁵. In its submission to the *Commonwealth Grants Commission Indigenous Funding Inquiry* ATSIK reported there were 1,345 CDEP participants involved in the provision of essential services.

The Report reviewing the *National Commitment* argued there were three major inefficiencies in local government services delivery: a lack of capacity to meet community requirements; duplication of services; and structural inefficiencies such as a policy focus that fails to include Indigenous communities and a lack of co-ordination¹⁶. The Report found ATSIK was a 'primary financier of local government service delivery rather than a supplementary source of funds'¹⁷ through separate reviews of all States and the NT which repeatedly revealed ATSIK's contribution to local government was comparable, and often in excess, to the provisions made by State/Territory Governments, particularly through these ATSIK programs:

<i>Community Economic Initiatives Scheme:</i>	sports facility maintenance; works equipment
<i>Employment and Training:</i>	CDEP (particularly wages component)
<i>Legal Aid and Human Services:</i>	community and youth support
<i>Law and Justice / Sports and Recreation:</i>	facilities and maintenance expenditure
<i>Housing, Infrastructure and Health:</i>	community housing and infrastructure
<i>Strategic Support:</i>	Indigenous women's issues

Many local governing bodies utilise ATSIK funding for other services which have been taken on by the council such as:

<i>Night or Community Patrols</i>	purchase of equipment, operational costs
<i>Safe Houses</i>	capital, maintenance, operational costs
<i>Arts and Crafts</i>	capital, maintenance, operational costs
<i>Home Living Skills</i>	capital, operational costs
<i>Crime Prevention Strategies</i>	wages, purchase of equipment
<i>Prevention, Diversion and Rehabilitation</i>	wages, program costs
<i>Family Violence Prevention</i>	wages, program costs

More recently, the ANAO's audit of the ATSIK Grant Management System again reiterated the fact that mainstream programs are not dealing with demands so ATSIK programs are substituting rather than supplementing funding from other agencies¹⁸.

Clearly ATSIK provides a considerable contribution towards local government services throughout the NT and the Commonwealth and NT Governments have benefited financially through ATSIK's programs. This not only burdens ATSIK's already limited resources but also masks governments' responsibilities in supporting the provision of local government services. The Commonwealth and NT Governments should either recognise ATSIK's role as a primary provider or reimburse ATSIK's share.

3.4 Agency contracts

Despite being required to take on more services devolved or cost shifted from the Commonwealth and NT Governments, councils do not always receive the requisite funding

required to provide a sustainable and adequate service. This was borne out in a consultancy undertaken by the Local Government Association of NT (LGANT) in 1997 which found that¹⁹:

- Councils appears to have taken on agency agreements on the understanding it was part of their 'Charter' and obligation to the community;
- Councils may not have been totally aware of the full requirements that would be necessary in taking on the agency work;
- Financial information was not always available in order for Councils to ascertain the exact costs to be incurred in taking on the work; and
- There was a common view that Councils were not being fully reimbursed for costs associated with agency activities.

Accepting that only two remote area councils were reviewed in LGANT's study, the results found significant shortfalls ranging from \$9,800 to \$100,000 over agencies including Power and Water Authority, NT Correctional Services, Police, Australia Post, Department of Social Security, and Territory Health Services.

Many of these contracts are with NT Government agencies. With ATSIC providing a significant amount of support to cover funding, in effect the NT Government is actually shifting costs to ATSIC, that is, a Commonwealth agency.

3.5 Funding implications of the NT Local Government Reform Agenda

The previous NT Government's Local Government Reform Agenda hit remote councils hard in the hip pocket. Amalgamation of councils was publicly declared to be voluntary yet the fine print of various documents published by the Department of Local Government told a different story and funding was the mechanism used to coerce councils into involuntary unions. For example, at the announcement of the implementation of the Reform Agenda in 1999 the Department stated that councils providing services over a larger area will receive an increase in funds 'initially' and that 'councils that choose to stay the way they are will receive less'²⁰. A year later pressures were put on smaller organisations when the Department warned of 'dramatic changes' particularly for minor communities (such as Bawinanga, Demed, Julalikari, and Mabunji) as a 'closer link is now required between funding provision and the delivery of local government services'²¹.

In the following year the Department 'upped the ante' on minor communities and town camps in combining them under one heading with the statement that 'the appropriateness of the continued funding of minor communities is also being considered'²². This harks back to recent years when the Department attempted to move service delivery responsibility from town camps to Municipal Councils which received much media attention and did not proceed.

At the same time, NT Operational Subsidy funding was increasing for councils which were prepared to take the Government's line and amalgamate²³. These amounts were deducted from other councils' allocations.

With the change of Government in the NT in 2001 the Local Government Reform Agenda was put on hold, primarily due to the outcry from councils and communities over the lack of consultation by the Department and the perception of forced amalgamations. However, no announcements have been made on whether the moves seen in recent years of using NT Operational Subsidies as a coercion mechanism will be halted.

Recommendations

That

6. The NT Government produces a yearly budget paper reporting on income and expenditure on Indigenous affairs across all NT agencies.
7. The Commonwealth and NT Governments introduce Indigenous Impact Statements for all policies and programs likely to affect Indigenous people.
8. The Commonwealth investigate the feasibility of directly funding communities.
9. The Commonwealth increase funding for local and arterial roads on Aboriginal communities and direct this funding to those organisations that deliver the services, regardless of incorporation status in line with recommendation 199 of the Royal Commission into Aboriginal Deaths in Custody.
10. The Commonwealth and NT Governments provide the requisite funding to all organisations that provide local government services.
11. The Commonwealth and NT Governments recognise that ATSIC is providing a considerable contribution to local government services which is contrary to ATSIC's charter as a supplementary provider. The Commonwealth and NT Governments need to provide funding to local government to cover these costs or reimburse ATSIC.
12. Where local governing bodies and Aboriginal Corporations undertake agency contracts on behalf of the Commonwealth or NT Governments, due recompense from those governments to cover all costs incurred with providing the service is made.
13. The Commonwealth and NT Governments give assurances that funding cuts will not be used as a coercive mechanism to force councils, associations and corporations to involuntarily amalgamate.

4. The capacity of local government to meet existing obligations and to take on an enhanced role in developing opportunities at a regional level including opportunities for councils to work with other councils and pool funding to achieve regional outcomes.

Local Government is struggling to keep up with its statutory obligations as evidenced by the numerous factors described in this submission. Structural changes and funding increases are necessary before any serious contemplation can be given to adding further burdens to the system. Regional co-operative arrangements are successful within the ATSIC structure and consideration could be given to their application in the local government sphere.

4.1 Regional collaboration

Since its inception, and in spite of several restructures, ATSIC's Regional Council framework has been the core of ATSIC's business. Regional Councils are designed around cultural or language boundaries with democratically elected representatives. Although there arise periodic problems with some Regional Councils having to service extremely large areas, (extended boundary changes were imposed by the Commonwealth in 1993), the concept has been

employed by local government interstate and by the former NT Government through programs of amalgamation.

ATSIC does not oppose amalgamations of councils per se but does oppose forceful mechanisms where communities are not involved in the decision-making process or feel they have no choice due to coercion (such as funding cuts). The argument for amalgamation has centred on the principle that smaller councils are not able to provide adequate services due to their limited capacity. In the modern world of increasing accountability and stretching the public dollar, this argument has some merit. However, the cultural diversity throughout the Territory must be considered in any decisions regarding co-operative arrangements. There are numerous instances where cultural and language differences have been ignored when governments have established local councils - Wadeye at Port Keats being a case in point where several language groups that traditionally lived separately are now required to live within the one community, leading to tensions and volatility that are evident through major social and health problems.

This recognition of the problems associated with co-opting councils to amalgamate was recognised by the new NT Labor Government and the Local Government Reform Agenda was halted in early 2002 in favour of promoting regional agreements. ATSIC supports this approach. It would also be advantageous for local government to utilise ATSIC Regional Council Plans which are a legislative requirement of all Regional Councils and which encompass social, economic and cultural advancement of communities in a strategic approach.

Co-operative arrangements have already been introduced in some Councils such as Jabiru Town Council and Kunbarllanjnja Community Government Council with a common CEO. Resource sharing is also applied to different extents as well. However, the Commonwealth and NT Governments need to be mindful of the impact of shared arrangements in remote areas rather than just view these as cost-cutting exercises.

Co-operation also needs to develop in the policy arena. For some months ATSIC has held discussions with the NT Government concerning the negotiation, to include other parties such as Land Councils, of a partnership agreement. Such an agreement would aim to co-ordinate efforts with the ultimate goal of improving the lives and the future of Aboriginal and Torres Strait Islander people in the NT. Such a partnership approach should also be adopted between the NT Government and local government.

4.2 Capacity building for elected members and communities

There has been piecemeal training programs and projects in recent decades aimed mostly towards council clerk and administration/supervision training. The Local Government Training Board developed what is known as the RALG (Remote Area Local Government) suite of certificates, diploma and degree courses which are now offered through NT University. LGANT managed the Remote Area Management Project for three years (ceasing in 2000) which conducted workshops for council staff and elected members. LGANT also offers a 'Local Government Learning' program and some private training companies offer one-off short-term training workshops on request and payment. The NT Local Government Division provides on-site training to council staff and elected members as part of their core role.

Both the Division and LGANT believe that councils are responsible for organising training for staff and councillors. However, the current trend is a realisation that training programs for specific practical skills may not necessarily develop organisations' or individual people's

capacity to govern their communities within a framework of cultural authority. A community should be a place of warmth, safety and comfort for its inhabitants. Often training programs aim for the fringe of this concept in providing specific skills for certain tasks. Programs need to be relative to the cultural context rather than the oft-used phrase 'culturally-appropriate'. Just as individuals travel a certain journey in attaining knowledge and experiences within their Aboriginal culture, training aimed at providing opportunities for employment and other roles such as councillor or president, must be modelled within the community's frame of reference.

One of the underlying problems is that governments and organisations frequently talk about or consult with 'the community' without considering that their understanding of this word may differ markedly from that of the people in that community. In formulating policy and programs do organisations and governments consider the traditional owners, the long-term residents, new-comers, particular clans, or family groups? Often people living in a community may fall into just one or all of these groups. Do organisations and governments consider that traditional owners or people with particular cultural responsibilities within or affecting a certain community may not reside in that place? Is consideration made of stolen generations' members who may no longer live on the land in question, or have a new role in the land to where they were taken. These are key questions which can affect the impact a program has on people and a community.

Re-building the capacity of individuals, families, clans and communities may be a long process so should not be addressed through short-term one-off workshops. It also cannot be an imposed program imposed from outside the community; rather, capacity building must be developed on the community's terms.

ATSIC NT will be forwarding a submission to the current *Inquiry into Capacity Building in Aboriginal Communities* which the Committee is urged to consider with relevant regard to local government services.

Recommendation

That

14. The NT Government consult with ATSIC regarding developing a new reform program for local government that, whilst maintaining cultural authority, focuses on: building capacity for individuals, families, clans and communities; developing regional collaboration (perhaps through regional agreements); and an aim for flexible governance systems.

5. Local government expenditure and the impact on local government's financial capacity as a result of changes in the powers, functions and responsibilities between state and local governments.

This has been addressed through previous discussion concerning the Commonwealth and NT Governments devolving responsibilities and services to local government often without adequate funding recompense.

6. The scope for achieving a rationalisation of roles and responsibilities between the levels of government, better use of resources and better quality services to local communities.

As has been shown in this submission ATSIIC, the Commonwealth and NT Governments are each contributing to the provision of local government services with considerable overlap and role confusion. All three bodies have been involved in recent new approaches to improving co-ordination and collaborative arrangements such as the Bilateral Housing Agreement and the NT Health Framework Agreement. At the regional level ATSIIC has initiated several co-operative arrangements, with the Partnership Agreement between Yapakurlangu Regional Council and Tennant Creek Town Council being a prime example of intersectoral collaboration.

Despite local government being the third sphere of government, and established under the Territory Government, the three bodies could consider some form of agreement or accord that aims to clearly define roles and responsibilities (particularly regarding funding), minimise duplication, assess impacts by performance indicators, and set specific targets for measurable outcomes. Remaining on the current path of the Commonwealth and NT Governments progressively shifting services to local government without shifting funds, and of ATSIIC having to fill funding gaps, will not result in viable and secure communities and the issue will only exacerbate.

7. The findings of the Commonwealth Grants Commission review of the Local Government (Financial Assistance) Act 1995 of June 2001, taking into account the views of interested parties as sought by the Committee.

ATSIIC supports many findings of this Review, specifically these conclusions that relate to Indigenous people (page 33 of the Review):

- ‘The Principle [for Aboriginal and Torres Strait Islander Peoples] should be strengthened to make explicit that the needs of all Indigenous people (whether living in discrete communities or mainstream communities) must be reflected in the assessments of the Local Government Grants Commissions’;
- A set of performance measures assessing local governing bodies in providing services to Indigenous people should be developed and reported in the National report’; Further, as outlined on page 28 of the Review, these measures should be developed in conjunction with Indigenous organisations; and
- ‘The National Report should also report on whether the Local Government Grants Commissions’ assessments are recognising the needs of Indigenous people’.

Recommendation

That

15. The Commonwealth Government implement recommendations from the *Commonwealth Grants Commission Review of the Local Government (Financial Assistance) Act 1995* (June 2001) that relate to reporting on the performance, and recognising the need, of Indigenous peoples by local governing bodies and the NT Local Government Grants Commission. As outlined on page 28 of the Review Indigenous organisations are to be involved in the development of performance measures as part of this reporting process.

8. Summary of Recommendations

1. The NT Government amends the *Local Government Act* to:
 - recognise all those organisations that provide local government services, in line with the Royal Commission into Aboriginal Deaths in Custody recommendation 199 and provide due funding and resource support;
 - allow for councils to transfer their status to another legislation if they wish to change their incorporation status;
 - make reference to the *Aboriginal Land Rights (NT) Act* in that many councils operate on Aboriginal land;
 - recognise Aboriginal Traditional Owners and their rightful authority to be consulted for all matters affecting their land;
 - state that Community Government Council Schemes must include the need for councils to consult with Aboriginal Traditional Owners for any council activities on Aboriginal land; and
 - accommodate traditional decision-making.
2. The Commonwealth and NT Governments actively encourage and provide support for council agreements for use of Aboriginal land under the *Aboriginal Land Rights (NT) Act*.
3. The Commonwealth and NT Governments sponsor an Indigenous Governance Summit where Aboriginal people and organisations, along with the Government, can explore, develop and negotiate options for alternative governance systems.
4. Any Partnership Agreement negotiated between ATSIC and the NT Government to emphasise mechanisms to advance Indigenous self-governance.
5. The Commonwealth and NT Governments endorse and actively support the Kalkaringi Statement as a means of a partnership approach to improving the lives of Aboriginal and Torres Strait Islander peoples in the NT.
6. The NT Government produces a yearly budget paper reporting on income and expenditure on Indigenous affairs across all NT agencies.
7. The Commonwealth and NT Governments introduce Indigenous Impact Statements for all policies and programs likely to affect Indigenous people.
8. The Commonwealth investigate the feasibility of directly funding communities.
9. The Commonwealth increase funding for local and arterial roads on Aboriginal communities and direct this funding to those organisations that deliver the services, regardless of incorporation status in line with recommendation 199 of the Royal Commission into Aboriginal Deaths in Custody.
10. The Commonwealth and NT Governments provide the requisite funding to all organisations that provide local government services.

11. The Commonwealth and NT Governments recognise that ATSIC is providing a considerable contribution to local government services which is contrary to ATSIC's charter as a supplementary provider. The Commonwealth and NT Governments need to provide funding to local government to cover these costs or reimburse ATSIC.
12. Where local governing bodies and Aboriginal Corporations undertake agency contracts on behalf of the Commonwealth or NT Governments, due recompense from those governments to cover all costs incurred with providing the service is made.
13. The Commonwealth and NT Governments give assurances that funding cuts will not be used as a coercive mechanism to force councils, associations and corporations to involuntarily amalgamate.
14. The NT Government consult with ATSIC regarding developing a new reform program for local government that, whilst maintaining cultural authority, focuses on: building capacity for individuals, families, clans and communities: developing regional collaboration (perhaps through regional agreements): and an aim for flexible governance systems.
15. The Commonwealth Government implement recommendations from the *Commonwealth Grants Commission Review of the Local Government (Financial Assistance) Act 1995* (June 2001) that relate to reporting on the performance, and recognising the need, of Indigenous peoples by local governing bodies and the NT Local Government Grants Commission. As outlined on page 28 of the Review Indigenous organisations are to be involved in the development of performance measures as part of this reporting process.

Endnotes

- ¹ Four councils are incorporated under the Commonwealth Act; 25 are under the NT Act.
- ² RCIADIC National Report Volume 2 Chapter 12.2: 'Relations at Local Government Level', 1990.
- ³ Aboriginal Deaths in Custody, Response by Governments to the Royal Commission Vol 2, Commonwealth of Australia 1992: pg 763
- ⁴ Aboriginal Deaths in Custody, Implementation of the Recommendations, NT Office of Aboriginal Development 1994: pg 169-170
- ⁵ Ministerial Statement, Hansard 7 March 2002.
- ⁶ Review of the Aboriginal Councils and Associations Act, Registrar of Aboriginal Corporations, 2002.
- ⁷ National Report Volume 2, 12.2: 'Relations at the Local Government Level'; and National Report Volume 4, Chapter 27: 'The Path to Self-Determination'.
- ⁸ For example, S.130 of *LGA* states that Councils may compulsorily acquire land, where S. 67 of the *ALRA* states there can be no such acquisition without consent.
- ⁹ Building on Land Rights for the Next Generation, the Review of the Aboriginal Land Rights (NT) Act 1976, John Reeves QC, C of A, 1998; sections relating to local government - Chapter 18 and appendix R.
- ¹⁰ Focus for Change, Strategic Planning for Local Government in the Northern Territory, DLG, 1997: pg 21.
- ¹¹ Inquiry into the Roles of Various Funding Bodies in the Development and Maintenance of Roads, Airstrips and Barge Landings on Aboriginal Communities and Outstations in the Northern Territory, Public Accounts Committee Report Number 34, Legislative Assembly of NT, August 1999: pg 51.
- ¹² Commonwealth Grants Commission Report on Indigenous Funding, Volume 1 Main Report, 2001: pages xiv and 9.
- ¹³ The Government Response to the Commonwealth Grants Commission Report on Indigenous Funding, 2001.
- ¹⁴ Municipal Services for Indigenous Communities, ATSIAC Performance Audit, Australian National Audit Office, 2001: pg 49.
- ¹⁵ Local Government Services to Aboriginal and Torres Strait Islander Communities: Its Capacity to Achieve the National Commitment to Improve Outcomes for Aboriginal and Torres Strait Islander Peoples, Report to the Local Government Ministers Conference, June 1998: pp 4-14.
- ¹⁶ *ibid* pg 42.
- ¹⁷ *ibid* pg 43.
- ¹⁸ Grant Management, ATSIAC Audit, Australian National Audit Office, 2002: sections 1.3; 1.6; 1.7; 2.6; 2.29; 2.30.
- ¹⁹ Agency Arrangements Consultancy, Local Government Association of NT, June 1997.
- ²⁰ Local Government, The Next Step, Questions and Answers, NT Department of Local Government, 1999 pg 15.
- ²¹ Grant Programs for 2000/2001, NT Department of Local Government, chapter 4.
- ²² Grant Programs for 2001/2002, NT Department of Local Government, pg 3.
- ²³ For example, Tiwi Islands Local Government - increase of \$156,000; Anmatjere - increase of \$66,000; Binjari - increase of \$52,000; Kardu Numida - increase of \$10,000; Minjilang - increase of \$36,000. There were small population increases in these communities but the funding increase on that basis would have been minimal.