

# THE PROVISION OF LOCAL GOVERNMENT SERVICES TO ABORIGINAL COMMUNITIES

## A FOCUS PAPER

Department of Indigenous Affairs  
November 1999

### 1.0 PURPOSE

The purpose of this document is to provide an overview of the recent history and current initiatives aimed at improving the delivery of local government services to Aboriginal communities in Western Australia. It also seeks to identify current impediments to improved service delivery and to present strategies to address these as a basis for a formal policy framework to be developed through the Ministerial Coordinating Group on Aboriginal Issues.

### 2.0 BACKGROUND

The 'National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders', signed by the Council of Australian Governments (COAG) on 7 December 1992, affirmed that Commonwealth, State and Local Governments have a shared responsibility for the delivery of programs and services to Aboriginal communities. The National Commitment also acknowledges existing resource constraints affecting the provision of services and the need to ensure that such constraints are managed equitably across all sectors of the community.

Specifically, the Governments of Australia:

- agreed that Local Governments will maintain their responsibilities to ensure the provision of a full range of local government services to Aboriginal people in accordance with appropriate planning, coordination and funding mechanisms;
- recognised the role of Local Government in local area planning and the need for its integration with ATSIC and State planning processes; and
- agreed that the development of bilateral agreements will take into account Local Government policies through consultative processes where appropriate.

The Local Government Ministers' Conference of 28 October 1994 resolved to work towards improving Local Government services to Aboriginal communities within the framework of the National Commitment. The Conference agreed that the Commonwealth Minister for Local Government, in conjunction with the Minister for Aboriginal and Torres Strait Islander Affairs, would negotiate agreements with individual States and the State Local Government Associations to examine on a systemic basis:

- the adequacy of services provided by local governments; and
- the financial capacity of local government to provide these services.

The Ministerial forum noted that such agreements might incorporate strategies to:

- identify the councils and Aboriginal communities concerned, and the factors

- influencing inadequate provision of services;
- identify the councils which provide examples of best practice;
- detail an action plan as to how improved performance shall be achieved, involving action by all levels of government where necessary; and
- provide practical assistance to councils identified as requiring to improve their performance in relation to service provision to Aboriginal communities;

The agreements would also provide for:

- monitoring of council performance in the area of service provision to Aboriginal communities, and the means of Commonwealth/State cooperation in this monitoring;
- an annual report on the achievement of the action plan; and
- revision as appropriate.

In August 1994, an Aboriginal/Local Government Coordinating Group, was convened by the Department of Local Government. The Group's brief was to keep abreast of developments relating to Aboriginal/Local Government issues in Western Australia. The then Minister for Aboriginal Affairs supported the establishment of the Group in order to help resolve long term policy deadlocks.

Following the Local Government Ministers' Conference, the Group was reconstituted with Ministerial agreement at State and Commonwealth level and renamed as the Ministerial Coordinating Group on Aboriginal Issues (MCGAI). The membership and Terms of Reference of the Group were revised to respond to the Local Government Ministers Conference resolution and to incorporate the development of a strategic plan.

There have been a number of developments in Aboriginal affairs at a State level which have impacted on the role of this Group. These include the establishment of :

- The Premier's Taskforce on Aboriginal Social Justice (Daube Report).
- The Chief Executive Officer Working Party on Essential Services to Aboriginal Communities (Hames Report).
- The Working Party on Local Government Health Services to Aboriginal Communities (Penman Report).
- The Legislative Review Reference Group (McCarrey Report)

The findings of these reports have formed the basis of a policy framework for the delivery of services to Aboriginal communities and inform much of the discussion that follows. The Daube and Hames Reports have both been endorsed by State Cabinet. The McCarrey Report, although not submitted to Cabinet, further developed the recommendations of these reports.

The Penman Working Party was commissioned to report to the Ministers for Health and Local Government on recommended changes to legislation, funding mechanisms, policies and practices at Commonwealth and State level in order to enable local government to better carry out its environmental health role in Aboriginal communities. Responsibility for the report was assumed by the Office of Aboriginal Health in 1996. This coincided with the decision of the Supreme Court in *Atyeo-v-Aboriginal Lands Trust* (1996 Supreme Court Library No. 960605) and the report was never finalised. The draft report however, and three project reports commissioned by the Working Party, are valuable reference sources and have informed the development of this paper.

Generally, the above reports have had a consistent theme; that is, that services to Aboriginal communities (including local government services) should be provided on an equitable basis to those provided to comparable mainstream communities and that service delivery should be progressively "normalised". The normalisation of service delivery was envisaged to involve the upgrading of infrastructure to acceptable standards; the application of mainstream planning, building and health regulations; the introduction of rates and charges for essential and municipal services; the vesting of road reserves and service easements in appropriate authorities; and the potential creation of formal townsites.

There has been action on a number of fronts to further this approach (see Attachment 1), however, significant progress is dependent upon the agreement of key stakeholders including Commonwealth and Local Governments and Aboriginal community residents. It is also dependent upon major policy and fiscal reforms as well as an injection of significant capital funds to upgrade infrastructure to acceptable standards.

### **3.0 ISSUES AND IMPEDIMENTS TO LOCAL GOVERNMENT SERVICES**

A number of reasons are cited for the limited nature of services provided to Aboriginal communities by local governments. These include:

- inadequate resources to service remote areas;
- land tenure and consequential non-rateability of land;
- the 'private' nature of Aboriginal communities;
- the availability of services and facilities to remote residents in town centres;
- a history of Federal and State agencies circumventing local government approvals and involvement;
- the current substandard nature of infrastructure;
- the Crown is not expressly bound by all provisions of the Health Act thus limiting the powers of local authorities to enforce health provisions in Aboriginal communities which are located on Crown reserve land under the care, control and management of the ALT;
- the areas in which many Aboriginal communities are located are exempt from building controls and the application of the Building Code of Australia; and
- the polarised views of the parties.

The following section discusses some of these issues.

### 3.1 Resourcing Local Government

Attachment 2 provides an overview of the financial relationship between Local, State and Commonwealth Governments and the available sources of revenue for local government.

It should be noted that the majority of Aboriginal communities are concentrated in a relatively small number of local authorities which share common features which mitigate against effective service delivery - low population, vast areas, harsh environments, low proportion of rates to total income, high unsatisfied expenditure needs, and narrow local economic base.

The difficulties in providing services in these regions needs to be recognised as does the current run down nature of many facilities and service infrastructure in Aboriginal communities. Measures need to be implemented to augment current sources of local government revenue and to provide supplementary services to redress the backlog of need in Aboriginal communities. At the same time, there needs to be an equitable and needs based allocation of available resources by local governments amongst all the competing areas of responsibility. This involves the full acceptance by local governments that Aboriginal communities are part of their area of responsibility and are entitled to share equitably in the enjoyment of accessible services and amenities.

It is therefore suggested that the local government resource issue be tackled on two fronts:

#### (1) Improved Accountability

Although funding provided by the Local Government Grants Commission is untied, it is calculated on the basis of a formula that includes Aboriginal residents and has specific disability factors relating to remoteness, Aboriginality and Aboriginal environmental health. Evidence suggests that despite the Grants Commission's recognition of funding needs in this area, little of this funding is actually spent on services to Aboriginal communities. For example, the Dampier Peninsula study found that less than 6% of the Aboriginal Environmental Health Allowance provided to the Shire of Broome was spent on environmental health related services to Aboriginal communities.

This is a source of great frustration for Aboriginal interests. Similarly, the failure of other stakeholders to recognise the untied nature of these funds and the limited availability of resources is a source of frustration for local governments.

Recent efforts to improve local government accountability include a requirement by the Minister for Local Government for local governments to report on service delivery to Aboriginal communities in Principal Activity Plans and Annual Reports. The information gained through this process should be used to identify examples of best practise as well as impediments to equitable service delivery. These efforts need to be balanced by endeavours to work with local governments to tackle these impediments and to improve the general understanding of local government resource allocation.

It is recommended that any additional specific purpose funds provided by the Commonwealth or State Governments to local governments be expressly linked to agreed outcomes with appropriate reporting requirements in order to ensure that the identified needs and entitlements of Aboriginal communities are met. Cost sharing arrangements (for example the proposed environmental health officer network) may provide opportunities to increase local government contributions towards meeting Aboriginal community needs. Two different cost sharing models exist:

1. Under the Commonwealth General Purpose Fund for Local Roads, the State effectively ties the 7% allocation for special projects through a 1:2 matching arrangement which is conditional upon Councils spending the monies for the intended purpose.
2. Under the Safer WA Community Security Program the State provides funds to local governments on condition that there is a one third contribution by local governments from general revenue.

It is understood that the second model is preferred from a local government perspective as it is more consistent with a partnership approach and does not threaten the untied nature of the Local Government Grants Commission allocation.

Attempts to influence the Local Government Grants Commission process in order to effectively tie the allocation of funds to the provision of services to Aboriginal communities are fraught with difficulties. Such a move is inconsistent with Commonwealth legislation on local government funding and may leave the State open to criticism of double standards (the State gains money through the Commonwealth Grants Commission based on Aboriginality, but similarly, does not spend the money it receives on services for Aboriginal people). It is recommended, however, that further analysis of this issue be undertaken in consultation with the LGGC.

## **(2) Measures to Augment Local Government Revenue**

As stated in the draft report by the Penman Working Party: "The long term objective in augmenting local government revenue should be for core services of local government to be met from own-source and Grants Commission sources, and for special purpose grants to be applied to supplementary and special services which redress accumulated health and amenity deficits and supplement the capacity of Aboriginal communities to fulfil their owner/occupier and community management roles."

The principal sources of funding for local government can be summarised as follows:

### **(i) Rates**

The non-payment of rates by the majority of Aboriginal communities has impacted on the financial capacity of Local Governments to deliver services, however, importantly, it is also a major impediment to the development of positive relationships between Aboriginal communities and local governments. There is considerable misunderstanding from both local government and Aboriginal representatives about the relationship between rate payments and the provision of services. The rate issue has also been raised as a potentially significant matter for consideration by Aboriginal people negotiating the transfer of land from the ALT.

There has been a traditional view that Aboriginal communities are exempt from rates, although legal opinions on this issue vary, depending upon whether the community is on Crown Land and the purpose for which the land is used. The recent Bindi Bindi case in the Shire of Ashburton has further entrenched the view that Aboriginal communities are not rateable. It is likely, however, that the legal arguments would need to be decided on a case by case basis. Attachment 3 discusses this issue in more detail.

Although most Aboriginal communities do not pay rates, an exception occurs in the Shire of Ngaanyatjarraku where all communities pay rates as a voluntary, community initiated action using valuations applying in the town of Wiluna. The Aboriginal Lands Trust (ALT) pays rates for freehold properties and those used for commercial purposes (or seeks the lessee to pay) and it also makes payments for services such as rubbish collection in some town reserve communities. ALT leases in recent years have included a clause which states that the lessee is responsible to pay rates if applicable.

The payment of rates (or ex-gratia payments in lieu of rates) is being explored in the context of service agreements between specific Aboriginal communities and local governments. It is also possible that an Aboriginal organisation that receives land in the course of the ALT transfer program may become liable for the payment of rates. All outstanding rates and charges are being met by the ALT prior to land transfers.

As discussed above, recent State Government reports have strongly recommended that Aboriginal communities pay rates. The Legislative Review Reference Group called for the development of a consistent policy for the payment of rates and charges which takes into account the residents' capacity to pay. The benefit of contributing to the rate revenue of a local government is not so much the revenue it may raise, but for the ancillary benefits that could flow. Payment of rates gives Aboriginal communities a material stake in the operation of local government and removes any residual arguments that Aboriginal communities are not eligible for local government services or that funding for core local government services should be met through other means.

It is recognised that the cost of service provision will greatly exceed the potential rate revenue gained. However, this should, if anything, enhance the willingness of communities to contribute to the cost of services via rate payments providing there is a willingness by local government to extend the range of services currently available to Aboriginal communities.

It is therefore recommended that, as part of a negotiated package to improve service delivery to Aboriginal communities, the principle of Aboriginal communities paying rates be endorsed. The implementation of this principle will require resolution of a number of significant issues:

- the development of an appropriate differential rating scheme which takes into account the capacity of Aboriginal communities to pay - perhaps based on land use types identified in Aboriginal community layout plans;
- the management of rate defaulters (eg Crown reserve land cannot be used as security as is the case for pastoral and mining leases);
- the development of appropriate transitional arrangements including the potential identification of sources of funding to subsidise rate payments.

Consideration also needs to be given as to whether the Local Government Act should be

amended to ensure that land occupied by Aboriginal communities is rateable or whether the payment of rates should be voluntary and negotiated on a case by case basis.

## **(ii) Fees and Charges**

As a general policy, Commonwealth and State funding agencies now include a requirement to submit building plans to respective local governments for approval. This is on a fee for service basis. Similar fees apply to building and septic tank inspections. This has been an important source of income to Shires where considerable development has been sponsored under national ATSiC programs. It is recommended that these fees continue to be incorporated into the development costs of funding agencies.

Other fees such as for refuse collection are sometimes paid by the ALT or individual communities. The Local Government Grants Commission does not recognise any costs or revenue disabilities associated with refuse collection in Aboriginal communities as this is considered a "user pays" activity. It is appropriate that such fees are negotiated and that local government has a major role in the management of refuse collection and disposal. However, access to a service at a lower cost than full cost recovery is essential if Aboriginal communities are to utilise the services of local governments.

## **(iii) Local Government Grants Commission**

There are fundamental structural obstacles to achieving equity of access by Aboriginal communities to Commonwealth local government grant funding. The objective of horizontal equalisation cannot be achieved under current financial arrangements which favour more densely populated States. The major policy constraints can be summarised as follows:

- The allocation of funds to the States by the Commonwealth on a per capita basis fails to recognise the substantial cost disabilities for a State such as Western Australia compared to more densely populated States.
- A ceiling is imposed on the extent of redistribution at the State level through horizontal equalisation by the requirement that no local government should receive less than it would if 30% of grants were distributed on a per capita basis, notwithstanding the absence of any evident need for these funds. (There were 17 metropolitan local governments with little or no equalisation need which received grants worth \$12.8 million under this minimum grant provision in 1997/98.)
- A ceiling is placed on the rate of adjustment of a grant to any local government in order to stabilise local government finances against sudden shifts in distribution. The ability to respond rapidly to increased expenditure need through increases in grant allocations is therefore severely restricted.

In addition, because the state-wide equalisation requirement far exceeds the available funds, the grant for each local government is "factored back" on a pro-rata basis so that the total funds distributed to all local governments equals the amount of Commonwealth assistance provided to the State. In 1997/98 each local government received only approximately 50% of their requirement.

It should be noted that in the absence of adequate local government services, many of the resultant costs ultimately shift back to the Commonwealth with high environmental health risk factors translating into increased State health funding requirements and substitute municipal services needing to be provided through the ATSIC budget.

It is therefore recommended that a collaborative submission be prepared for the consideration of the Commonwealth Grants Commission which seeks to modify the current method of allocating Commonwealth local government assistance grants to the States. This submission should seek to tackle the above policy constraints and also seek to establish an effective framework for monitoring service equity issues.

#### **(iv) Special Purpose Funding**

In addition to initiatives to modify the general revenue sources of local government and to target these more effectively to meet Aboriginal needs, there is a need for special purpose funding to address the backlog of need and to accelerate the normalisation process.

The report on a systemic examination of the financial capacity of Local Government to provide services to Aboriginal communities, prepared for the LGMC by Remote Rural Resources Pty Ltd, indicates that there is a general concern amongst many Local Government councils about becoming locked into a situation where they would become solely responsible for addressing service backlog issues once they begin to provide services to Aboriginal communities. In many cases, current pressure to increase local government involvement in Aboriginal communities is perceived as the Commonwealth and the State Governments attempting to "shift the problem".

Similarly, the Penman Working Party noted that increased local government services and controls will only serve to highlight the glaring deficiencies in existing community infrastructure and resources unless balanced by arrangements which underpin the capacity of communities to meet environmental health standards.

Efforts to address priority environmental health needs are currently being coordinated through the Environmental Health Needs Coordinating Committee (EHNCC) and the Aboriginal Affairs Coordinating Committee (AACC) processes. The findings of the 1997 Environmental Health Needs Survey are being used to target Commonwealth, State and Local Government resources to address the urgent backlog of need.

There is still, however, a need for significant increased capital expenditure to bridge the gap between current standards and minimum requirements for service normalisation. In particular, if local governments are to be asked to assume responsibility for communal infrastructure such as roads, street lighting and recreational facilities, these facilities must be brought to a standard acceptable to local governments. At the same time, the standard set by local governments must be reasonable and consistent with those already maintained under similar circumstances within the Shire. Similar principles are currently being negotiated with the Water Corporation and Western Power as part of endeavours to regularise services to town based communities.

It is proposed that significant additional State and Commonwealth funding be sought to expand the approach currently adopted under the ACSIP and to advance the progressive regularisation of services to Aboriginal communities in close cooperation with local governments. These funds should target both town reserve and remote communities and be additional to current capital funding and other supplementary funding provided for environmental health and town planning initiatives. Where local governments are to be asked to undertake an ongoing role in management and maintenance of an asset they should be closely involved in the planning and implementation of the project.

Current NAHS, RAESP and ACSIP programs are largely targeted at remote communities. It is suggested that a concerted program to upgrade assets in town based communities needs to be implemented. The first stage of this program should be a comprehensive assessment of upgrade requirements in order to meet Water Authority, Western Power and local government standards. This could be staged in order to target selected communities as a priority.

The provision of supplementary recurrent funding to assist local governments to meet their service obligations in areas such as environmental health is also required. A proposal to extend the environmental health officer network in a cost share arrangement is currently being developed (see Attachment 1).

### **3.2 Private Nature of Aboriginal Land**

Crown reserves on which most Aboriginal communities are situated are generally classed as private land. Reserves that have been additionally proclaimed under the Aboriginal Affairs Planning Authority Act also require entry permits. The private nature of communities and the undedicated status of roads are a major impediment to local government service delivery. Local Governments have generally stated that they will not assume responsibility for services or provide facilities that are not available to the general public.

The dedication of internal and access roads as public roads under the Land Administration Act places responsibility for the care, control and management of the road in the local council. The road then becomes part of the Council's road inventory and is eligible for funding under the Grants Commission's untied road grant. It should be noted that increasing the length of road for which Councils are responsible does not increase the total amount of funding available and only a small percentage of the additional road maintenance costs are likely to be attracted through the grant process. This is a significant deterrent from the local government point of view. For example the Broome Shire estimates that the annual cost of maintaining the roads at Bidyadanga once sealed, are in the order of \$66,000. Only approximately 10% of this cost may be gained from the Grants Commission to offset these costs.

The dedication of public roads therefore needs to be progressed as part of a negotiated package which includes the recognition of the cost burden on local government and seeks to augment local government revenue sources through payment measures such as rates.

It should also be noted that Aboriginal communities may be opposed to road dedication. Dedication of public roads means that current "closed" communities will become open to the public with potential social and cultural impacts. The pros and cons of road dedication will need to be negotiated at a community level in light of the possible health, safety and economic benefits. The excision of road reserves as public roads will also have native title implications.

Options such as service easements similar to those being explored for power and water services in Aboriginal reserves need to be examined within the context of potential service agreements with local governments. The impact of road dedication on bylaws established under the Aboriginal Communities Act also needs further examination as this may be one means of vesting care and control in local government but still being able to restrict the activities of the public.

### Townsites

The Daube, Hames, McCarrey and Penman reports all mooted the formal establishment of Aboriginal communities as town sites in order to give greater recognition to larger communities. Town sites are constituted under section 26 of the Land Administration Act by the Minister for Lands. The constitution of communities as town sites does not appear to have direct legislative implications on service delivery but can be seen as a step in the process of normalising communities.

The Minister for Energy has indicated that he sees the establishment of communities as townsites as an important step in the State recognising its obligations to provide power services to these communities.

In discussions with the Department of Land Administration it has been suggested that a pilot community be selected to trial the normalisation / town site process, possibly in conjunction with the ALT land handback.

It is recommended that this be progressed as part of the ACSIP. Preliminary discussions have been held with the Jigalong community on this issue which appears to be an ideal candidate for this process as it is both an ACSIP community and a priority community for the ALT land handover.

### **3.3 Infrastructure Standards and Approval Processes**

As discussed above, current State and Commonwealth agency policies require that all developments in Aboriginal communities receive Local Government planning and building approvals and are in accordance with approved community layout plans. This is also a requirement of the ALT for developments on ALT land.

The development of Environmental Health Infrastructure Guidelines also aim to improve the functionality and sustainability of environmental health infrastructure and to ensure local government requirements are met.

It is proposed that these arrangements be formalised through an essential services bilateral agreement between the Commonwealth and the State. It is also suggested that the infrastructure standards be given some statutory recognition through the proposed new Building Act.

The process of upgrading infrastructure standards discussed above (section (iv)) should involve local governments wherever possible. Not only does this provide a level of local knowledge and expertise and ensure that infrastructure is built to standards approved by local Shires, it also ensures that local governments are increasingly involved in Aboriginal communities thus building the relationship between communities and local government. This approach is being pursued through the ACSIP where local government involvement in road maintenance and

construction is being negotiated on a fee for service basis.

### **3.4 Binding of the Crown**

A further impediment to local government involvement in Aboriginal communities has been the decision of the Supreme Court that the ALT as an agent of the Crown, is not bound by section 99 of the Health Act. At the time, this served to prevent the Shire of Halls Creek from compelling the ALT to provide adequate sanitary conveniences to the community of Mardiwah Loop. In the longer term, the implication that the State is not bound by provisions of its own Health Act has served as a major deterrent for local government to take any proactive role in addressing environmental health risks in Aboriginal communities.

The proposed hand back of land to Aboriginal communities may remove this impediment. It will also place a major burden on Aboriginal communities to meet health requirements unless local governments adopt a flexible and supportive approach and adequate support is provided by State and Commonwealth agencies. It is recommended that priority communities for the ALT land transfer process be given priority consideration for capital works funding by Commonwealth and State agencies.

It is further recommended that the new Health Act currently being drafted explicitly binds the Crown.

### **3.5 Application of Building Controls**

Aboriginal communities occupying Crown land or outside gazetted townsites and above the 26th parallel are generally exempt from local government building controls. Such controls are generally essential in order to protect public health and to ensure the development of sustainable infrastructure.

The Environmental Health Needs Coordinating Committee has attempted to address this issue through including these requirements in the contract conditions of funding agencies. The Committee is also sponsoring the development of guidelines for the design and construction of environmental health infrastructure. These initiatives, together with improved town planning, have significantly increased the role of local governments in the development of Aboriginal communities.

In the long term, however, legislative enforcement is necessary. It is understood that this is proposed under the new Building Act.

### **3.6 Community Attitudes**

The history of relations between Aboriginal people and local government varies from disinterest to acrimony. Although significant gains have been made in recent years it is apparent that instances of misinformation and racism as well as historical legacies remain a serious impediment to the development of good working relationships between Aboriginal communities and local governments.

Efforts to increase the involvement of Aboriginal people in local government and to facilitate direct negotiations between Aboriginal people and local governments as outlined in Attachment 1 are supported. It is further suggested that increased emphasis be placed on the development of suitable materials for Aboriginal communities explaining the roles and functions of local government and the opportunities to develop more effective relationships and service options.

Cross cultural awareness training should be available for all local government staff and Councillors, particularly those in areas of high Aboriginal population.

### **3.7 Status of Aboriginal Communities as Local Governments**

The establishment of new local government areas that would better represent the needs of Aboriginal communities has been explored based on the experience of the Shire of Ngaanyatjarraku. The feasibility of establishing a new local government on the Dampier Peninsula as one option to improve access to services has recently been examined by the Aboriginal Affairs Department.

This study found that the creation of a new Shire was not feasible in the short term due to a number of critical issues. These issues included land title and ownership, cost of improvements to essential services, the establishment of sustainable funding sources, access to adequate training and support; and the willingness of communities to contribute to the cost of running a local government. The most feasible option for improving local government services was seen as the negotiation of specific service agreements between the communities and the existing Shire. This is currently being progressed.

Other models for recognising Aboriginal communities as formal local governing bodies exist in other jurisdictions. In both Queensland and the Northern Territory a number of Aboriginal communities are recognised as local governments and receive direct grant funding from the Commonwealth.

All councils constituted under State local government acts are automatically entitled to receive grants. In addition, informal local government bodies, such as Aboriginal and Torres Strait Islander community councils, can be made eligible for grants under the Local Government (Financial Assistance) Act 1995. There were 726 councils that received grants in 1997/98, including 100 recognised informal local governing bodies.

Importantly, such informal local governing bodies must be located outside of existing local government areas. This effectively excludes Aboriginal community councils in Western Australia where the whole State is incorporated into existing local government districts.

The Report: "Local Government Services to Aboriginal and Torres Strait Islander Communities: Its capacity to Achieve the National Commitment to Improved Outcomes for Aboriginal and Torres Strait Islander Peoples", examined a number of case studies of local government services to indigenous communities.

The evidence of these case studies is that those indigenous communities that are incorporated as conventional local governments, provide a higher level of service than those with quasi-local government status or no status at all.

This is likely to be related to the ability of these communities to directly access funding and support for administration and basic municipal services. This is a vital issue for Aboriginal communities in Western Australia where the capacity of communities to effectively and efficiently run municipalities of up to 600 people is severely compromised by inadequate resources and expertise.

The issue of community management and capacity building is currently the subject of a consultancy coordinated by the AAD which seeks to develop an integrated strategy to address the issues impacting on the management and administration of discrete Aboriginal communities. Community management issues are also a major thrust of the ACSIP. It is suggested that members of the Ministerial Coordinating Committee maintain a close involvement with these initiatives and that options be examined to recognise selected Aboriginal community councils as local governing bodies for the purposes of the Local Government (Financial Assistance) Act 1995.

#### **4.0 PROPOSED POLICY FRAMEWORK / SUMMARY OF RECOMMENDATIONS**

The preceding discussion outlined a number of proposals for consideration by the Ministerial Coordinating Group as a basis for future action to improve the delivery of local government services to Aboriginal communities. These proposals need to be considered in the context of existing initiatives as detailed in Attachment 1.

It is important that a consistent policy framework is established in order to inform current initiatives such as ACSIP and the LGDP and to maximise the value of any service agreements negotiated between Aboriginal communities and their local governments.

The following provides a summary of proposed action to be coordinated through the MCGAI:

It is recommended:

1. That the information gained by the Minister for Local Government about service delivery to Aboriginal communities, be used to identify examples of best practice and to target initiatives to address identified impediments to equitable service delivery.
2. That any additional specific purpose funds provided by the Commonwealth or State Governments to local governments be expressly linked to agreed outcomes with appropriate reporting requirements in order to ensure that the identified needs and entitlements of Aboriginal communities are met.
3. That additional specific purpose payments seek to establish a partnership with local governments through negotiated cost sharing arrangements in order to supplement available funding sources and increase the contribution from local governments towards Aboriginal community services.

4. That negotiations be held with the Local Government Grants Commission with a view to examining options to better target available funding to meet the needs of Aboriginal people.
5. That the principle of Aboriginal communities contributing to the rate revenue of the Shire be endorsed as part of service delivery negotiations.
6. That a detailed policy on rates be developed which addresses the following issues:
  - the development of an appropriate differential rating scheme;
  - the management of rate defaulters;
  - the development of appropriate transitional arrangements including the potential identification of sources of funding to subsidise rate payments;
  - legislative enforcement versus voluntary contributions.
1. That local government service fees and charges continue to be incorporated into the development costs of funding agencies and that additional services such as rubbish collection be negotiated on a community by community basis.
2. That a collaborative submission be prepared for the consideration of the Commonwealth Grants Commission which seeks to modify the current method of allocating Commonwealth local government assistance grants to the States. This submission should seek to tackle the identified policy constraints and also seek to establish an effective framework for monitoring service equity issues.
3. That significant additional State and Commonwealth funding be sought to expand the approach currently adopted under the ACSIP and to advance the progressive regularisation of services to Aboriginal communities.
4. That local governments be closely involved in the planning and implementation of projects particularly where they are to be asked to undertake an ongoing role in management and maintenance of an asset.
5. That a concerted program to upgrade assets in town based communities be implemented. The first stage of which is a comprehensive assessment of upgrade requirements in order to meet Water Authority, Western Power and local government standards.
6. That additional supplementary funding be negotiated for local governments assessed as having high recurrent needs in areas such as environmental health.
7. That as a principle all assets to be vested under the care and control of local governments should be generally accessible through excisions, service easements or other negotiated arrangements.
8. That the dedication of public roads be progressed as part of a negotiated package which recognises the cost burden on local government and seeks to augment local government revenue sources through payment measures such as rates.

9. That the impact of road dedication on community bylaws established under the Aboriginal Communities Act be examined in order to limit the social and cultural impact of service regularisation.
10. That the constitution of Aboriginal communities as formal townsites under the Land Administration Act be piloted as part of the ACSIP in conjunction with the ALT land handover.
11. That the implementation of environmental health infrastructure standards be formalised through the proposed essential services bilateral agreement and integrated with the new Building Act.
12. That ALT land transfer be included as a criterion for the prioritisation of capital works funding by Commonwealth and State agencies.
13. That the new Health Act currently being drafted explicitly binds the Crown.
14. That proposed the new building legislation apply to construction in Aboriginal communities.
15. That efforts to increase the involvement of Aboriginal people in local government and to facilitate direct negotiations between Aboriginal people and local governments continue.
16. That increased emphasis be placed on the development of suitable materials for Aboriginal communities explaining the roles and functions of local government and the opportunities to develop more effective relationships and service options.
17. That cross cultural awareness training be promoted for all local government staff and Councillors, particularly those in areas of high Aboriginal population.
18. That options be examined for the recognition of selected Aboriginal community councils as local governing bodies for the purposes of the Local Government (Financial Assistance) Act 1995.

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November 1999

## ATTACHMENT 1

### CURRENT INITIATIVES AIMED AT IMPROVING LOCAL GOVERNMENT SERVICES

#### Accountability

The Minister for Local Government has powers under Section 8.2 of the *Local Government Act 1995* to require specific information from Local Governments about their approach to, and achievements in, providing services to Aboriginal communities. The Minister has recently written to all Local Governments with significant Aboriginal populations requiring them to indicate in their Principal Activity Plans what services will be provided to Aboriginal communities in their districts and to report on the services provided to Aboriginal communities in their annual reports.

#### Increasing Aboriginal Involvement in Local Government

The Ministerial Coordinating Committee has sponsored a campaign to increase the participation of Aboriginal people in Local Government. This is attempting to encourage Aboriginal people to enrol, to vote and to nominate as candidates for Local Government elections. The recent Local Government elections has seen an increase in participation by Aboriginal people. The Shire of Broome now has a majority of Aboriginal councillors and is one of a number of Shires which now have Aboriginal Shire Presidents.

Options are also being explored for the creation of new Local Government areas where existing arrangements are disadvantaging the residents of Aboriginal communities. This is based on the experience of the Shire of Ngaanyatjaraku.

#### Service Agreements

A major strategy to improve access by Aboriginal communities to Local Government services and the relationship between the two parties is the negotiation of specific service agreements. These are being pursued under the auspices of the Aboriginal Community Strategic Investment Program (ACSIP), particularly in the area of road maintenance as part of a broader strategy to normalise services to these communities. The AAD and ATSIC are also facilitating the development of service agreements between Dampier Peninsula Aboriginal communities and the Shire of Broome in the areas of roadworks, environmental health services and the application of building standards. A framework agreement has recently been signed between the parties as the basis for these negotiations.

#### Building and Planning Control

The Environmental Health Needs Coordinating Committee has resolved that all development in Aboriginal communities sponsored by member agencies must receive Local Government planning and building approvals, whether or not this is required by statute or regulation. This involvement of Local Government is on a fee for service basis. The ALT has reinforced this policy for all developments on ALT land. It is hoped that current negotiations regarding an essential services bilateral agreement will formalise this arrangement.

In addition, the Environmental Health Needs Coordination Committee is currently sponsoring the development of Environmental Health Infrastructure Guidelines which will aim to develop a set of standards to improve the functionality and sustainability of environmental health infrastructure. The project aims to address a history of design, material and construction deficiencies associated with housing, water, power and waste disposal.

### The Town Planning Project

The AAD and ATSIC have been cooperating to develop town layout plans for Aboriginal communities since 1995 as an important component of current endeavours to improve environmental health outcomes in Aboriginal communities.

A project steering committee was convened by AAD in 1995 with representatives from ATSIC, the Ministry for Planning, the Department of Land Administration and WAMA. Its role has been to develop an appropriate policy framework governing the project. This policy is currently being finalised as a Statement of Planning Policy under s5AA of the *Town Planning and Development Act*.

The town planning project has attempted to involve Local Governments in a cooperative and informal way and to use the planning process to establish a platform for negotiation and agreement at a local level. The planning policy attempts to balance the introduction of increased planning control and regulation of development in communities with Aboriginal self determination and cultural requirements.

The AAD has also funded a town planning / community development position within the Shire of Derby West Kimberley since 1996. This joint project (which is now also part funded by the Ministry of Housing and the Shires of Derby and Broome) provides an Aboriginal specific planning and community development service to Aboriginal communities in the Shires of Derby West Kimberley and Broome.

### Local Government Development Program

Following the LGMC resolution of April 1995, two Local Government Development Program (LGDP) projects were initiated by the Commonwealth in Western Australia:

- A Strategic Approach to Environmental Health Planning (\$180,000 funding) - Shire of Derby-West Kimberley; and
- An Integrated Approach to Increase the Recognition of Aboriginal People in the Town Planning Process (\$150,000 funding) - Shire of Broome.

These projects are managed by the respective Shires and supported through the National Office of Local Government and Regional Services.

The Derby-West Kimberley Shire project aims to identify service gaps and limitations to the Looma and Mowanjum communities and to encourage a coordinated approach by local government,

Aboriginal communities and service agencies in addressing those gaps. It is anticipated that the findings of the project will provide guidance to other local governments in the provision of services and facilities to Aboriginal communities.

The project initiated in 1996 came to halt in 1997 but has recommenced following a recent agreement between the Shire and the National Office of Local Government. The LGDP is expected to develop a long term strategy to improve service delivery to Looma and Mowanjum possibly formalised through a form of service agreement.

The Broome Shire project aimed to develop an integrated approach to increase recognition of indigenous people in the Shire planning process. It was aimed at enabling the involvement of Aboriginal people in the decisions about land use, management of reserved land, coastal areas and public open space.

Additional outcomes expected from these projects were:

- an assessment of how to improve Local Government services to Aboriginal people; and
- the production of training and development modules for Aboriginal people elected to Local Government.

#### Environmental Health Officer and Environmental Health Worker Support

The Health Department of Western Australia currently provides funding to support the Shires of Derby West Kimberley and Halls Creek to employ full time Environmental Health Officer / Building Surveyors and Aboriginal Environmental Health Workers to assist the Shires to meet their environmental health obligations to Aboriginal communities.

This initiative has been widely supported by the Shires concerned and has resulted in improved environmental health outcomes and quality of life for Aboriginal people in these areas. The strengthening of this network of environmental health professionals throughout areas with high Aboriginal populations is seen as an important component of efforts to improve living conditions in Aboriginal communities. The AAD is currently coordinating the development of a strategy to expand this approach as part of a collaborative government response to the findings of the 1997 Environmental Health Needs Survey.

#### Local Government Ministers Conference - Ongoing Review of Local Government Services

In 1994, the Local Government Minister's Conference (LGMC) resolved that the adequacy of services provided at the local government level should be examined on a systematic basis, in conjunction with an examination of State and Territory financial capacity to provide services to Aboriginal and Torres Strait Islander communities.

In April 1995 LGMC agreed that coordinated action was required by all spheres of Government and the Aboriginal and Torres Strait Islander community to significantly improve services at the local level. In 1997/98 the Australian Local Government Association (ALGA) under the auspices of the

LGMC Activities Fund let a consultancy (by Remote Rural Resources P/L) to investigate :

- the financial capacity of Local Government to provide adequate services to Aboriginal communities;
- the issues in relation to Aboriginal Land and its rateability;
- deficiencies and gaps between Local Government and funding sources; and
- other inefficiencies including duplication or under-funding.

The Report: "Local Government Services to Aboriginal and Torres Strait Islander Communities: Its capacity to Achieve the National Commitment to Improved Outcomes for Aboriginal and Torres Strait Islander Peoples", was provided in draft form in June 1998 and was noted by Local Government Ministers at their 1999 meeting.

As part of the consultation process all State and Territory Local Government Ministers and the ALGA were asked to report on their progress in 1997/98 in implementing the 1995 LGMC resolution to improve services to Indigenous communities. Importantly, a number of initiatives in New South Wales were highlighted for their potential to improve services to Aboriginal communities. Initiatives included:

- The establishment of an Aboriginal Mentoring Program to address the under-representation of Aboriginal people in local government;
- The establishment of a Local Government Aboriginal Network of local advisory/consultative committees. 43 currently operate throughout the State in order to improve communication, understanding and trust between Aboriginal people and local government;
- Local agreements have been determined as the best method to clarify local situations leading to improved service delivery. 10 Councils have been selected to pilot measures to improve services to Aboriginal communities.
- Amendments to the Local Government Act now require all Councils to develop a social/community plan or equivalent which:
  - Identify the local community in the council area;
  - incorporate community profiles and a set of strategies;
  - summarise key issues facing the community;
  - include a mandatory requirement to examine issues affecting the local Aboriginal population;
  - formulate recommended strategies which council and/or other agencies - could implement to address needs;
  - inform council's strategic planning process across a range of functions; and
  - report annually on access and equity in relation to council's services.

Importantly, the NSW Land Rights Act provides mechanisms that enable councils to recover rates from either regional land councils or the NSW Aboriginal Land Council.

### Commonwealth Grants Commission Inquiry

In March 1999, the Commonwealth Government tabled in Parliament amendments to the Commonwealth Grants Commission Act to give the Commission the task of providing an independent assessment of relative need of indigenous populations. The inquiry is set for completion by March 2001 and is intended to improve the targeting of Commonwealth indigenous funding.

### Building the Capacity of Aboriginal Communities

The Aboriginal Affairs Coordinating Committee (AACC) has endorsed the development of a coordinated, interagency strategy to build the capacity of Aboriginal individuals, families and communities by improving the management and administration of their communities. The strategy is being progressed by a Working Group consisting of Commonwealth, State and local government agencies.

The State Government's draft Regional Development Policy has as its cornerstone strategies and initiatives to build the capacity of regional communities. This provides an opportunity to focus on the important elements of capacity building for Aboriginal communities including community leadership, management and administration; the ability to enhance skills and knowledge; and access to and use of information.

The AAD will be coordinating a consultancy over the next few months to examine the issues relating to effective community management and capacity building in order to inform the development of an integrated strategy which would aim to provide increased support for Aboriginal communities in this area.

### Essential Services Bilateral Agreement Negotiations

The Commonwealth and State Governments are currently negotiating a bilateral agreement on the provision of power, water and sewerage services to Aboriginal communities. The objectives of such an agreement are broadly to:

- Clarify current State and Commonwealth Government responsibilities.
- Formalise the current joint approach to essential services reform adopted by ATSIC and the State Government.
- Establish agreed service delivery principles including agreement to coordinate future State and Commonwealth infrastructure programs.
- Formalise the expansion of State funded communities from 48 to 72 communities and establish a regular process of review.

- Provide a commitment to appropriate design and construction standards and approval processes.
- Establish a framework for the negotiation of separate agreements on power and potentially water and waste water services through which the State would assume increased responsibility for essential services.

Importantly, the agreement will recognise the role of local governments consistent with the National Commitment and seek to ensure that local governments are involved in all developments in Aboriginal communities.

## ATTACHMENT 2

### THE ROLE OF LOCAL GOVERNMENT AND LOCAL GOVERNMENT REVENUE SOURCES

Constitutional responsibility for Local Government rests with the States which have the primary role in:

- managing Local Government within their jurisdictions;
- legislating for and regulating Local Government;
- setting new policy directions; and
- distributing Commonwealth general purpose assistance grants to Local Government.

States regulate the electoral system for Local Government, establish boundaries, delegate the revenue raising powers, establish the services which councils can and/or must provide and, to varying extents, supervise their performance. These have resulted in the development of different State systems for overseeing local governments and delivering local government services. Furthermore, such responsibilities are exercised in different ways. New South Wales imposes more extensive reporting requirements than do other States, and more recently the Victorian Government has more directly and extensively intervened in the operational decisions of Victorian councils.

Although constitutional responsibility for Local Government rests with the States, the Commonwealth has developed financial and administrative relationships which are important influences on Local Government and the resources available to it.

Commonwealth involvement in Local Government stems from its constitutional power to grant financial assistance to the States for any purpose on terms and conditions the Parliament thinks fit. Such power is founded on the Commonwealth's overseeing role in the promotion of national interests, ensuring Local Government contributes to the national social, environmental and economic performance. This allows the Commonwealth to play an oversighting role, influencing Local Government by allocating financial assistance through the States and providing grants to develop the capacities of Local Government.

The principal sources of funding for Local Government in Australia are property rates, government grants, and interest and loans. Other sources of revenue available are charges for services such as:

- garbage disposal;
- development charges;
- housing and community services;
- economic services;
- health services;
- library services;
- community services;
- recreational and cultural amenities.

A substantial proportion of Local Government revenue is generated through taxes, fees and fines (48%), followed by sale of goods and services (21%) and government grants (18%).

Like the States, the expenditure responsibilities of Local Government in Australia exceed their revenues from taxes and charges. The shortfall is made up by grants supplied principally by the Commonwealth.

Commonwealth payments to Local Government consist of:

- specific purpose payments (for both recurrent and capital purposes); and
- general purpose payments (made up of financial assistance grants and identified local road grants both of which are untied and together comprise over 80% of total Commonwealth payments to Local Government).

Specific payments are made directly to local governments for such purposes as:

- Aged Care Services
- Disability Services (not Western Australia)
- Children's Services
- Training for Aboriginals Program - Local Government
- Local Government Incentive Program and
- Regional Flood Mitigation Program

General purpose payments are passed through the States and are allocated by State Local Government Grants Commissions.

### **Impact on Aboriginal People of Local Government Grants Commission Process**

The Local Government Grants Commission operates under a set of National Principles (for allocating general purpose and local road grants) determined by the Commonwealth. Principle number 5 states that:

"Financial assistance shall be allocated to councils in a way which recognises the needs of Aboriginal peoples and Torres Strait Islanders within their boundaries".

The Local Government Grants Commission takes the Aboriginal people into account in the following ways:

#### **General Population Counts**

The Commission recognises the need for local governments to provide services to all residents. Aboriginal persons and Torres Strait Islanders are included in the ABS general population counts used by the Commission.

#### **Aboriginal Environmental Health Allowance**

This allowance recognises the additional costs incurred for provision of environmental health services to Aboriginal communities. The allowance is based on the number of full-time equivalent Environmental Health Officers assessed as required to service Aboriginal communities in local government districts by the WA Health Department.

### **Socioeconomic Disadvantage Factor**

This factor (which is based on the ABS Index of Socioeconomic Disadvantage) recognises the increased service costs on a local government due to high levels of socioeconomic disadvantage in the community. The index is based on various socioeconomic variables related the economic resources of households such as education, occupation, etc including the percentage of Aboriginal and Torres Strait Islanders.

### **Population Dispersion Factor**

This factor recognises the increased expenditure need that results from a widely dispersed population such as duplicated recreation and library facilities, increased travelling and communication costs, etc. These allowances are provided only to councils that service more than one town / community (with over 50 persons).

### **Revenue Capacity**

The council rates assessments (residential / commercial) are partly based on valuations (and hence would not take into account Aborigines in non-rateable dwellings) and partly based on dwelling numbers in communities of more than 50 persons (which would include non-rateable Aboriginal dwellings).

### **Identified Local Road Grants**

Since 1991/92 local road funds distributed by the LGGC have been untied and can be spent at the discretion of local governments. 93% of these road funds are distributed by the LGGC as determined under the Asset Preservation Model. The other 7% are reserved for special projects (around \$4 million in 1997/98): two thirds for bridges and one third for Aboriginal access roads.

A special committee (comprising representatives from WAMA, Main Roads, Aboriginal Affairs Department, Aboriginal and Torres Strait Islander Commission and the Department of Local Government), set up by the Commission, has established funding criteria for the allocation of Aboriginal access road funds (with the aim of better meeting the needs of Aboriginal communities) based on factors such as the number of Aborigines served, distance of the community from a sealed road and availability of an alternative access.

## State Funding Support

The State also makes payments from its own resources to Local Government. These are mostly for roads. 25% of Main Roads income from vehicle licences is provided to local governments based on a similar asset preservation model as used by the LGGC. Main Roads also matches the 7% special project funds allocated by the Commonwealth on 1:2 basis. Importantly, these funds are conditional upon the Councils allocating the funds for the intended purposes and this therefore effectively ties the 7% Commonwealth allocation.

In addition, for three years from 1998-99 the State has allocated 4.1% of its National Competition Policy payments from the Commonwealth towards the establishment of a Local Government Development Fund. In 1998-99, the State provided \$830,000 to Local Government from this Fund. For the next two financial years, the amount to be paid to Local Government will more than double (\$1.8 million each year).

Other State funded programs include the:

- Community Facilities Grants Program which provides grants of between \$2000 and \$25,000 to local governments and incorporated community groups for facilities such as public toilets, playgrounds and equipment, roadside rest areas, information signs and rubbish bins. \$1 million is available each year until 2000/2001.
- Safer WA Community Security Program whereby the State has allocated \$4 million over four years to support specific security safety measures including security patrols.

## ATTACHMENT 3

### ABORIGINAL COMMUNITIES AND LOCAL GOVERNMENT RATES

Local Governments are empowered to levy rates by the Local Government Act 1995 (LGA). Section 6.44 of the LGA provides that the "owner" for the time being of land on which a rate or service charge has been imposed is liable to pay that rate or service charge. Section 1.4 of the LGA defines "owner" to include a lessee from the Crown (which includes a lessee from the ALT). Thus, the present situation is that lessees from the ALT are potentially liable to pay local government rates.

The ALT, as an agency of the Crown, is not itself liable to pay rates (refer section 1.6 LGA and the unreported Supreme Court decision in *Atyeo -v- ALT* (Supreme Court Library No. 960605). Section 6.26 of the LGA also provides (inter alia) that Crown land that is being used or held for a public purpose is not rateable land nor is land that is being used exclusively for charitable purposes. There is also power under that section for the Minister for Local Government to declare that certain land is to be exempt from rates.

"Owner" under the LGA has also generally been understood to include the person in whom the care, control and management of a reserve has been placed. Whether an Aboriginal corporation which holds a management order for a Crown reserve that is unleased will be liable to pay rates, will depend upon the character of the corporation and the nature of the use of the land.

The recent Supreme Court decision in the matter of the Shire of Ashburton -v- Bindi Bindi Community Aboriginal Corporation (Unreported SC Library No. [1999]WASC108 ), held that Bindi Bindi was exempt from the requirement to pay rates over the reserve which it both occupied and held the management order, on the basis that it was a charitable organisation and the land was being used for "a charitable purpose". The Supreme Court decision recognised that the advancement of Aboriginal people generally is a charitable purpose and determined that the term "charitable", in its legal sense, comprises the following four principal divisions:

- relief of poverty;
- advancement of education;
- advancement of religion;
- other purposes beneficial to the community not falling under the above categories.

Similar to the situation where a corporation holds a management order for a reserve, a corporation holding a lease from the Crown could also seek exemption from the payment of rates on the basis that it was charitable in nature and the land was being used for a charitable purpose.

The issue of local government rates has been raised on a number of occasions as a potentially significant matter for consideration by Aboriginal people negotiating the transfer of land from the ALT. Where a reserve is currently under lease from the ALT to an Aboriginal corporation, the transfer of management control of that reserve from the Trust will not have any impact on the question of whether a local government may levy rates in respect of that land.