



***EDUCATION AND HEALTH
STANDING COMMITTEE***

**WHERE FROM?
WHERE TO?**

**A DISCUSSION PAPER ON REMOTE
ABORIGINAL COMMUNITIES**

**Report No. 6
in the 37th Parliament**

2007

Published by the Legislative Assembly, Parliament of Western Australia, Perth, April 2007.

Printed by the Government Printer, State Law Publisher, Western Australia.



Education and Health Standing Committee

Where from? Where to? A Discussion Paper on Remote Aboriginal Communities

ISBN: 978 1 921355 07 3

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Education and Health Standing Committee. Report 6)

328.365

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REMOTE ABORIGINAL COMMUNITIES**

Report No. 6

Presented by:
Hon T.G. Stephens, MLA
Laid on the Table of the Legislative Assembly
on 5 April 2007

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COMMITTEE'S FUNCTIONS AND POWERS

The functions of the Committee are to review and report to the Assembly on:

- (a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- (b) annual reports of government departments laid on the Table of the House;
- (c) the adequacy of legislation and regulations within its jurisdiction; and
- (d) any matters referred to it by the assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual report of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

INQUIRY TERMS OF REFERENCE

That the Committee examine, report and make recommendations on successful initiatives in remote Aboriginal communities. The Committee will pay particular attention to:

- 1 The costs and benefits of successful initiatives;
- 2 The model utilised for the development and delivery of successful initiatives; and
- 3 Where possible, comparing and contrasting the models utilised for the development and delivery of successful initiatives.

The Committee will report its findings and recommendations to the Legislative Assembly by 29 November 2007.

CHAIRMAN'S FOREWORD

Any genuine attempt to tackle challenging areas of public policy needs to be guided by the lessons of history. Without a working knowledge of our history we can be too easily destined to relive it. This is particularly the case in the area of Indigenous affairs.

The Education and Health Standing Committee remains keen to chart a course for positive government and community response to the circumstances still facing Aboriginal people across Western Australia.

To do this, however, we see a need to be guided by an understanding of the past and how we got to the present; to see what has failed and what has worked and to try and understand why.

This discussion paper sketches out a short history of Indigenous affairs policy in Western Australia with particular reference to the remote communities.

As a Committee we are completely indebted to the work of the Principal Research Officer, Dr Jeannine Purdy, and to the Research Officers, Mr Peter Frantom and Ms Nicole Burgess, for putting to paper this outline.

Even for those roughly familiar with the area, to have the history succinctly told in this way is a stark and challenging reminder of why things are as they are.

My hope is that through our collaborative work as a team of MPs drawn from the three major political parties, working with quality parliamentary staff, we will put before the Parliament and the community a challenging series of reports that will help create fresh opportunities for a better way forward.

I believe that as a community we must increase the audacity of our hope - we can find new ways for the three spheres of government to collaborate with the Aboriginal community and with the wider community to secure a more certain future for the growing Aboriginal population of Western Australia.

HON T.G. STEPHENS, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

AAPA	Aboriginal Affairs Planning Authority
ABS	Australian Bureau of Statistics
ANAO	Australian National Audit Office
ARCPSP	Aboriginal Remote Community Power Supply Project
ARIA	Accessibility/Remoteness Index of Australia
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIS	Aboriginal and Torres Strait Islander Services
CAEPR	Centre for Aboriginal Economic Policy Research
CDEP	Community Development Employment Program
CHINS	Community Housing and Infrastructure National Survey
CHIP	Commonwealth Housing and Infrastructure Program
COAG	Council of Australian Governments
DAA	Department of Aboriginal Affairs
DIA	Department of Indigenous Affairs
EHNS	Environmental Health Needs Survey
GST	Goods and Services Tax
IPA	Indigenous Protected Areas
NAHS	National Aboriginal Health Strategy
NATSISS	National Aboriginal and Torres Strait Islander Social Survey
RAESP	Remote Area Essential Services Program
RCIADIC	Royal Commission into Aboriginal Deaths in Custody

GLOSSARY

Aboriginal Remote Community Power Supply Project (ARCPSP)

The Aboriginal and Remote Communities Power Supply Project will supply permanent remote Aboriginal communities larger than 200 people with power at the same cost and with the same levels of reliability as regional towns supplied by Horizon Power in Western Australia. Customers in eligible communities will also be able to obtain rebates like other consumers. The Kimberley communities of Ardyaloon (Bardi), Beagle Bay, Bidyadanga, Djarindjin/Lombadina and Warmun have been included in Phase 1 of the Project.¹

Aboriginal town based communities

Aboriginal town based communities are located near existing mainstream towns. There are two main categories of town based community, those that are basically a suburb of a rural town and those that are discrete communities located up to five kilometres away. Classification as an Aboriginal town based community occurs when the communities are connected to either town power or town water supplies.²

Accessibility/Remoteness Index of Australia (ARIA)

Developed by the Commonwealth Department of Health and Aged Care and the National Key Centre for Social Applications of Geographic Information System in 1997, ARIA measures the remoteness of a point based on the physical road distance to the nearest Urban Centre. The Remoteness Structure contains the following categories:

- Major Cities of Australia
- Inner Regional Australia
- Outer Regional Australia
- Remote Australia
- Very remote Australia
- Migratory.³

Community Development Employment Program (CDEP)

CDEP began in 1977 at the request of several remote Aboriginal communities as an alternative to receiving unemployment benefits. Initially based on community development with projects ranging from housing and road maintenance to artefact production and horticultural enterprises as well as maintaining the cultural integrity of the Indigenous Community, the emphasis of CDEP has changed more recently so that employment away from CDEP is seen as an

¹ Aboriginal Housing and Infrastructure Council, *Aboriginal Housing and Infrastructure Council News*, Issue No. 2, Spring 2003, p7.

² Department of Water, *Report for the Minister for Water Resources on Water Services in Discrete Indigenous Communities - Final Report*, [2006], pp25,26.

³ Australian Bureau of Statistics (ABS), *ABS Views on Remoteness*, cat. no. 1244.0, ABS, Canberra, 2000, p1.

intended outcome for many CDEP participants.⁴ The Commonwealth currently describes CDEP as providing ‘*activities which develop participants’ skills in order to assist them move into employment outside the CDEP and to meet community needs*’.⁵

Council of Australian Government (COAG)	The peak intergovernmental forum in Australia, comprising the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association.
Discrete Indigenous Communities	Refers to larger Indigenous townships, smaller outstations and town-based Aboriginal reserves.
Homelands	Small decentralised communities of close kin, established by the movement of Aboriginal people to land of social, cultural and economic significance to them. ⁶ These are now more commonly known as outstations.
Horizon Power	An independent regional power corporation, created in April 2006 with the separation of Western Power into four stand-alone businesses. Horizon Power is owned by the State Government and services the Pilbara, Kimberley, Gascoyne, Mid West and southern Goldfields (Esperance and Hopetoun). It is responsible for generating or procuring, distributing and selling electricity. ⁷
Horizontal equalisation	<p>Defined under section 6(3) of the <i>Local Government (Financial Assistance) Act 1995</i> (Clth) as being the allocation of funds that:</p> <ul style="list-style-type: none"> (a) ensures each local governing body in the State is able to function, by reasonable effort, at a standard not lower than the average standard of other local governing bodies in the State; and (b) takes account of differences in the expenditure required to be incurred by local governing bodies in the performance of their functions and in their capacity to raise revenue. <p>This principle must be applied by State agencies in distributing Commonwealth Financial Assistance Grants to Local Governments. However it is not used by the Commonwealth when allocating these funds to the States for distribution to Local Governments.</p>
Outstations	See ‘ <i>homelands</i> ’ above. Although referring to the same communities, outstations more accurately represents both the

⁴ Community Development Employment Projects NSW, Available at: <http://www.cdep.com.au/default.aspx?id=1> Accessed on 13 February 2007.

⁵ Australian Government (Employment and Workplace Services for Australians), Available at: <http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/CommunityDevelopmentEmploymentProjectsCDEPprogramme.htm> Accessed on 13 February 2007.

⁶ Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, pxiii.

⁷ Horizon Power, Available at: http://www.horizonpower.com.au/about_us/index.html Accessed on 13 February 2007.

reliance of these small communities on the larger established Aboriginal townships as service centres and of the movement between the two as ‘*a culturally distinctive feature of the way Aboriginal people live*’.⁸

Remote Area Essential Services Program

Ninety-one remote Aboriginal communities are under the Remote Areas Essential Services Program (RAESP), a joint Commonwealth/State program for the provision and maintenance of water, power and wastewater services. Communities eligible for State RAESP support are generally those communities of 50 people or more with an agreed standard of infrastructure. A Program Manager (Parsons Brinckerhoff) is appointed jointly by the Department of Housing and Works and the Commonwealth to oversee the program and reports to a steering committee convened by the Department of Indigenous Affairs. For RAESP, Western Australia is divided into three regions (Kimberley, Pilbara/Gascoyne and Goldfields/Central Reserves), which are serviced by contracted service providers.

‘*Remote*’

The ARIA class of remoteness where geographic distance imposes a high restriction upon accessibility to the widest range of goods, services and opportunities for social interaction.⁹

‘*Very Remote*’

The ARIA class of remoteness where geographic distance imposes the highest restriction upon accessibility to the widest range of goods, services and opportunities for social interaction.¹⁰

⁸ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, p1.

⁹ ABS, *ABS Views on Remoteness*, cat. no. 1244.0, ABS, Canberra, 2000, p19.

¹⁰ *ibid.*

EXECUTIVE SUMMARY

The Education and Health Standing Committee (the Committee) resolved to undertake an inquiry into *Successful Initiatives in Remote Aboriginal Communities* on 23 August 2006. The intention was to highlight those initiatives which are bringing positive outcomes to remote Aboriginal communities. It was hoped this would not only provide models for consideration and adaptation by remote communities throughout Western Australia, but highlight successes at a time when there is much focus on the negative and dysfunctional aspects of some communities.

The purpose of this Report is to provide both a history of remote Aboriginal communities in Western Australia and an outline of the major changes currently taking place in the arrangements at all levels of government concerning Indigenous Affairs. As a discussion paper, the Committee hopes that it will contribute to an informed debate on these issues. The Committee would welcome the views, corrections and insights of interested members of the community before finalising its findings and recommendations. The closing date for submissions is Friday, 18 May 2007.

A BRIEF HISTORY OF HOMELANDS TAKEN AND REGAINED

Background: Often suggestions about what needs to occur in remote Aboriginal communities are justified by the adage '*desperate times demand desperate measures*' and there is no doubt that current conditions in many remote communities demand urgent transformation. In spite of the urgent need for reform, however, there have more recently been demands that the issues warrant careful examination and evidence-based policy formulation. Chapter 2 of this Report is intended to contribute to the current debate by providing a background to the emergence of remote Aboriginal communities, in particular to highlight that these are not homogeneous.

Imperial oversight: Chapter 2.2 briefly outlines the history of Aboriginal communities from the establishment of the Swan River Colony in 1829, when the Governor declared that land in what is now known as Western Australia was British Sovereign Territory, omitting any recognition of a right to land by the Indigenous inhabitants. The origins of many of the existing remote Aboriginal communities can be traced to the grant of power to reserve land for the '*Use and benefit of the Aboriginal inhabitants of the Country*'.¹¹

State provisions: Chapter 2.3 outlines changing State policies over some 150 years, ranging over an initial protectionist intent, to the strengthening of segregationist policies including the imposition of pass laws and forcible detention in settlements and reserves during the first half of the 20th Century, to the later adoption of assimilationist policies. These eventually saw the State's legal restrictions on Aboriginal people being largely repealed by 1963. These policies are examined with reference to the implications for Aboriginal reserves, settlements and missions.

The 1967 referendum: The emerging role of the Commonwealth in Aboriginal Affairs, after the 1967 referendum, is discussed in Chapter 2.4. Key areas include the Commonwealth shift away from assimilationist policy towards Aboriginal self-determination and land rights, as well as the

¹¹ Under the *Waste Lands Act 1842* (Imperial).

assumption of increasing funding responsibilities for Aboriginal 'homelands',¹² a movement described as:

*one of a concerted attempt by Aboriginal people in 'remote' areas of Australia to leave government settlements, reserves, missions and non-Aboriginal townships and to re-occupy their traditional country.*¹³

The Commonwealth's Community Development Employment Program (CDEP), initiated in 1976/77, is analysed as an important support for the homelands communities. Although intended to provide Aboriginal communities with the opportunity to undertake employment oriented projects designed to develop their communities, much of the CDEP expenditure was found to have contributed to subsidising the provision of municipal services in discrete communities, services which in the wider Australian community would be provided by local government or by separate public utilities.

Chapter 2.4 examines the unique collaborative arrangements between the Commonwealth and this State for administering Aboriginal Affairs between 1974 and 1984, and the deterioration and eventual demise of those arrangements over Nookenebah and Aboriginal Land Rights. The implications of the failure of the WA Aboriginal Lands Bill and the abandonment of national Land Rights legislation for remote Aboriginal communities in WA are outlined, although some crucial documentation cannot now be located.

The ATSIC era: The rise and fall of the Aboriginal and Torres Strait Islander Commission (ATSIC) and its specific contribution to the homelands movement is considered in Chapter 2.5. Increasingly becoming known as 'outstations', indicative of both the reliance of these small communities on the larger established Aboriginal townships as service centres and of the movement between the two as 'a culturally distinctive feature of the way Aboriginal people live',¹⁴ the Report looks at the crucial role of ATSIC in supporting these communities both at a policy level and financially. Collaborative arrangements between the State, Commonwealth and ATSIC, of significance for remote Aboriginal communities, are outlined.

'New ways of working':

Commonwealth: The Commonwealth's 'New Arrangements in Indigenous Affairs' is the topic of inquiry in Chapter 2.6(a). The new arrangements, implemented from July 2004, are examined including the dismantling of ATSIC, the move to mainstream service delivery, and the restriction of CDEP. Also canvassed is the criticism that these reforms are part of a trend in Indigenous Affairs to improve Indigenous people's livelihood prospects through recentralisation from small discrete Indigenous communities to larger discrete Indigenous communities, and from Aboriginal townships to larger urban centres as a means. Apparent inconsistencies in current Commonwealth policy on these matters are explored including the current Minister for Indigenous Affairs

¹² Homelands were described as 'small decentralised communities of close kin, established by the movement of Aboriginal people to land of social, cultural and economic significance to them'. Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, pxiii.

¹³ *ibid*, pp7,8.

¹⁴ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, p1.

description of the majority of those larger settlements as 'living hell holes' and town camps as 'urban ghettos'.¹⁵

COAG: Chapter 2.6(b) examines the Council of Australian Governments (COAG) trial of a whole-of-governments cooperative approach in eight Indigenous communities or regions. The analysis of expenditure on, and recent evaluation of, the trials is explored, particularly with reference to the aims of reducing bureaucracy and making it easier for Indigenous communities to work with Government. This part investigates the recent contention over whether the trials were successful was based on misunderstanding about the purpose and potential of the trials in the context of the original evaluation framework. That framework indicated that the trials were intended to lead to improved social and economic circumstances for Indigenous people in the participating communities.

REMOTE ABORIGINAL COMMUNITIES NOW

Almost one-quarter of all discrete Indigenous communities are in Western Australia. Chapter 3 examines the infrastructure and housing services available to the approximately 300 discrete Indigenous communities that are home to almost 17,000 people in Western Australia. The different arrangements in place for the various kinds of communities - outstations, larger communities and Aboriginal town based communities - are noted, together with the significant shortfalls, and the perhaps surprising different outcomes for residents.

Remote Aboriginal communities in WA:

Infrastructure: Chapter 3.2(a) looks into the comparatively limited services or support from government for the most numerous types of community, the approximately 200 outstations and small remote communities, home to about 3,000 people. Traditionally, infrastructure capital funding was provided to these communities through a range of Commonwealth programs, although there is no ongoing funding for operations and maintenance. However, around 82 per cent of Indigenous people living in remote communities are in mid-sized or large communities under the Remote Areas Essential Services Program (RAESP), a joint Commonwealth/State program for the provision and maintenance of water, power and wastewater services. The Aboriginal town based communities are the third kind of remote community, and are located near existing mainstream towns. Traditionally water and power services were only made available to the perimeter of the community boundary. These communities are currently the subject of a regularisation program, which aims to upgrade and transfer responsibility for services to mainstream providers.

Housing: Chapter 3.2(b) highlights the limited data available on housing for discrete Indigenous communities in WA, but what is available indicates, for example, that in relation to the predominate housing tenure in discrete WA Aboriginal communities, tenants of Indigenous or mainstream community housing, the rate of overcrowding was almost 40 per cent. Over 14 per cent of permanent dwellings in these communities in WA required replacement and another 20 per cent required major repairs. Of interest is the data which suggest that overcrowding is less severe in outstations and small communities.

¹⁵ Reported in *The Age*, 20 and 21 March 2006, as quoted in Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, pp10,13.

Outcomes for Indigenous people: Chapter 3.3 explores how, in spite of an increased acceptance by all governments of the need to improve the outcomes for Indigenous Australians, current government policies have been criticised as not being evidence-based, and for the absence of data that differentiates between the outcomes achieved by Aboriginal people living in outstations and the larger remote communities. The outcomes relating to core indicators of environmental health and to the provision of community services from the Western Australian Environmental Health Needs Survey (EHNS), suggest that core environmental health and community services are considerably better for the larger remote communities than those available in the smaller communities. What is perhaps surprising, however, is that this is not necessarily reflected in the health outcomes for the different kinds of remote community. The potential for significantly better health outcomes for the residents of the smaller communities, particularly given concerns relating to diabetes, substance abuse and nutrition, is noted and appears to be consistent with the very different origins of the larger communities as opposed to the outstations. While there may be reason to doubt that remoteness is necessarily correlated to poor health outcomes for Aboriginal people, both poorer western educational outcomes in outstations, and greater reliance upon CDEP, rather than participation in the ‘*real economy*’, in all communities, are noted.

FUTURE DIRECTIONS

The Commonwealth: Chapter 4.1 highlights the role of the Commonwealth as the primary contributor to funding for housing and infrastructure in remote Aboriginal communities over the past three decades. With the demise of ATSIC and current Commonwealth policy direction, it appears that the State is expected to assume an increasing responsibility for the provision and maintenance of housing and infrastructure to all remote Aboriginal communities. This is examined in the context of the substantial Commonwealth funding this State already receives to address Aboriginal disadvantage under the distribution of Goods and Services Tax (GST) revenue.

The State: Chapter 4.2 addresses how the future responsibility of the State for remote Aboriginal communities provides an opportunity to make serious inroads into Aboriginal disadvantage. It is proposed, however, that the State engage in a debate about the future of outstations, and other remote communities, that is informed, at least in part, by the views of the residents of these and other remote Aboriginal communities and is evidence-based.

Local Government: Chapter 4.3 examines the implications of the recent Commonwealth/State agreement for those local governments which include discrete Aboriginal communities within their jurisdiction. It is of note that such local governments were not a party to the agreement. The contention is put that, with CDEP and Commonwealth municipal services funding being substantially reformed, the need for alternative arrangements to provide for municipal services in remote Aboriginal communities, and to ensure accountability by local governments for monies allocated for those purposes, has become pressing. With the reduction of Commonwealth CDEP and Commonwealth Housing and infrastructure Program (CHIP) municipal services funding exposing the inequities of the present national allocation of funds for Local Government purposes, it is proposed that the State argues for greater and more equitable financial provision from the Commonwealth for municipal services in remote Aboriginal communities.

FINDINGS

Page 72

Proposed Finding 1

There is little available evidence to demonstrate the benefits of recentralisation from small to large remote Aboriginal communities; and there is some evidence to the contrary, particularly in relation to health outcomes.

Page 74

Proposed Finding 2

Previously, Commonwealth funding available to remote Aboriginal communities through the Community Development and Employment Program (CDEP) and the Community Housing and Infrastructure Program (CHIP) substantially subsidised the provision of municipal services in those communities.

RECOMMENDATIONS

Page 72

Proposed Recommendation 1

The State should obtain research into the viability or otherwise of the small remote Aboriginal communities, informed, at least in part by the views of the residents of these and other remote Aboriginal communities.

Page 76

Proposed Recommendation 2

In negotiating new financial arrangements within the terms of the State/Commonwealth *Bilateral Agreement for the provision of Housing, Infrastructure and Essential Services for Indigenous People in Western Australia November 2005 - June 2008*, the State should be cognisant of the implications of the Commonwealth's changes to its Community Development and Employment Program (CDEP) and Community Housing and Infrastructure Program (CHIP) and the inequities in the current allocation of Financial Assistance Grants to WA for distribution to local government.

CHAPTER 1 INTRODUCTION

1.1 This Inquiry

The Education and Health Standing Committee resolved to undertake an inquiry into *Successful Initiatives in Remote Aboriginal Communities* on 23 August 2006. In some respects a continuation of the Committee's earlier Report No. 2, on its *Inquiry into the Swimming Pool Program in Remote Communities*, the intention was to highlight those initiatives which are bringing positive outcomes to remote Aboriginal communities. It was hoped this would not only provide models for consideration and adaptation by remote communities throughout Western Australia, but highlight successes at a time when there is much focus on the negative and dysfunctional aspects of some communities.

In order to appreciate the measure for successful initiatives in remote Aboriginal communities, the Committee wanted to first gain an understanding of the broader context in which such communities operate. It is significant to note, for example, that when considering what might constitute a successful initiative in remote Aboriginal communities the general framework of legislative standards relating to basic health may not apply. The 1996 Western Australian Supreme Court case of *Atyeo v The Aboriginal Lands Trust* established that Parliament did not intend the State to be bound by the *Health Act 1911* (WA) provisions requiring that no house be built without providing for 'sanitary conveniences, and also bathroom and laundry and cooking facilities... in accordance with the by-laws of the local authority'.¹⁶ As a result, the Court held that the Aboriginal Lands Trust (as a non-commercial State enterprise) was not required to provide the inhabitants of Mardiwah Loop, residents of a reserve 'for the "Use and Benefit of Aboriginal Inhabitants"' with toilet and ablution facilities. Other regulatory regimes which do not apply to many remote Aboriginal communities include building regulations, local government laws and planning requirements.¹⁷

Given that basic amenities are often a prerequisite to attaining good health or education outcomes, the Committee sought background on the current arrangements relating to potable and waste water services, power supplies, housing, and the broader issue of funding, for remote Aboriginal communities. Informal briefings have been provided by the Office of Energy, Horizon Power, the Water Corporation, the Department of Housing and Works, and the Department of Indigenous Affairs (refer Appendix One). The Chairman also met informally with the Acting State Auditor General to discuss the general absence of accountability measures to ensure that untied funding to

¹⁶ *Atyeo v The Aboriginal Lands Trust* [1997] *Australian Indigenous Law Reporter* 24; (1997) 2 *Australian Indigenous Law Reporter* 45, Supreme Court of Western Australia, 4 November 1996, Perth.

¹⁷ Environmental Health Needs Coordinating Committee, *Environmental Health Needs of Indigenous Communities in Western Australia: The 2004 Survey and its Findings*, Environmental Health Needs Coordinating Committee, [Perth, WA], 2005, p23.

State and Local governments, allocated on a per capita basis to include Indigenous communities, or because of Indigenous disadvantage,¹⁸ is spent for these purposes.

These briefings and meetings contributed greatly to the Committee's understanding of the context in which remote Aboriginal communities operate in Western Australia today. Aspects are reflected in this introductory Report, which outlines the background of government arrangements which contributed to the emergence of remote Aboriginal communities, and the circumstances in remote Aboriginal communities in Western Australia today.

In addition to those briefings and meetings, the Committee also relied heavily upon a number of secondary sources in drawing together the material presented in this Report. The Committee particularly would like to acknowledge the Department of Indigenous Affairs' *Lost Lands Report*, published in 2003 but originally drafted in 1997,¹⁹ and the Department of Water's 2006 *Report to the Minister for Water Resources on Water Services in Discrete Indigenous Communities*.²⁰

1.2 A series of reports

This Report, which has been tabled as a discussion paper, is the first in a series of reports that the Committee intends to publish in relation to its current Inquiry.

The series will include two reports concerning the Committee's travel to far north Queensland in November 2006. The next Report, No. 5, is based on insights shared with, and gained by, the Committee when members travelled to meet with Mr Noel Pearson and visited a number of the Cape York communities. That Report provides background on Mr Pearson's '*Cape York Agenda*'²¹ and associated initiatives. Not only significant in themselves, many of these have also

¹⁸ Gaps in the existing framework for Local Government financial accountability for Commonwealth and State funding were identified in Western Australia, Legislative Assembly, Public Accounts Committee, *Local Government Accountability in Western Australia*, 2006. More specific reference was made to the lack of expenditure by Local Governments on remote Aboriginal communities in Law Reform Commission of Western Australia, *Aboriginal Customary Laws: Final Report*, 2006, pp352-354. The issue of State Government accountability for the expenditure of funds allocated by the Commonwealth on the basis of Aboriginal population, remoteness and disadvantage has not been canvassed in the same detail. However, in recent times States such as Victoria and New South Wales are reported as querying the current formula for the distribution of GST funds by the Commonwealth Grant Commission, based on '*horizontal fiscal equalisation*'. Those States claim that funds granted on the basis of Indigenous '*disabilities*' are not spent by State and Territory Governments such as Western Australia, South Australia and the Northern Territory to address those needs (Salusinszky, Imre, 'Overhaul proposed for black funding', *The Australian*, 31 July 2006, p3). Refer to Chapter 4 for a further discussion of these issues.

¹⁹ Department of Indigenous Affairs (DIA), *Lost Lands Report*, [DIA, Perth], [2003].

²⁰ Department of Water, *Report for the Minister for Water Resources on Water Services in Discrete Indigenous Communities - Final Report*, [2006].

²¹ Pearson, N, '*The Cape York Agenda*', Address to the National Press Club, Canberra, 30 November 2005. See also Pearson, Noel, *Our Right to Take Responsibility*, Noel Pearson & Associates, Cairns, Queensland, 2000, p5.

influenced Commonwealth policies and as a result have implications for Indigenous individuals and communities throughout Australia.

The Committee took the opportunity while in far north Queensland to visit the Torres Strait Islands. Of special interest to the Committee was the continuing role of an Indigenous regional representative authority, the Torres Strait Regional Authority, in the Torres Strait. This model of Indigenous administration was abolished on mainland Australia with the abolition of the Aboriginal and Torres Strait Islander Council (ATSIC) in 2005. The Committee's visit to the Torres Strait will be the subject of a later report.

The Committee also intends to publish a background report, addressing the issue of State agency employment of Indigenous people in Western Australia, before publishing other reports highlighting specific initiatives which have proved successful for remote Indigenous communities. These are intended to provide evidence-based models which may offer practical assistance to overcome the many challenges remote communities face.

1.3 Submissions invited

The purpose of this Report is to provide a preliminary account of the history of remote Aboriginal communities in Western Australia and of the major changes currently taking place in the arrangements at all levels of government concerning Indigenous Affairs.

The Report is presented as a discussion paper in the hope that it might contribute to an informed debate on these issues. The Committee would welcome the views, corrections and insights of interested members of the community before finalising its findings and recommendations. The closing date for submissions is Friday, 18 May 2007.

Passive welfare and grog and drugs are finally tearing our society apart ... We have to be as forthright and unequivocal about our responsibilities as we are about our rights - otherwise our society will fall apart while we are still fighting for our rights. We do not have a right to passive welfare - indeed we can no longer accept it. We have a right to a real economy, we have to build a real economy.

CHAPTER 2 A BRIEF HISTORY OF HOMELANDS TAKEN AND REGAINED

2.1 Background

In recent times there has been intense focus on dysfunction and despair in remote Aboriginal communities. A recent report of the Child Death Review Committee of Western Australia commented that:

The environmental circumstances in which many Aboriginal children died in the north of the state are alarming. These environments lacked service provision, infrastructure and were impoverished and unsafe for children. The Committee is very aware of the difficulties involved in working with Aboriginal families in these areas and their extended families. However, those working with these families ... appeared to accept as normal the impoverished and unsafe living conditions of children living in Aboriginal transitional or fringe communities...

It may be that if the circumstances of poverty and neglect underlying the likelihood of death in these communities cannot be managed, and parents are not able to safeguard their children's safety and wellbeing, possible removal has to be given more consideration.²²

Often suggestions about what needs to occur in remote Aboriginal communities are justified by the adage '*desperate times demand desperate measures*' and there is no doubt that current conditions in many remote communities demand urgent transformation. There is also no doubt that the extent of the crisis in many such communities has prompted the discussion of what would otherwise appear drastic and radical measures - such as some of those initiatives occurring as part of Mr Noel Pearson's reform agenda for Cape York which will be outlined in a future Report. The Committee is cognisant of the crucial significance of these efforts to tackle what often appear intractable problems.

In spite of the urgent need for reform, however, there have more recently been demands that the issues warrant careful examination and evidence-based policy formulation. In February 2007, for example, the Social Justice Commissioner expressed concerns that many of the current initiatives lacked any '*evidence that what they are pushing for has worked*'.²³

This chapter is intended to contribute to the current debate by providing a background to the emergence of remote Aboriginal communities, in particular to highlight that these are not homogeneous. Significantly many of the larger remote communities have emerged at the sites of reserves, missions and settlements to which Aboriginal people were often forcibly removed and detained for reasons of segregation and protection; the smaller outstations, however, emerged

²² Child Death Review Committee Western Australia, *Annual Report 2005-2006*, Child Death Review committee Western Australia, Perth, 2006, pp20,21.

²³ Karvelas, P, 'Pearson "playing to white crowd"', *The Australian*, 20 February 2007, p5.

from the 1960s after segregationist policies were repealed and Aboriginal people were free to return to their traditional lands and kin based communities. These remote communities are not therefore homogeneous, and as indicated in Chapter 3, nor are they homogeneously dysfunctional. It is the Committee's view that in developing future policy on remote Aboriginal communities the available evidence, limited though it is, needs to be taken into account.

2.2 Imperial oversight²⁴

On establishing the Swan River Colony in 1829, the Governor declared that land in what is now known as Western Australia was British Sovereign Territory. Absent from this declaration was any recognition of a right to land by the Indigenous inhabitants. Some 13 years later, however, the Governor gained power from the Imperial Parliament of Britain to reserve land for the '*Use and benefit of the Aboriginal inhabitants of the Country*'.²⁵ A number of such reserves were created between 1874 and 1884 and although all reserves were to support Christian missions to Aboriginal people these were officially the responsibility of the Aborigines Protection Board appointed by the Governor.

Western Australia went on to gain responsible government from Britain in 1890. Because of British concern over the treatment of Aboriginal people in Western Australia, however, it did not receive full responsibility for Aboriginal affairs. Section 70 of the *Western Australian Constitution Act 1889* provided that one per cent of gross revenue had to be '*appropriated for the welfare of aboriginal natives*'. This provision was unpopular within the State, particularly after State revenue increased as a result of the gold rushes, and by 1897 legislation was passed to repeal section 70.²⁶ The State of Western Australia for the first time assumed full responsibility for Aboriginal affairs within its territory.

2.3 State provisions²⁷

From 1898, the administration of Aboriginal people in WA was through the State's Aborigines Department. At this time Aboriginal people who tried to participate in farming were hindered either by the *Land Act 1898* which prohibited Aboriginal people being given more than 200 acres although 400 was considered the minimum for a viable farm; or by being granted farms that were declared to be reserves. Without title, Aboriginal farmers could not access loans for the improvements which were frequently a condition of the land grant.

²⁴ This section of the Report is sourced from Department of Indigenous Affairs (DIA), *Lost Lands Report*, [DIA, Perth], [2003], pp9-12.

²⁵ Under the *Waste Lands Act 1842* (Imperial).

²⁶ Confirmed in the later *Aborigines Act 1905* (WA). The subject of lengthy legal proceedings, culminating in *Yougarla v Western Australia* [2001] HCA 47 (9 August 2001), the High Court found that section 70 of the *Western Australian Constitution Act 1889* had been validly repealed by the 1905 Act.

²⁷ This section of the Report is sourced from DIA, *Lost Lands Report*, [DIA, Perth], [2003], pp12-24.

A Royal Commission in 1904, called in response to ongoing British and eastern states' criticism over the problems and abuse of Aboriginal people in the north of the State, recommended that large tracts of land be set aside for Aboriginal people. While the subsequent *Aborigines Act 1905* limited Aboriginal reserves to 2,000 acres, it also provided the Chief Protector with the power, amongst other things, to declare areas prohibited to Aboriginal people, and to remove and confine them to reserves proclaimed under the Act. In the north of the State reserves were established and run by the newly amalgamated Department of Aborigines and Fisheries. The establishment of feeding depots, 'Aboriginal' pastoral stations, lock hospitals and additional reserves in the north were part of an expanding programme of Aboriginal protection and segregation. In the south settlements were created as well as 'native camping reserves' near townships where the 'appalling conditions engendered by the lack of even the most rudimentary facilities ... were often used as an argument for further segregation'.²⁸

From 1915, with the appointment of Mr A O Neville as Chief Protector, the centralised native settlement system began to dominate government policy on the administration of Aboriginal people. These settlements were funded through the closing down of ration depots and halving government assistance to the missions. In the south of the State, other than New Norcia, missionary activity became confined to providing a Christian influence in the settlements.

By 1920 the administration of Aboriginal people in the north was transferred to the Department of the North-West, to which Mr Neville was appointed as Secretary. In the south it was transferred to the Chief Inspector of Fisheries and the Deputy Chief Protector of Aborigines, and removal to settlements was less utilised as gazettal of native camping reserves was seen as a less expensive alternative.

With the Depression, Aboriginal people who could no longer be employed by farmers moved to the camping reserves and over time many of these reserves were moved further from the towns. In addition to increasing segregation in country towns, a pass system was introduced in 1937 to restrict Aboriginal people not resident in Perth, or who could not demonstrate legitimate business, from entering the city.

By the mid 1930s allegations of slavery, maltreatment of Aborigines by pastoralists and abuse of Aboriginal women prompted another Royal Commission. The overhaul of the *Aborigines Act 1905* which followed resulted in it being renamed the *Native Administration Act 1936*, which largely continued the policies of the original Act although with a greater regulatory role over missions. By the end of the 1930s, there were 40 native camping reserves created for the purposes of segregation and, of the 39 farming properties previously reserved for particular Aboriginal people, only nine had not been resumed by the State.

During World War II and subsequently there were changes to the strict segregationist policy which saw Aboriginal people gradually become entitled to Commonwealth social security entitlements and to gain restricted access to citizenship rights. At the same time more native

²⁸ DIA, *Lost Lands Report*, [DIA, Perth], [2003], p16.

camping reserves were being created as Aboriginal people began to concentrate in regional centres because of better access to employment and services.

However, with the formalisation of a policy of '*assimilation and supervision*' from 1948 there was a shift away from the use of native camping reserves. In the south, a program to normalise reserves commenced with provision of toilets and better water supplies, then temporary accommodation (sheds), and beginning in the second half of the 1950s, with the construction of temporary housing.

This coincided with enactment of the *Native Welfare Act* in 1954. That Act removed the powers to declare towns and cities as prohibited to Aboriginal people and for protectors to order the removal and confinement of Aboriginal people to reserves. In the north, cattle stations reserved for Aboriginal use were disposed of and large tracts were excised from reserves. The Aboriginal settlements in the south were given to the control of the churches, with financial support from the government, to cater for Aboriginal children removed from their families.

Up until this time, legislation had ensured that the provision in the Constitution of Australia that:

No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State, shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of Parliament of the Commonwealth

was applied to '*any aboriginal native of Australia*' to exclude them from voting unless they were on the State's electoral roll in 1901.²⁹ Shortly after the *Commonwealth Electoral Act 1918* was amended in 1962, however, to provide that Indigenous people could enrol to vote in federal elections if they wished, the right to vote in state/territory elections was also extended to Indigenous people in the Northern Territory and Western Australia.³⁰

By 1963 the legal restrictions on Aboriginal people were largely repealed although the Department of Native Welfare continued to use the power to reserve land for Aboriginal housing throughout town and city boundaries across the State. Many of these lots, however, were in remote parts of town, underdeveloped and un-serviced, and where lots were developed the houses were consistently substandard.

²⁹ Australian Electoral Commission, *History of the Indigenous Vote*, Australian Electoral Commission, ACT, 2006, p5. The Commission reports '*Electoral officials had the power to decide who was an 'aboriginal native' and who was not. It was common for some people of Aboriginal and Torres Strait Islander descent to be allowed to vote (usually only if they lived like white people) and for others to be refused.*'

³⁰ *ibid*, p8. In 1965, when Queensland followed the other states and permitted Indigenous people to vote in state elections, Indigenous people around Australia gained the same voting rights as other Australians.

2.4 The 1967 referendum³¹

As a result of the 1967 referendum, the Commonwealth was granted power for the first time to ‘*make special laws*’ for Aboriginal Australians resident in the States (it already had power to legislate for those in the Territories).³² Initially, this did not result in the Commonwealth assuming any additional financial responsibilities.³³ In 1972, however, the Commonwealth established the Department of Aboriginal Affairs (DAA) and at about this time there were also significant government policy shifts away from assimilationist policy to one of self-determination, and towards land rights. Commonwealth expenditure on specific Indigenous programs doubled,³⁴ and consistent with the policy direction of Aboriginal self-determination, Aboriginal controlled and managed corporations were funded to provide services at the community level.³⁵ Commonwealth policy of this time has been described as being driven by the view that ‘*the states were not fulfilling their responsibilities to Aboriginal and Torres Strait Islander citizens*’, and as one ‘*that by-passed the states and funded Aboriginal and Torres Strait Islander corporations to deliver government support and programs*’.³⁶

At about this time the earlier changes to social security benefits, making payments available in cash from the late 1960s, combined with the new policies of self-determination and land rights, to facilitate the ‘*homelands*’ movement.³⁷ Homelands were described as ‘*small decentralised communities of close kin, established by the movement of Aboriginal people to land of social, cultural and economic significance to them*’.³⁸ Twenty years ago the origins of these communities was described by a Commonwealth Parliamentary inquiry as follows:

The history of the homelands movement is one of a concerted attempt by Aboriginal people in ‘remote’ areas of Australia to leave government settlements, reserves,

³¹ Unless otherwise indicated, this section is sourced from DIA, *Lost Lands Report*, [DIA, Perth], [2003], pp24-27.

³² National Archives of Australia, *Fact Sheet 113- Aboriginal and Torres Strait Islander People*, p1. Section 51 (xxvi) of the Constitution had stated that the Commonwealth had power to make laws for ‘*The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws*’. The “Yes” case for the 1967 referendum identified two purposes for deleting the words ‘*other than the aboriginal race in any State*’: the first was to ‘*remove any ground for the belief that, as at present worded, the Constitution discriminates in some ways against people of the aboriginal race*’ and the other was ‘*to make it possible for the Commonwealth Parliament to make special laws for the people of the Aboriginal race, wherever they may live*’ (*Kartinyeri v The Commonwealth* [1998] HCA 22 (1 April 1998), pars 26,30).

³³ Gardiner-Garden, J, ‘Identifiable Commonwealth Expenditure on Aboriginal and Torres Strait Islander Affairs’, *Current Issues Brief*, 18, 1997-98.

³⁴ *ibid.*

³⁵ Westbury, N & Dillon, M, ‘The Institutional Determinants of Government Failure in Indigenous Affairs’, 2006, p6.

³⁶ *ibid.*

³⁷ Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, p18.

³⁸ *ibid*, pxiii.

*missions and non-Aboriginal townships and to re-occupy their traditional country.*³⁹

By 1973 the Commonwealth had decided to support the homelands movement and to provide basic establishment grants.⁴⁰ This appears to be related to the broader Commonwealth agenda, reported to have been adopted in 1973, of:

*the Commonwealth Government [becoming] increasingly involved in Aboriginal affairs as the direct funding agency for all programmes to provide those special services required by Aborigines beyond those available to them as members of the general community.*⁴¹

While these developments were occurring at a federal level, in Western Australia in 1972 the *Native Welfare Act* was repealed. According to the then, and last, Commissioner of Native Welfare, Mr Frank Gare, the Native Welfare Department was seen by the State government of the time as ‘unnecessary’:

*If natives were to be integrated, they should be treated the same as anyone else and should have access to the same legislation and administrative machinery as everyone else.*⁴²

This resulted in Aboriginal housing matters being transferred to the State Housing Commission together with the 1200 properties reserved for ‘native housing’. A number of reserves including hostels, community halls and lots which had been reserved for the ‘Requirements of the Department of Native Welfare’ were transferred to the Department for Community Welfare.

The Department of Community Welfare was also allocated responsibility for welfare issues and matters relating to Aboriginal children. In 1972, there were 3,099 Aboriginal people in institutions in WA, the majority of them children.⁴³ The separation of Aboriginal children from their families as a matter of government policy had, by this time, been occurring in WA for a century. Originally removed as ‘orphans’ (although they had living parents) or as ‘apprentices’ under the terms of the *Industrial Schools Act 1874* (WA), by 1905 legislation was to specifically authorise the forcible removal of Aboriginal children from their families. From 1951, however, the adoption of assimilationist policies saw the removal of Aboriginal children occur more often under general child protection legislation. This did not appear to alter the frequency of their removal; nor did the transfer of responsibility for Aboriginal child welfare to the Department of Community Welfare in 1972. For example, 57 per cent of children in care between 1979 and

³⁹ Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, pp7,8.

⁴⁰ *ibid*, p17.

⁴¹ Commissioner for Aboriginal Planning, *Annual Report for the Year ended 30th June, 1974*, p7.

⁴² Gare, F E, ‘Interview with Frank Ellis Gare, last Commissioner for Native Welfare’, 1998 [Battye Library, Perth], p86.

⁴³ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Australia), *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Human Rights and Equal Opportunity Commission, Sydney, 1997, Chapter 7 ‘Western Australia’.

1981 were Aboriginal. The removal of Aboriginal children is a contentious issue and, for Aboriginal people, also a highly traumatic one. It has been dealt with in more appropriate detail elsewhere such as in the *Bringing them home* report and the more recent Child Death Review Committee's report referred to earlier at Chapter 2.1.⁴⁴

Returning to 1972, Mr Gare noted that,

It became obvious though ... that there were some things which couldn't be handed over. There were no appropriate departments to take over some of the functions. For instance, consultation with Aborigines, preservation of traditional culture, and handling estates of Aborigines. And this led to the establishment of the Aboriginal Affairs Planning Authority.

The much smaller Aboriginal Affairs Planning Authority (AAPA) was established on 1 July 1972 to coordinate the activities of various government agencies and 'to foster the economic, social and cultural advancement of Aborigines of the State'.⁴⁵ The AAPA also administered the Aboriginal Lands Trust, which consisted of Aboriginal people appointed by the Minister of Aboriginal Affairs. The Trust had eighty-six reserves transferred to it, consisting of 24 million acres.⁴⁶ However, title and control of these lands were effectively retained by the Crown, and as indicated in Chapter 1.1, for this reason were not seen as being subject to the general regulatory framework that applied elsewhere.

By 1974, in a unique⁴⁷ arrangement, the Commonwealth Department of Aboriginal Affairs in Western Australia became responsible for the administration of the State's *Aboriginal Affairs Planning Authority Act 1972*, with the exception of the Aboriginal Lands Trust. Mr Frank Gare became the head of both the State's AAPA and the Commonwealth's AAD in Western Australia. He later conceded the 'joint administration' had odd consequences such as correspondence with the same individual having to reflect that person's different functions, but:

*It didn't cause any trouble at all. It meant there was absolute coordination between the two [Commonwealth and the State] because the one person held both jobs. So there was no need for formal consultation.*⁴⁸

During the ten years the arrangement was in place the Commonwealth funded and staffed State AAPA distributed many millions of dollars of Commonwealth funds annually to Western

⁴⁴ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Australia), *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Human Rights and Equal Opportunity Commission, Sydney, 1997; Child Death Review Committee Western Australia, *Annual Report 2005-2006*, Child Death Review committee Western Australia, Perth, 2006.

⁴⁵ Commissioner for Aboriginal Planning, *Annual Report for the year Ended 30th June 1973*, p7.

⁴⁶ *ibid.*

⁴⁷ Unique in Aboriginal Affairs, but similar to the arrangements for the State and Commonwealth statistical authority at the time. (Gare, F E, 'Interview with Frank Ellis Gare, last Commissioner for Native Welfare', 1998 [Battye Library, Perth], p87.)

⁴⁸ *ibid.*, pp88,89.

Australian agencies, for housing, education, health, employment and welfare, with additional funding being granted directly to Aboriginal organisations and communities in the State.⁴⁹ Interestingly, however, during this time, the State's view on the purpose of Commonwealth funding appeared to change and instead of being to provide for '*special services required for Aborigines beyond those available to them as members of the general community*', the funding was described as being '*provided by the Federal Government for the benefit of Aborigines in Western Australia*'.⁵⁰ By 1975/6, for example, the bulk of the funding allocated by the Commonwealth via AAPA to the State Housing Commission was being spent on '*urban housing*'.⁵¹

On a Commonwealth level the Community Development Employment Program (CDEP) was initiated in 1976/77 with the aim of providing Aboriginal communities with the opportunity to undertake employment oriented projects designed to develop their communities.⁵² In lieu of individual unemployment benefits, block funding was made available consisting of the total unemployment benefit of the community, together with an additional 20 per cent to provide for the costs of administration, materials and tools for the projects.⁵³ Recipients could be exempted from participating in the activities usually required to be eligible for unemployment benefits (remote area exemptions or RAEs) on the basis that there was no local access to a labour market, labour market program or vocational training course.⁵⁴ The subsequent report of the House of Representatives Standing Committee on Aboriginal Affairs, *Return to Country: The Aboriginal Homelands Movement in Australia*, found that CDEP allowed communities to define what was '*work*' for the purposes of remuneration with what was seen as valuable by the community:

*The purpose of CDEP in homeland centres should be to provide homeland dwellers with a guaranteed income support to undertake those productive activities which are important to them and their lifestyle.*⁵⁵

However, it also found that much of the CDEP expenditure contributed to subsidising the provision of municipal services in discrete communities, services which in the wider Australian community would be provided by local government or by separate public utilities.⁵⁶

⁴⁹ Commissioner for Aboriginal Planning, *Annual Reports*, Years ended 30 June 1974 to 30 June 1984.; and Gardiner-Garden, J, 'Identifiable Commonwealth Expenditure on Aboriginal and Torres Strait Islander Affairs', *Current Issues Brief*, 18, 1997-98.

⁵⁰ Commissioner for Aboriginal Planning, *Annual Report for the year Ended 30th June 1973*, p7; Commissioner for Aboriginal Planning, *Annual Report for the year Ended 30th June 1977*, p7.

⁵¹ Commissioner for Aboriginal Planning, *Annual Report for the year Ended 30th June 1976*, p16.

⁵² Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, p143.

⁵³ *ibid*, pp142,143.

⁵⁴ Department of Employment and Workplace Relations, 'Updated Questions and Answers for the CDEP Guidelines 2006-07', Available at: www.workplace.gov.au/NR/rdonlyres/93B45EF0-8908-4FB0-BA43-2534BFE6623A/0/Finalupdate24Oct.pdf Accessed on 5 February 2007.

⁵⁵ Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, p157.

At around this time in the Northern Territory⁵⁷ and South Australia,⁵⁸ the granting of land rights had enabled the establishment of homelands with an economic base built upon subsistence activities of hunting, gathering and fishing. In New South Wales, the government introduced an Act in 1983 which effectively established, and provided limited power and funding to, State, Regional and Local Land Councils throughout New South Wales. This Act provided for a fixed 75 per cent of the land tax to be paid for a period of 15 years: half of the annual amount was to be invested for the future needs of Aborigines in New South Wales.⁵⁹ While there was specific provision made for land in some territories and states, however, it was the Commonwealth which was seen at that time as largely responsible for the development and funding of homelands.

In Western Australia, Commonwealth and State divisions had emerged in 1981 over Aboriginal land claims in relation to Noonkanbah.⁶⁰ In May the following year the State government proposed to appoint an independent Commissioner for Aboriginal Planning, partially bringing an end to the joint arrangement between the Commonwealth and the State over Aboriginal Affairs.⁶¹ Although new governments were subsequently elected at both Commonwealth and State levels in 1983, and an Aboriginal Land Inquiry was established in WA 1983,⁶² tensions emerged once more particularly with discussion that the Commonwealth planned to institute some form of inquiry aimed at producing legislation which would address the land rights of Aboriginal people throughout Australia.⁶³ By the time the Western Australian government put forward the Aboriginal Lands Bill in 1985 the joint Aboriginal affairs arrangements between WA and the Commonwealth had ended, with the State wanting independent administration and the

⁵⁶ Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, p144; Australian National Audit Office (ANAO), *Municipal Services for Indigenous Communities: Aboriginal and Torres Strait Islander Commission*, ANAO, Canberra, 2001, pp11,15.

⁵⁷ In 1976 the Federal Liberal Government amended a Labor Bill and passed the *Aboriginal Land Rights (Northern Territory) Act 1976*, which was implemented in 1977.

Previously gazetted 'Native Reserves' for the use and benefit of Aborigines were scheduled to the Act and for the first time 'the benefits' intended were made possible through [the] mechanism of the Act enabling Aboriginal people equal negotiating status in 'arms length' commercial arrangements affecting their land and lives. The States were expected to follow the Northern Territory, although not immediately, and not in the same format. (Royal Commission into Aboriginal Deaths in Custody, Regional Report of Inquiry into Underlying Issues in Western Australia, Australian Government Publication Service, Canberra, 1991, 6.4)

⁵⁸ In 1981 the Pitjanjatjara Bill, relative only to the north-west reserves in that State, was passed (*ibid*).

⁵⁹ *ibid*.

⁶⁰ Commissioner for Aboriginal Planning, *Annual Report for the year Ended 30th June 1981*, p7. The Noonkanbah dispute 'resulted in the use of a special convoy of drilling material travelling from Perth to the West Kimberly in an atmosphere of intense public feeling'. The exploratory drilling program on what local people regarded as a site of cultural significance did not prove to be a commercial well (*ibid*).

⁶¹ Commissioner for Aboriginal Planning, *Annual Report for the year Ended 30th June 1982*, p7.

⁶² Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry into Underlying Issues in Western Australia*, Australian Government Publication Service, Canberra, 1991, 6.4.

⁶³ *ibid*.

Commonwealth wanting an agency to be clearly identified as being responsible to implement Commonwealth policy in Aboriginal affairs.⁶⁴

When the WA Aboriginal Land Bill did not pass both Houses of Parliament there was further conflict between the State and Commonwealth over the issue of Aboriginal land rights. However, with the Commonwealth's abandonment of its plans for national uniform land rights in March 1986 no legislation eventuated.⁶⁵ In its place, in Western Australia (which is still the only one of the States and Territories in Australia without land rights legislation),⁶⁶ the Aboriginal Communities Development Programme arose as a joint State-Commonwealth agreement. The Programme was to be funded for \$100 million over the next five years, and contained provision for the State to secure areas of land, by means of excisions from pastoral and vacant Crown land, to satisfy Aboriginal residential needs in areas of traditional significance.⁶⁷ The Commonwealth role was to provide infrastructure for the homelands communities once the land was acquired.⁶⁸ In conjunction with this, it was agreed that the State would be responsible for the repair and maintenance of power, water and waste water services to 48 Indigenous communities in Western Australia.⁶⁹ The Commonwealth, however, continued to provide supplementary funding to assist in the provision of capital works and power house fuel in the 48 communities and *'for all aspects of essential service delivery in the remaining communities'*.⁷⁰

The Department of Indigenous Affairs recently described the *'list of 48'* as consisting of *'generally large permanent communities where the infrastructure was of a level acceptable to the State'*.⁷¹ Unfortunately no copy of the original agreement or related documentation could be located, but it is the State's view that *'the Commonwealth had assumed responsibility for all remote Aboriginal communities prior to 1985'*⁷² (presumably since the initiatives implemented in 1972), and it appears that this was thought to include not only the outstations but also the town-based Aboriginal communities, the old *'native camping reserves'*, and the larger established communities on the old settlements and missions.

⁶⁴ Commissioner for Aboriginal Planning, *Annual Report for the year Ended 30th June 1984*, p7.

⁶⁵ Black, D, *'Political Chronicle'*, *Politics and History*, 1986, Vol. 32, No.3, p493.

⁶⁶ Altman J C & Dillon M C, *A Profit-Related Investment Scheme for the Indigenous Estate*, Centre for Aboriginal Economic Policy Research (CAEPR) discussion paper no. 270/2004, CAEPR, Canberra, 2006, p1.

⁶⁷ Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry into Underlying Issues in Western Australia*, Australian Government Publication Service, Canberra, 1991, 6.4.2.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ The Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *Agreement for the Provision of Essential Services to Indigenous Communities in Western Australia*, 2000, piv.

⁷¹ DIA, *'RAESP Management Workshop'* 8 November 2005, p1.

⁷² Western Australian Treasury, *'Commonwealth Grants Commission Indigenous Funding Inquiry Submission'*, No. IFI/SUB/0021, (2000), p26. The State noted that *'services to indigenous people not in remote communities have always been provided as part of mainstream service delivery'*.

By the time the House of Representatives Standing Committee on Aboriginal Affairs reported on the homelands movement in 1987, the division of government responsibility for funding communities had become increasingly contentious. In its *Return to Country*, the Committee reported that:

It is the Commonwealth's view that it is the responsibility of State and Northern Territory governments to provide to homeland dwellers the general community services which they provide to all other citizens.

... The differing views of the States and Northern Territories are based on the premises that the homelands movement is costly and as the Commonwealth has largely been responsible for stimulating the movement through its funding programs and the granting of land rights in the Northern territory, it is unreasonable to expect the states and the Northern Territory to accept the responsibility for the provision of essential services and other State-type services without the injection of substantial additional funds.⁷³

Return to Country had identified 700 small communities with 14,500 associated people. The Report offered strong and bipartisan support of the homelands movement, despite some reservations about issues associated with levels of service provision. It found that the role of the Commonwealth was essentially a 'seeding' role, 'special' funding for development programs such as CDEP and enterprise development; with the states liable for 'the "essential" facilities and services which they are obliged to provide to all their citizens'.⁷⁴

2.5 The ATSIC era

In 1990, the Aboriginal and Torres Strait Islander Commission (ATSIC) replaced the Commonwealth Department of Aboriginal Affairs.⁷⁵ ATSIC had both an administrative and elected arm which allowed it to act as the primary representative voice for Aboriginal and Torres Strait Islander peoples at national level and to also operate as a government agency.⁷⁶ As such it had both an advisory and decision-making function. It had a broad legislative mandate on behalf of Aboriginal persons and Torres Strait Islanders which included the formulation and implementation of programs, monitoring the effectiveness of programs conducted by all bodies and agencies, and developing policy proposals.⁷⁷ ATSIC Regional Councils consisted of elected members who in turn participated in the selection of 12 national representatives who were the

⁷³ Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, p100.

⁷⁴ *ibid*, ppxvii, xviii.

⁷⁵ National Archives of Australia, *Fact Sheet 113- Aboriginal and Torres Strait Islander People*, p1.

⁷⁶ Behrendt, L, 'The abolition of ATSIC - Implications for democracy' in *Democratic Audit of Australia* - November 2005, Available at: http://democratic.audit.anu.edu.au/papers/200511_behrendt_atxic.pdf Accessed on 1 February 2007

⁷⁷ *Aboriginal and Torres Strait Islander Commission Act 1989* (Commonwealth), section 7.

Commissioners.⁷⁸ Regional Councils were also required to formulate a regional plan and to assist, advise and co-operate in the implementation of that plan, and to represent and advocate for the constituents in their region.⁷⁹ ATSIC was to be a key support for the homelands movement - both at a policy level and financially.

Shortly after the creation of ATSIC, the *Mabo* decision of 1992⁸⁰ provided greater recognition of Indigenous people's rights to land and the movement to traditional lands was facilitated by successful native title claims.⁸¹ Although recent research has indicated that the legal recognition of native title has not brought the benefits to Indigenous peoples that might have been expected,⁸² in the 1990s, the Indigenous land base expanded and there were growing pressures from Indigenous people for support for decentralisation.

By 1996, ATSIC imposed a moratorium on funding new homelands communities,⁸³ which were becoming more commonly known as 'outstations', indicative of both the reliance of these small communities on the larger established Aboriginal townships as service centres and of the movement between the two as 'a culturally distinctive feature of the way Aboriginal people live'.⁸⁴ In 1999 new policy principles were released setting out the basis on which the moratorium was removed. These required Regional Councils to apply planning guidelines which provided some transparency in priority setting to groups involved in these movements.⁸⁵ The 'National Homelands Policy: ATSIC's Policy for outstations, homelands and new and emerging communities' set out four principal criteria for the establishment of outstations:

- Secure land tenure (a focus on outstations the place);
- The outstation must be the principal residence of members (a focus on people);

⁷⁸ Behrendt, L, 'The abolition of ATSIC - Implications for democracy' in *Democratic Audit of Australia - November 2005*, Available at: http://democratic.audit.anu.edu.au/papers/200511_behrendt_atsic.pdf Accessed on 1 February 2007.

⁷⁹ *ibid.*

⁸⁰ *Mabo and Others v. Queensland* (No. 2) [1992] HCA 23; (1992) 175 Commonwealth Law Reports 1, (3 June 1992).

⁸¹ ANAO, *Municipal Services for Indigenous Communities: Aboriginal and Torres Strait Islander Commission*, ANAO, Canberra, 2001, p28.

⁸² Laurie, V, 'Land use contracts fail to deliver' in *The Australian*, 30 January 2007, pp.1,6; Laurie, V, 'Overlooked by the boom: Land access deals have failed to deliver jobs and benefits to Aborigines' in *The Australian*, 30 January 2007, p11; Pearson, N, 'Boom and dust lifestyle' in *The Australian*, 3 February 2007, p29. The reporting related to research by Griffith University Prof. Ciaran O'Faircheallaigh who found that after five years of detailed examination of 45 land use agreements that half were 'basket cases' that should not have been entered into or had delivered few cultural or monetary benefits for Aboriginal people.

⁸³ Aboriginal Access and Living Areas Pastoral Industry Working Group, *Final Report*, 2003, p54.

⁸⁴ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, p1.

⁸⁵ ANAO, *Municipal Services for Indigenous Communities: Aboriginal and Torres Strait Islander Commission*, ANAO, Canberra, 2001, p29.

- Access to potable water at outstations (again a focus on the place), and
- Support from a community organisation or Outstation Resource Agency (ORA).⁸⁶

The policy framework also allowed for transparent assessment of need, minimum standards in housing and infrastructure (a requirement that was problematic owing to high costs of delivery and the nature of local priorities), the need for planning, and the option for ATSIC to withdraw support. ATSIC policy also stated unequivocally that development at outstations would be staged.⁸⁷ It highlighted that outstations could not expect the same level of housing, infrastructure and services as available within existing communities unless populations stabilised and grew. This view reflected recommendations made in *Return to Country*.⁸⁸ Within two years, ATSIC had gone further and imposed a moratorium on the funding of new ORAs through its Community Housing & Infrastructure Program (CHIP).⁸⁹

By 2000, the Western Australian Government had entered into an agreement with ATSIC and the Commonwealth to expand its provision of maintenance and repairs from 48 to 64 large (at least 50 residents), permanent, remote Aboriginal communities, with ATSIC agreeing to fund capital infrastructure and municipal services including power house fuel.⁹⁰ The Commonwealth and ATSIC also undertook to provide maintenance and repair to identified '*emerging communities*' of between 40 and 49 people until these were transferred to State responsibility. There was also agreement for the '*normalisation*' of services to Aboriginal town based communities (not necessarily remote) by mainstream service delivery, with funding from the State, ATSIC and the Commonwealth.

An Australian National Audit Office (ANAO) report found that in 2000/01, ATSIC was providing some \$40 million a year nationally:

for the recurrent costs of operating and maintaining services such as town management and rubbish disposal, and essential community services such as water, sewerage, power, and local roads in a number of Indigenous communities. ATSIC provides these services by funding community-based Indigenous organisations to implement them. The services are usually provided to communities located in rural and remote localities. In the wider Australian community, the services being delivered by ATSIC's funding in these areas are normally provided by local government or by separate public utilities operating in States and regions...

⁸⁶ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, pp6-7.

⁸⁷ *ibid*, p7.

⁸⁸ *ibid*.

⁸⁹ Department of Family and Community Services, *Community Housing & Infrastructure Program (CHIP) - Program Guidelines 2005-06*, 5.3.3.

⁹⁰ The Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *Agreement for the Provision of Essential Services to Indigenous Communities in Western Australia*, 2000.

The ANAO concluded that ATSIC's Municipal Services activities enable specific Indigenous communities, particularly those in remote areas, to obtain some services they need for maintaining living and environmental health standards. The activities are managed in a way that is broadly consistent with financial reporting and accountability requirements.⁹¹

It is of note that almost half of the municipal funds were expended in WA. The ANAO stated that:

Over a number of years, ATSIC has provided capital works and power house fuel in these 48 [WA discrete Aboriginal] communities (the list has been increased to 62 in the past 2 years) and all aspects of essential services delivery in many smaller communities. Power house fuel in the ATSIC CHIP 1997–1998 budget was some \$5.8 million.⁹²

The ANAO also found that:

Through the CDEP, ATSIC delivers services some of which substitute for services of a municipal character. But it does not collect data on municipal services impacts of the CDEP, and it has difficulty in presenting comprehensive information about the extent of its Municipal Services role in discussions with other agencies.⁹³

In 1999/2000 separate funding for WA from ATSIC under its CDEP program totalled \$112 million, expended substantially in remote areas of the State.⁹⁴ In spite of having only the third largest Indigenous population and third largest remote/very remote Indigenous population,⁹⁵ CDEP expenditure in WA was higher than in every other State and Territory in Australia by at least four and a half million dollars. (This was possibly related to the large number of communities, and hence higher administration costs, associated with WA as opposed to a State such as Queensland with an equivalent remote Indigenous population.)

In 2002, another agreement was entered into between the State, Commonwealth and ATSIC, this time 'for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander people in Western Australia July 2002 - June 2007'. The agreement highlighted that:

Approximately 11% of Aboriginal people living in Aboriginal communities in Western Australia reside in temporary dwellings, with 23% of permanent dwellings requiring major repairs and 11% requiring replacement. It is estimated that nearly \$400 million is needed

⁹¹ ANAO, *Municipal Services for Indigenous Communities: Aboriginal and Torres Strait Islander Commission*, ANAO, Canberra, 2001, pp11,12.

⁹² *ibid*, p115.

⁹³ *ibid*, p15.

⁹⁴ *ibid*, p92. No more recent data could be located and the ABS advised that no comparative data on CDEP expenditure per State is published.

⁹⁵ ABS, *Population Characteristics, Aboriginal and Torres Strait Islander Australians*, cat. no. 4713.0, ABS, Canberra, 2001, p22. According to this data New South Wales had an Indigenous population of 134,888, Queensland 125,910 and WA 65,931. Northern Territory had the largest remote/very remote Indigenous population of 66,188; Queensland had 30,389 and WA 29,751.

*to repair existing houses in line with national standards and to provide enough new houses to eliminate overcrowding and homelessness.*⁹⁶

Amongst other things, there was agreement to pool Commonwealth, ATSIC and State funding for Indigenous housing and infrastructure. The agreement also emphasised that ‘*Commonwealth funds will target housing and related infrastructure in rural and remote areas where there is a high need and where there are no other housing options*’.⁹⁷ Although the pooling of funds did not take effect as intended in the 2002/3 financial year, the agreement provided an indicative breakdown of the funding for expenditure on Indigenous housing and infrastructure throughout the State in 2002/3. It comprised almost \$100 million from the Commonwealth, with half from the ATSIC administered National Aboriginal Health Strategy (NAHS) program and additional lesser funds for municipal services in remote communities, remote essential services, town planning and Aboriginal rental housing. State Treasury contributed \$12.5 million with additional funding of generally \$4 million p.a. being taken from the State’s Department of Housing and Works and utilising untied Commonwealth funding provided under the Commonwealth State Housing Agreement.⁹⁸ The State Treasury funding for 2002/3 was to be considerably higher than had traditionally been made available for these purposes.⁹⁹

According to Professor J C Altman of the Centre for Aboriginal Economic Policy Research at the Australian National University, the Community Housing and Infrastructure Needs Survey (CHINS) conducted by the Australian Bureau of Statistics (ABS) in 2001, shows that:

*in the 1990s ATSIC did a fair job of closing the gaps between townships and outstations that were extreme in the 1970s and 1980s. ...much of this improvement was due to the efficacy of the ORAs [Outstation Resource Agencies], especially as they became CDEP organisations in the 1990s and administered significant quantities of Commonwealth Community Housing and Infrastructure Program (CHIP), National Aboriginal Health Strategy (NAHS) and Housing and Infrastructure Priority Program dollars.*¹⁰⁰

If Professor Altman’s analysis is correct, it was ATSIC and CDEP, together with the ORAs, which were fundamental in maintaining the viability of outstations.

It was at about this time, in 2000, that Mr Noel Pearson published his seminal *Our right to take responsibility*, stating that ‘*passive welfare*’ had undermined Aboriginal Law, led to grog and

⁹⁶ The Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *An Agreement for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia July 2002 - June 2007*, 2002, p3.

⁹⁷ *ibid*, p4.

⁹⁸ *ibid*, p22.

⁹⁹ DIA, ‘Services to Discrete Indigenous Communities in Western Australia Discussion Paper’, 2002, p14.

¹⁰⁰ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, p7.

alcohol abuse in Aboriginal communities, and he began advocating the ‘*right to a real economy*’ for Aboriginal people.¹⁰¹ Mr Pearson also highlighted that the existing system of:

community governance keeps the power (the right and responsibility) to decide and take action away from individuals. This removes responsibility and initiative from the people themselves...

*... when I talk about ‘leadership’ I talk about a pervasive concept. It is something that everybody is capable of exercising... The pyramid style conception of power and governance is reinforced by the formal system of governance.*¹⁰²

The Committee was particularly keen to visit with Mr Pearson and to observe his initiatives given that his analysis of the difficulties confronting Aboriginal Australia and proposed solutions have striking resonance with the Commonwealth’s ‘*New ways of working*’ in Indigenous affairs and also more broadly with contemporary public debate surrounding remote Aboriginal communities. As indicated, these initiatives will be the subject of another report by this Committee. Analysis of the ‘*New Ways of Working*’, however, follows as the subject of Chapter 2.6.

2.6 ‘*New ways of working*’

(a) Commonwealth

The Commonwealth Minister for Indigenous Affairs published an *Indigenous Fact Sheet* about the ‘*New Arrangements in Indigenous Affairs*’, stating that ‘*important changes*’ were made from 1 July 2004. It refers to special programs still being in place, but states these are now ‘*administered by the agencies that provide similar services for all Australians*’. It also refers to the various agencies that will coordinate these programs, including the Ministerial Taskforce on Indigenous Affairs, Indigenous Coordination Centres which are located in 30 locations across Australia, and highlights that COAG ‘*is a key strategic forum*’ and that ‘*the new arrangements build on work sponsored by COAG since 2000*’.¹⁰³ Discussion of the COAG initiatives follows next, in Chapter 2.6(b).

As indicated, ATSIC and CDEP had been integral in the development and support of the remote communities and outstations. The Commonwealth’s ‘*new arrangements*’ have seen both subject to substantial reform in recent years, with the dismantling of ATSIC, and the move to mainstream service delivery. Interestingly there has been one clear exception to the reforms - with the Torres Strait Regional Authority the ATSIC Regional Council structure has been retained in the Torres Strait. That Authority also continues to administer CDEP funding,¹⁰⁴ unlike every other region in

¹⁰¹ Pearson, N, *Our Right to Take Responsibility*, Noel Pearson & Associates, Cairns, Queensland, 2000, p5.

¹⁰² *ibid*, pp47,52.

¹⁰³ Minister for Families, Community Services and Indigenous Affairs, *Indigenous Fact Sheet 3.1 New Arrangements in Indigenous Affairs* [undated].

¹⁰⁴ Torres Strait Regional Authority, Education, Training and Employment, Available at: <http://www.tsra.gov.au/www/index.cfm?ItemID=256> Accessed on 3 April 2007.

Australia where the program is administered through the Department of Employment and Workplace Relations. The opportunity to observe the success or otherwise of the governance regime in the Torres Strait, now so radically different to that governing other remote Indigenous communities in Australia, was a significant factor shaping the Committee's travel itinerary in far north Queensland in November 2006, and it will be the subject of another of the reports in the series on this Inquiry.

For Aboriginal Australia, however, the Commonwealth announced its intention to abolish both ATSIC and the Aboriginal and Torres Strait Islander Services (ATSIS)¹⁰⁵ on 15 April 2004. Programs and services which ATSIS had administered were distributed to mainstream Australian Government agencies. The transfer of the vast majority of programs occurred on 1 July 2004 while on 16 March 2005 the Federal Parliament passed the ATSIC Amendment Bill abolishing ATSIC and ATSIS. The legislation was proclaimed with effect from 24 March 2005 and ATSIC Regional Councils ceased operations on 30 June 2005.¹⁰⁶ Critics have noted that although the abolishment of ATSIC was often tied to the poor socio-economic indicators for Indigenous Australians, ATSIC did not have funding for either health or education.¹⁰⁷ Moreover, although it did not have strong voter turnouts, these were in some instances higher than at local government or trade union elections, particularly in those electorates where remote communities had specific and special needs in relation to services.¹⁰⁸

Since abolishing ATSIC, the Commonwealth's primary avenues for engaging Aboriginal people have been through the implementation of Shared Responsibility Agreements and Regional Partnership Agreements. The first are agreements with families, or '*communities*' which are not formally structured; and which specify the obligations of both parties in relation to specific projects. The latter are broader framework agreements, entered into between governments and a range of Indigenous organisations (which again often have no clear formal mandate to act as representatives for Indigenous peoples), and including businesses and others, again specifying the obligations of all parties.

¹⁰⁵ The Commonwealth established the Aboriginal and Torres Strait Islander Services (ATSIS) as a separate Commonwealth Agency on 1 July 2003 to make all individual funding decisions concerning programmes delivered by ATSIC. ATSIC Commissioners and Regional Councillors were to continue to determine policies and priorities for expenditure, in line with the original intention behind the establishment of ATSIC (Department of Immigration and Multicultural and Indigenous Affairs, *Fact Sheet Indigenous Affairs Budget: Chronology of Indigenous Policy Achievements*, p4).

¹⁰⁶ The Agreements, Treaties and Negotiated Settlements Project database, 'ATSIS', Available at <http://www.atns.net.au/biogs/A002578b.htm> Accessed on 5 February 2007.

¹⁰⁷ Behrendt, L, 'The abolition of ATSIC - Implications for democracy' in *Democratic Audit of Australia* - November 2005, Available at: http://democratic.audit.anu.edu.au/papers/200511_behrendt_atsic.pdf Accessed on 1 February 2007.

¹⁰⁸ For example, voter turnout in the Northern Territory reached 34.68 per cent, and in WA reached 27.70 per cent (*ibid.*).

Although not abolished, CDEP has also undergone significant reform. The 2005 Minister's Foreword in the *Building on Success CDEP - Future Directions* paper states:

*The Australian Government is seeking to challenge the welfare culture in favour of a work and entrepreneurial culture. A key to moving away from welfare is to build workforce participation with policies that support more Indigenous people getting real jobs and owning their own homes and to encourage commercial development along with effective service delivery of education, health and other essential services. At the same time, we recognise that some labour markets are limited and that programmes of community development will remain an integral component of the new approach.*¹⁰⁹

However, the Commonwealth Department of Employment and Workplace Relations website states that 'RAEs are being progressively removed around Australia in recognition of increased opportunities for people in remote areas to participate in work or work-related activities'.¹¹⁰ It was reported in December 2006 that more than 95 per cent of the 549 Aboriginal people who resided in 23 communities which had their RAE removed were unable to find 'real work'.¹¹¹ Affected communities included Aurukun and Halls Creek.¹¹²

The recent Commonwealth description of CDEP as 'a stepping stone to economic independence'¹¹³ with an emphasis on planning 'to move participants into a real job',¹¹⁴ together with the plan to remove RAEs from all remote communities demonstrates a very different understanding of the function of CDEP to the earlier view that it was an income guarantee, at least in outstations, allowing Indigenous people to pursue activities which are of value to them.

It is also significant that what had been a moratorium on funding of new ORAs imposed by ATSIC in 2002, appears to have been reapplied by governments as a moratorium on funding of new homelands and outstations in 2006/07.¹¹⁵

¹⁰⁹ Department of Employment and Workplace Relations, *Building on Success CDEP - Future Directions*, Department of Employment and Workplace Relations, Canberra, 2005, piii.

¹¹⁰ Department of Employment and Workplace Relations, 'Updated Questions and Answers for the CDEP Guidelines 2006-07', Available at: www.workplace.gov.au/NR/rdonlyres/93B45EF0-8908-4FB0-BA43-2534BFE6623A/0/Finalupdate24Oct.pdf Accessed on 5 February 2007.

¹¹¹ Karvelas, P, 'Remote Aborigines failing in job search', in *The Australian*, 13 December 2006, pp1,6.

¹¹² FACS, *Community Housing and Infrastructure Program (CHIP) E-Sub Program Guidelines 2006-07 For Applicant Organisations*, p5.

¹¹³ Australian Government, *Achieving Indigenous Economic Independence: Indigenous Economic Development Strategy*, [undated], p9.

¹¹⁴ Department of Employment and Workplace Relations, 'Updated Questions and Answers for the CDEP Guidelines 2006-07', Available at: www.workplace.gov.au/NR/rdonlyres/93B45EF0-8908-4FB0-BA43-2534BFE6623A/0/Finalupdate24Oct.pdf Accessed on 5 February 2007.

¹¹⁵ The Department of Family and Community Services, *Community Housing & Infrastructure Program (CHIP) - Program Guidelines 2006-07*, 2.5. states that 'the moratorium on the funding of new homelands and outstations remains in place'. However, the only reference that could be located was to a previous moratorium which applied only to funding new ORAs, see footnote 89.

Professor Altman has questioned such ‘*new arrangements*’ as part of an apparent trend in Indigenous Affairs to:

*encourage the recentralisation from small discrete Indigenous communities to larger discrete Indigenous communities [or] for a move from outstations to townships or from townships to larger urban centres to improve Indigenous people’s livelihood prospects.*¹¹⁶

It is of note that the early reports on the movement to the outstations were hailed as Aboriginal people seeking economic independence and self-sufficiency, and were also recognised as:

*a reaction to the stresses of living in settlements, reserves and missions and to the practice of bringing diverse groups of Aboriginals together to live in these artificial communities. There was widespread dissatisfaction with the institutional nature of these settlements and missions and a recognition that they had enormous social problems... For Aboriginal people the perceptions of these communities were as ‘no good’, ‘too much trouble’, ‘people fightin[sic]’, ‘too much worry’, ‘sad place’ and ‘too much sick there’.*¹¹⁷

According to Professor Altman, the effectiveness and coherence of current Commonwealth policy on Indigenous Affairs appears limited by a lack of understanding and evidence:

In December 2005, Senator Vanstone suggested that outstation people might need to migrate to larger townships if they were to access services. But not long afterwards in March 2006, the new Minister for Indigenous Affairs, Mal Brough, referred to 150 (out of 225) of these townships as ‘living hell holes’ and town camps as ‘urban ghettoes’... It does seem problematic when one Minister suggests improvement is only possible if small outstations are closed down, while the next Minister identifies the proposed destinations such as larger townships and urban centres in very negative terms. Perhaps politicians and policy makers are too distanced from the problems of centralisation and the reasons why today’s outstation people chose to decentralise.

It appears that the Howard Government, perhaps a little simplistically, sees a trade off between economic equality and cultural plurality... with outstations symbolising the most culturally different and, consequently, the least likely to succeed in mainstream economic terms. It is noteworthy that such views have been supported by some Indigenous spokespeople like Warren Mundine, who has a somewhat evolutionary take on outstations, and Noel Pearson, who sees Indigenous futures, perhaps a little homogeneously, in the ‘real’ (or mainstream) economy.

*In the ‘Beyond Conspicuous Compassion’ speech, Vanstone appears to have targeted the opportunity for Indigenous people to choose to live fundamentally differently from the mainstream as an issue up for ‘open’ debate. While the need for a national debate is to be encouraged, this needs to be an informed, transparent and evidence-based debate. So far this is far from the case ...*¹¹⁸

¹¹⁶ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, pi.

¹¹⁷ Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987, p14.

¹¹⁸ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, p13.

Interestingly the concern expressed about the lack of evidence-based decision making in these matters is consistent with indications that recent reforms may not be having the expected results, with one very remote Aboriginal community in WA reporting that it has had an influx of people moving to the communities where CDEP has been retained, further stretching inadequate resources.¹¹⁹ The outcome of the whole of government initiatives, under the auspices of the 'COAG trials', as discussed next at Chapter 2.6(b), provides additional evidence of the limited effectiveness of current policy directions.

Further highlighting the current apparent lack of consistency in Commonwealth policy direction in Indigenous affairs is a recent review of the Community Housing and Infrastructure Program conducted by Price Waterhouse Coopers on behalf of the Commonwealth Department of Families, Community Services and Indigenous Affairs. The review recommended that all future housing and infrastructure be linked to access to sustainable essential services, transport and law and order, education, employment and health services and specifically to:

*Continue the shift away from building housing "on country" outstations and homelands and focus on building new housing where there is access to education, health, law and order and other basic services.*¹²⁰

The report's recommendations were described as 'a radical plan to accelerate the [Commonwealth] Government's push to move indigenous Australians into larger settlements'.¹²¹ This is in spite of the Minister's previously reported comments describing the majority of those larger settlements as 'living hell holes' and town camps as 'urban ghettos'.¹²²

(b) Council of Australian Governments (COAG)¹²³

In 2002, the Council of Australian Governments (COAG) agreed to a trial of a whole-of-governments cooperative approach in up to 10, but eventually only eight, Indigenous communities or regions, including Wadeye in the Northern Territory, Cape York in Queensland and the East Kimberly in Western Australia. The COAG Indigenous Trial Sites webpage states:

COAG's expectation is that the lessons learned from this initiative will be able to be applied more broadly.

¹¹⁹ ABC News Online 'Communities feel impact of CDEP changes' Available at: <http://www.abc.net.au/news/newsitems/200702/s1841202.htm> Accessed on 6 February 2007.

¹²⁰ Price Waterhouse Coopers, *Living in the Sunburnt Country*, 2007, p23.

¹²¹ Karvelas, P, 'No more bush homes for Aborigines', *The Australian*, 9 March 2007, p1.

¹²² Reported in *The Age*, 20 and 21 March 2006, as quoted in Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, pp10,13.

¹²³ COAG is the peak intergovernmental forum in Australia, comprising the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association (ALGA). It has been a significant forum in which a 'joined-up government' approach to addressing Indigenous issues has been espoused over the past 15 years. Following the first COAG meetings in 1992, and the National Commitment to the planning and provision of Government programs and services for Aboriginal and Torres Strait Islander people as a shared responsibility and a legitimate policy interest of all spheres of Government, a series of bilateral agreements were entered into, some of which, involving the Western Australia, have been referred to previously.

Governments agreed that outcomes need to be improved and the way to do that is twofold:

- *governments must work together better at all levels and across all departments and agencies; and*
- *Indigenous communities and governments must work in partnership and share responsibility for achieving outcomes and for building the capacity of people in communities to manage their own affairs.*

This means that responsibility for the condition and well-being of Indigenous communities is one shared by the community, its families and individuals and with governments - this is being called Shared Responsibility.¹²⁴

Describing Commonwealth government initiatives including its partnership with the States in the COAG trials in July 2004, the then Minister of Immigration and Multiculturalism and Indigenous Affairs, stated:

We have stripped away layers of bureaucracy to make it easier for Indigenous communities to work with Government... The bureaucracy was stifling outcomes. ATSIC was simply another bureaucracy. It was created to get around these difficulties - but in the end only added to them...

In a nutshell, we will produce better results by stripping away the layers of bureaucracy, by listening to local communities, responding to their requirements and sharing responsibility for outcomes with them.¹²⁵

The evaluation of the trial sites was originally to occur within two years of their commencement;¹²⁶ however, the evaluation reports were only made available in late February 2007. However, earlier newspaper reports had indicated that there were concerns about the departmental costs associated with administering funds associated with the COAG community projects.¹²⁷ For example, in the East Kimberley trial site, funding by the lead agency, Transport and Regional Services, was estimated as consisting of \$672, 000 expenditure on Canberra-based staff, \$399,800 on Halls Creek-based staff, and only \$470,000 on community projects and initiatives.¹²⁸ Relevantly too, a different evaluation report, on the degree of 'red tape' for Indigenous communities seeking to engage with government, was published in May 2006.

¹²⁴ COAG Indigenous Trial Sites, Available at: http://www.indigenous.gov.au/coag/coag_initiative.html Accessed on 6 February 2007.

¹²⁵ Minister for Immigration and Multiculturalism and Indigenous Affairs, 'Deeds more important than words', 9 July 2004.

¹²⁶ COAG Indigenous Trial Sites, Available at: <http://www.indigenous.gov.au/coag/evaluation/default.html> Accessed on 6 February 2007.

¹²⁷ Schubert, M, 'Aboriginal aid swamped by red tape', in *The Age*, 16 February 2006.

¹²⁸ Answer to Question on Notice REGS 01 asked in the Senate by Senator O'Brien, *Senate Rural and Regional Affairs and Transport Legislation Committee*, Consideration of the Senate Budget Estimates May 2005.

Surveying 22 Indigenous organisations nominated by Commonwealth Indigenous Coordinating Centres, it also raises serious concerns. It found that:

- *Relatively small exposure or risk in small grants is not recognised in the way these grants are treated. This is significant because just under half the grants are for \$50,000 or less, and just over 60% are for less than \$100,000. In general, small grants are treated the same as much larger grants with, for example, similar reporting frequency, and large numbers of performance indicators for which data has to be collected: data that is not necessarily useful to the organisation in managing the grant activity. The time taken to report on the smaller grants is generally the same as for larger grants, making the cost per dollar of income very much higher on small grants than large grants.*
- *Annual applications are required for the 66% of grants from programs that continue year after year, even though little changes in the circumstances or risk profile of the funded organisations year after year.*
- *Organisations are receiving little feedback on their reports, and funding departments appear to be making relatively limited use of the information being collected. Of particular concern is that there is minimal analysis or monitoring of the cash position of the organisations, leaving one of the major risks for funding departments unmonitored, despite the effort going into reporting.*
- *Performance indicators are not very closely matched to funded activity in the majority of funding agreements. As reported in Section 5.10 Performance indicators not related to activity, a little over 75% of the schedules have a majority of indicators that are not likely to be useful in managing the activity or organisation well, or informing future policy and program settings. In effect, A Red Tape Evaluation of Selected Indigenous Communities this means that in 75% of the schedules, performance reporting requirements meet the generally agreed definition of 'red tape'.¹²⁹*

In Senate Estimates Committee hearings in November 2006, the then unreleased evaluation reports of the COAG trial sites were described as '*varied*'¹³⁰ and the report on Wadeye, which had been '*leaked*' to newspapers and politicians, was said to refer to:

- departmentalism and programme silos continuing to dominate;
- a lack of communication across and between government; and
- a reduction in Indigenous participation.¹³¹

¹²⁹ Morgan Disney & Associates Pty Ltd, *A Red Tape Evaluation in Selected Indigenous Communities - Final Report for the Office of Indigenous Policy Coordination*, 2006, pp7,8.

¹³⁰ Gibbons, W, (Associate Secretary, Department of Families, Community Services and Indigenous Affairs), Commonwealth, Senate, *Standing Committee on Community Affairs - Estimates (Hansard)*, 2 November 2006, pCA 39.

The Associate Secretary of the Commonwealth Department of Families, Community Services and Indigenous Affairs, confirmed that the lead agencies involved in five of the eight trial sites had ‘handed [them] back to us’, stating that:

As a result of the evaluations that are about to be considered by government, I think that consideration will be given to bringing the trials to an end and moving on, but that will have to be resolved in partnership with the appropriate state or territory jurisdiction.¹³²

In February 2007 with the release of the eight trial site evaluation reports and *Synopsis Review*,¹³³ the Commonwealth Minister for Indigenous Affairs was reported as conceding that some of the eight communities hosting the COAG trials were worse off than before the system was implemented.¹³⁴ In fact, the evaluation report on the Wadeye trial site stated that although housing and construction had been identified as one of three ‘key regional priorities’:

With regard to housing, the community has seen 4 houses for Indigenous occupants built over a period of three years. During that same period some 15 houses were made uninhabitable for periods of up to three months through gang violence and an additional 200 babies were born into the community.¹³⁵

It was also noted that the Wadeye Indigenous community representative, Thamarurr Regional Council,

participated believing that the combined and coordinated resources of both governments would result in early and visible improvements in the wellbeing of the people and the infrastructure of the town and surrounding region. These expectations were reinforced by visits by the Prime Minister, The Chief Minister of the NT and other Ministers over the past three years. Their expectations have not been realised and there is frustration and disappointment regarding the lack of visible and tangible outcomes on the ground.

The Commonwealth and NT Governments, on the other hand, foresaw that considerable preliminary and planning work would be necessary before any major improvements would

¹³¹ Senator C Evans, Commonwealth, Senate, *Standing Committee on Community Affairs - Estimates (Hansard)*, 2 November 2006, ppCA 31, 33 (referring to the Wadeye Trail site evaluation report by Mr Bill Gray of April 2006); and see Taylor, L, ‘Wadeye experiment a failure’, in *Australian Financial Review*, 2 November 2006, p7.

¹³² Gibbons, W, (Associate Secretary, Department of Families, Community Services and Indigenous Affairs), Commonwealth, Senate, *Standing Committee on Community Affairs - Estimates (Hansard)*, 2 November 2006, pCA 40.

¹³³ Morgan Disney & Associates et al, *Synopsis Review of the COAG Trial Evaluations: Report to the Office of Indigenous Policy Coordination*, 2006.

¹³⁴ ABC News Online, ‘Brough vows to fix “flawed” trails in Indigenous communities’ Available at: <http://www.abc.net.au/news/newsitems/200702/s1855013.htm> Accessed on 23 February 2007.

¹³⁵ Gray, B, *Council of Australian Governments (COAG) Trail Evaluation Wadeye Northern Territory*, 2006, p12.

*be seen on the ground. They were also aware of the considerable lead times associated with the budget processes of government.*¹³⁶

According to the *Synopsis Review*:

Some of the controversy about whether the Trials have been a success or not has been based on misunderstanding about the purpose and potential of the Trials...

It appears that most communities and governments entered into agreements in the belief that the Trials were primarily about priorities and issues in their communities.

...[Instead] The Trials were not expected to achieve significant change in the the complex issues for Indigenous communities, families and individuals in 1 - 2 years. They were designed to begin to make radical change to how parties worked together that was recognised to be an essential change to achieve major improvement.

*Unfortunately one of the problems that emerged early in some sites was that over ambitious plans were set with the implication that the issues might be addressed in a short time frame.*¹³⁷

It is of note, however, that it was not just the ‘ambitions plans’ at ‘some sites’ which created the problems relating to expectations: The COAG Indigenous Trial Sites website states:

Evaluation

This page outlines the structure, nature and purpose of the framework used to evaluate the trials.

Key elements

*Each trial site is different. The monitoring framework has been designed to track and capture outcomes from this new approach, taking account of the differences between the sites. The evaluation framework will be used to assess whether the approach adopted in the trial leads to improved social and economic circumstances for Indigenous people in the participating communities.*¹³⁸

More recent government interventions into selected Aboriginal communities has been under the auspices of these being assessed as ‘communities in acute crisis’ under bilateral agreements

¹³⁶ Gray, B, *Council of Australian Governments (COAG) Trial Evaluation Wadey Northern Territory*, 2006, p11.

¹³⁷ Morgan Disney & Associates et al, *Synopsis Review of the COAG Trial Evaluations: Report to the Office of Indigenous Policy Coordination*, 2006, pp12,19,30.

¹³⁸ COAG Indigenous Trial Sites - Evaluation Available at <http://www.indigenous.gov.au/coag/evaluation/default.html> Accessed on 6 March 2007.

between the Commonwealth and States.¹³⁹ The new Bilateral Agreement between the Commonwealth and WA on Indigenous Affairs is discussed further below.

Quite apart from the apparent failings of many of the trials to lead ‘*to improved social and economic circumstances for Indigenous people in the participating communities*’, critics of the COAG trial site initiatives and the present style of government intervention claim that these:

are essentially a means to delimit and focus government actions to a finite number of priority locations. While perhaps smart politics – governments appear to be addressing the worst problems – these ad hoc and ‘targeted’ approaches reflect policymakers’ realisation that current policy settings and program allocations will not deliver the across the board institutional reforms necessary to address entrenched Indigenous disadvantage.¹⁴⁰

¹³⁹ See, for example, The Commonwealth of Australia and the State of Western Australia, *Bilateral Agreement on Indigenous Affairs 2006-2010*, [2006], pp12,13. Kalumburu has been identified as such a community.

¹⁴⁰ Westbury, N & Dillon, M, ‘*The Institutional Determinants of Government Failure in Indigenous Affairs*’, 2006 p20.

CHAPTER 3 REMOTE ABORIGINAL COMMUNITIES NOW¹⁴¹

3.1 Australia-wide data

The most recent available data, from the Community Housing and Infrastructure Survey (CHINS) of 2001, identified 1,216 discrete Indigenous communities in Australia, with only five communities being located in 'Major Cities' and 1,030 (85%) located in 'Very Remote' regions.¹⁴² Twenty-three per cent of all discrete Indigenous communities (274 of 1,216) were located in Western Australia, second only to the Northern Territory.¹⁴³ The survey also indicated 45 per cent of Indigenous Western Australia lived in remote areas, with many living in discrete Aboriginal communities, again second only to the proportion of Indigenous people living in remote areas in the Northern Territory.¹⁴⁴

These communities consisted of both the large and generally permanent communities, often located on the old reserves, mission and feeding depot sites, and the smaller homelands, now more commonly referred to as outstations. In relation to the outstations, the CHINS data indicated:

- There are an estimated 991 communities with a population of less than 100. Their total population is 19,817 and the average size of an outstation is 20.

¹⁴¹ There is a plethora of data available on remote Aboriginal communities, although there is also a lack of consistency in the timing and scope of surveys producing the data. For example, CHINS data was the result of a survey conducted in 2001; the Environmental Health Needs Surveys were conducted in 1997 and 2003. Moreover, remote communities are a smaller subset of discrete Indigenous communities, defined to include 'town reserves', communities which are 'adjacent to, in or near established towns and cities' (Environmental Health Needs Coordinating Committee, *Environmental Health Needs of Indigenous Communities in Western Australia: The 2004 Survey and its Findings*, Environmental Health Needs Coordinating Committee, [Perth, WA], 2005, p27). As a result there are some discrepancies in the available data relied upon in this section.

¹⁴² Australian Bureau of Statistics (ABS), *Housing and Infrastructure in Aboriginal and Torres Strait Islander Communities* (CHINS), cat. no. 4710.0, ABS, Canberra, 2002, p13. The 'Major Cities' and 'Very Remote' references are to the Accessibility/Remoteness Index of Australia (ARIA) which was developed by the Commonwealth Department of Health and Aged Care and the National Key Centre for Social Applications of Geographic Information System in 1997. ARIA measures the remoteness of a point based on the physical road distance to the nearest Urban Centre. The Remoteness Structure contains the following categories:

- Major Cities of Australia
- Inner Regional Australia
- Outer Regional Australia
- Remote Australia
- Very remote Australia
- Migratory (ABS, *ABS Views on Remoteness*, cat. no. 1244.0, ABS, Canberra, 2000, pp1,19).

¹⁴³ ABS, *Housing and Infrastructure in Aboriginal and Torres Strait Islander Communities* (CHINS), cat. no. 4710.0, ABS, Canberra, 2002, pp13,14.

¹⁴⁴ Australian Institute of Health and Welfare (AIHW), *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander People 2005*, AIHW & ABS, Canberra, 2005, p5.

- Outstations are mainly located in the Northern Territory, followed by Western Australia, Queensland and South Australia.
- The average size of outstations nationally is remarkably similar. Arguably, there is some similarity between this contemporary post-colonial figure and the average size of co-residing units in pre-colonial times.
- While there are a few small discrete Indigenous communities in the more settled States of New South Wales, Victoria and Tasmania, these might be a different form of community from outstations in remote and very remote regions; on average, these communities are markedly larger than communities in the other States.
- The vast majority of outstations are in very remote (87%) and remote (9%) Australia, and most are associated with Aboriginal land ownership.
- Almost all outstations are linked to larger communities and ORAs (Outstation Resource Agencies). It is estimated that there are about 100 ORAs Australia-wide: some are dedicated to outstation support, and some are general service organisations that also service outstations.¹⁴⁵

3.2 Remote Aboriginal Communities in WA¹⁴⁶

Approximately 300 discrete Indigenous communities in Western Australia are home to almost 17,000 people. These include around 45 Aboriginal Town Based Communities, 91 large and mid-sized remote communities serviced by the Remote Area Essential Services Program (RAESP) and 6 town reserves that are also on RAESP. Most discrete Indigenous communities are located in very remote parts of the State and are small, with a usual population of 50 people or less. About 20 of the communities have populations over 200 while a small number have populations over 400. The largest community, Bidyadanga, is home to up to 850 people. The population distribution within these communities is shown in the following Table (refer Table 1). The Indigenous population for small remote communities is not increasing substantially although it is in many of the larger communities and regional centres. The Indigenous population in the State is increasing overall due to the comparatively high birth rate compared to the non-Indigenous population.

¹⁴⁵ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, CAEPR working paper no. 34/2006, CAEPR, Canberra, 2006, p4

¹⁴⁶ This section of the Report is sourced from Department of Water, *Report for the Minister for Water Resources on Water Services in Discrete Indigenous Communities - Final Report*, [2006], pp17-27.

Table 1**Discrete Indigenous Communities in Western Australia**¹⁴⁷

Community population size	Communities		Usual population	
	No.	%	No.	%
Less than 50 persons	174	63.5	2945	17.4
50-199 persons	81	29.6	6925	40.9
200 or more persons	19	6.9	7082	41.8
All communities	274	100	16952	100.0

(a) Infrastructure

A recent report by the Department of Water found that with most Aboriginal communities in WA located in remote areas, there were innate challenges to effective service delivery due to limited access to technical expertise, long distances, and a long history of sub-standard services and circumvention of state or local government approval processes. These communities were also said to be affected by legacies of discriminatory practices, insufficient and ad hoc funding and poor quality infrastructure.

Analysis of the 2004 Environmental Health Needs Survey by the Department of Water, however, demonstrated progress in meeting priority health needs, particularly water supply and sewerage in larger communities. This has been attributed to improved targeting of resources; improved coordination and resource sharing between the Commonwealth and the State; the concentration of resources in the larger communities; the application of improved standards and surveillance; and increased expenditure through state and national infrastructure programs.

(i) Outstations and Small Remote communities

The most numerous types of community (approximately 200) are the outstations and small remote communities, usually with less than 50 people. They are home, in total, to about 3,000 people. The division between outstations and small permanent remote communities is not clear, as most communities have periods of significant fluctuations in population.

Small communities and outstations receive comparatively limited services or support from government. Traditionally, infrastructure capital funding was provided to these communities through a range of Commonwealth programs (National Aboriginal Health Strategy (NAHS), etc), although there is no ongoing funding for operations and maintenance. Emergency repairs are currently funded through the Municipal Services Program, which is part of the Community

¹⁴⁷ Department of Water, *Report for the Minister for Water Resources on Water Services in Discrete Indigenous Communities - Final Report*, [2006], p19.

Housing Infrastructure Program (CHIP). People living on small remote communities are not charged for water services directly and power is often based on diesel fuel generators that are run by the community, also with the assistance of Municipal Services funding.

The Department of Water attributes the limited support these communities receive, in part, to a legacy of the division of State and Commonwealth responsibilities. As indicated, while the Commonwealth, through ATSIC, supported the establishment of these communities through the provision of funding for infrastructure, the State has been reluctant to take responsibility for the cost of ongoing operations and maintenance. The Department states that there is a view within State government agencies that many of the small remote communities are unsustainable, a view that has recently been supported by statements from the Commonwealth government and the latest moratorium on new communities. As indicated also, these communities have often been established by people seeking to remove themselves and their families from the social problems in larger communities and mainstream towns. The Department acknowledges that despite the difficulties in servicing these communities, the termination of services without consideration of regional governance models is likely to have negative social repercussions.

The Commonwealth currently provides contingency funds for emergency services and repairs to the water supply and other basic infrastructure in small communities. In the recent Commonwealth/State bilateral agreement for the provision of Housing, Infrastructure and Essential Services for Indigenous People in Western Australia, the parties agreed to develop a strategy for progressing the joint funding, planning, coordination and management of housing, infrastructure and essential services beyond those already serviced by the Western Australian government.

(ii) Mid-sized and Large Remote Communities

The majority of the population (around 82 per cent) of Indigenous people living in remote communities are in mid-sized or large communities. Midsized communities can be considered those with a population greater than 50 and a large community can be considered to be over 200. These 91 communities are under the Remote Areas Essential Services Program (RAESP), a joint Commonwealth/State program for the provision and maintenance of water, power and wastewater services. Communities eligible for State RAESP support are generally those communities of 50 people or more with an agreed standard of infrastructure. A Program Manager (Parsons Brinckerhoff) is appointed jointly by Department of Housing and Works, the lead State agency, and the Commonwealth to oversee the program and reports to a steering committee convened by the Department of Indigenous Affairs.

For RAESP, Western Australia is divided into three regions (Kimberley, Pilbara/Gascoyne and Goldfields/Central Reserves), which are serviced by contracted service providers: Kimberley Regional Service Providers, Pilbara Meta Maya and Ngaanyatjarra Services (Goldfields/ Central Reserves). Planned maintenance services are undertaken every six to eight weeks. Water testing is undertaken on a monthly basis. An additional benefit of RAESP is that it provides Indigenous community based training and employment opportunities for Essential Service Operators located within the communities.

The Department of Water notes that State contributions for RAESP have decreased in the last five years despite the number of communities in the program increasing significantly. The Commonwealth provides around \$12-15 million per annum to the RAESP capital works program. The current annual State contribution is around \$3.7 million towards maintenance, disinfection and testing and emergency breakdown services. The actual cost for maintenance is around \$10 million with the shortfall met by pooled funds under the Infrastructure and Housing Agreement. Communities currently do not pay directly for their water although the ‘*chuck in*’ system provides funds to the community, which can be used for maintenance and fuel. The most recent Bilateral on Housing, Infrastructure and Essential Services promotes the installation of individual meters in these communities with the aim of ‘*normalisation*’ of services and improved water conservation.

The State and Commonwealth have also agreed to fund an Aboriginal Remote Community Power Supply Project (ARCPSP). This is being implemented at a cost of some \$100 million dollars for ten years and will see Horizon Power oversee the provision of diesel powered electricity to five large communities by a private contractor. Individual metres are being installed and power will be charged at the uniform tariff, with consumers able to access relevant rebates.

This project, which commenced in approximately 2000, has been associated with a complaint of racial discrimination against the State and Western Power to the Human Rights and Equal Opportunity Commission in 1998 by one of the five communities, Warnun. The background to the complaint was as follows:

Electricity produced at the Ord River is transported 200 kilometres by powerlines to Wyndham, a town of 750 to 800 people. Warnun is only 32 kilometres from the hydroelectricity plant and has a population of 400 to 600 ... yet it has to take responsibility for the generation of its own power. Warnun is not on the State government’s [2000] list of communities [for which it takes responsibility for the provision of essential services].¹⁴⁸

The intention of ARCPSP is that this project will be expanded to include other large communities, although funding has not yet been agreed between the State and Commonwealth.

There has been no comparable initiatives implemented in relation to water supplies and the Department of Water noted the need for a specific agency to ‘*champion*’ this issue.

(iii) *Aboriginal town based communities*

Aboriginal town based communities are located near existing mainstream towns, generally on reserve land. There are two main categories of town based community, those that are basically a suburb of a rural town and those that are discrete communities located up to five kilometres away. Classification as an Aboriginal town based community occurs when the communities are connected to either town power or town water supplies.

¹⁴⁸ Robbins, J, ‘The Price of Power: Essential Services in Remote Indigenous Communities’, [2000] *Indigenous Law Bulletin*, 138.

Inside the reserve boundary, maintenance of reticulation and power supplies has been the responsibility of the community and, according to the Department of Water is, in some cases, supported by RAESP. The communities are generally charged for water services on a communal basis by the Water Corporation, although a small number of communities have individual meters to assist communities to determine household contributions. The Office of Energy reports that historically electricity was supplied to a single point of connection via a master meter and the community received an aggregate bill from Horizon Power. Horizon Power did not sub-meter and bill individual users and it neither owns nor is responsible for the maintenance of the electricity distribution infrastructure within these communities. The communities generally adopted a 'chuck-in' method to collect money from residents to pay the electricity account.¹⁴⁹

However, the Department of Housing and Works in conjunction with the Commonwealth has now been implementing a Town Reserves Regularisation Program in nominated town based communities for a number of years. The Town Reserve Regularisation Program aims to upgrade and transfer responsibility for services to mainstream providers. Horizon Power is to individually meter consumers and assume responsibility for operation, repair and maintenance of the distribution network.¹⁵⁰ That Bilateral Agreement sets as objectives that communal water and wastewater infrastructure should be owned, managed and maintained by the Water Corporation. It was therefore of some concern to the Committee that despite the length of time this program had been in place, Aboriginal town based communities recognised by the Department of Housing and Works did not completely correspond to those recognised by the Water Corporation. In particular it is of concern to the Committee that there are apparently five communities classified as Aboriginal town based communities that are currently only being serviced 'on an extreme emergency basis' by the Department of Housing and Works.¹⁵¹

In 2000, the State and Commonwealth Governments contributed around \$2.5 million each for the Town Reserves Regularisation Program. Currently, there is no specific budget allocation although under the State/Commonwealth Agreement, funds provided under the Agreement can be used to support the regularisation of services in town reserve communities until 30 June 2007. After this date the State will assume full responsibility for housing and essential services in these communities. In the 2006/07 financial year, approximately \$3 million has been obtained from pooled funds under the Agreement.

(b) Housing

Recent data on housing for discrete Indigenous communities in WA is difficult to locate. In 2001, 12.6 per cent of all Indigenous households were overcrowded, the second highest rate in the country. In relation to the predominate housing tenure in discrete WA Aboriginal communities, tenants of Indigenous or mainstream community housing, the rate of overcrowding was almost 40

¹⁴⁹ Office of Energy - Town Reserve Regularisation Program, Available at: http://www.energy.wa.gov.au/3/3222/64/town_reserves_r.pm Accessed on 21 February 2007.

¹⁵⁰ *ibid.*

¹⁵¹ E-mail from Manager Service Delivery, Water Corporation, 14 March 2007.

per cent. Over 14 per cent of permanent dwellings in these communities in WA required replacement and another 20 per cent required major repairs.¹⁵²

In 2004, the Western Australian Environmental Health Needs Survey (EHNS) of discrete Indigenous communities showed that there were 20 'priority' communities with populations of more than 100 which had population density ratios of between 7.5 and 40 persons per permanent dwelling.¹⁵³ There were 45 communities of less than 100, with population density ratios of between 8 and 50 per dwelling. The need for major repairs was the single highest cause for dwellings remaining unoccupied in these communities.¹⁵⁴ As highlighted previously at Chapter 2.5, however, there are data which indicate that housing in outstations in some respects may be better than in the larger communities.

In late 2006 this Committee sought feedback on an issue related to housing from large remote Aboriginal communities, with populations of 50 and above, and stakeholders. A range of serious concerns were highlighted including:

- the difficulty in engaging service providers and contractors to undertake work in remote communities;
- a lack of coordination with reference to ensuring adequate power and water infrastructure to support new buildings;
- non-participation by community members in training and employment opportunities because of contractors' obligations to deliver within restricted timeframes and lack of cultural awareness;
- reluctance by contractors to train community members given time constraints and expense;
- the ineffectiveness of contractual obligations to train/employ community members when it is more efficient for contractors to simply pay CDEP workers 'top up' with no expectation that they will participate;
- high administrative burdens on acquitting and reporting on housing grants;
- lack of clear allocation of responsibilities between various government departments;
- poor quality of construction requiring expensive and extensive maintenance and repair;

¹⁵² AIHW, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, cat. no. 4704.0, AIHW, 2005, Canberra, pp39,42.

¹⁵³ The official definition is the community population divided by the number of permanent dwellings with connections to water, electricity and sewerage.

¹⁵⁴ Environmental Health Needs Coordinating Committee, *Environmental Health Needs of Indigenous Communities in Western Australia: The 2004 Survey and its Findings*, Environmental Health Needs Coordinating Committee, [Perth, WA], 2005, pp47,50-52.

- the ‘*vagaries*’ of in government policy and community governance relating to CDEP;
- the absence of any financial or other assistance in the maintenance of community housing over the past 25 years;
- severe overcrowding; and
- the ‘*disenfranchisement*’ of community members by the increasing adoption of a ‘*service-delivery*’ model, often via outside contractors, to remote communities.

Other than the one stakeholder, all other respondents to the survey represented communities of at least 150 residents.

3.3 Outcomes for Indigenous people

In spite of an increased acceptance by all governments of the need to improve the outcomes for Indigenous Australians, current government policies have been criticised for not being evidence-based, and for the absence of data that differentiates between the outcomes achieved by Aboriginal people living in outstations and in the larger remote communities.¹⁵⁵

Tables 2 and 3 summarise the EHNS survey outcomes relating to core indicators of environmental health and to the provision of community services. These indicate that consistent with the State’s over-riding imperative to meet the needs of larger population facilities, that core environmental health and community services are considerably better than those available in the smaller communities. What is perhaps surprising, as indicated in Table 4, is that this is not necessarily reflected in the health outcomes for the different kinds of remote community.

Table 2

Core indicators of environmental health by community population size

Core Indicators of Environmental Health	Communities with population <20			Communities with population >20		
	No.	Total Population	%	No.	Total Population	%
Inadequate Water Source	17	103	17	8	171	5
No disinfection of drinking water	84	97	87	48	132	36
No monthly testing of water supply	82	93	88	41	125	33

¹⁵⁵ For example, the NATSISS (National Aboriginal and Torres Strait Islander Social Survey) categories are ‘*remote*’ and ‘*non-remote*’.

Core Indicators of Environmental Health	Communities with population <20			Communities with population >20		
	No.	Total Population	%	No.	Total Population	%
Unsatisfactory water supply	45	96	47	53	166	32
No source of electricity	12	102	12	1	171	1
Electricity supply regularly interrupted	50	83	60	62	116	53
Unsatisfactory electricity supply	48	91	53	52	162	32
Rubbish not collected sometimes	23	97	23.7	49	168	29.2
Inappropriate rubbish tip	6	103	5.8	13	168	7.7
Dumping area not well fenced	70	81	86.4	91	143	63.6
Rubbish tip capacity less than 12 months	43	74	58.1	50	131	38.2
High litter levels	3	98	3.1	24	163	14.7
No adequate sewerage treatment/disposal system	30	97	30.9	23	168	13.7
No access to septic tank or leach drain equipment	39	64	60.9	47	108	43.5
High or excessive dust levels	45	103	43.7	109	170	64
No dust suppression or revegetation program	86	101	85	130	168	77
Unsealed roads	99	102	97	125	168	74
No dog program	22	54	41	30	147	20

Core Indicators of Environmental Health	Communities with population <20			Communities with population >20		
	No.	Total Population	%	No.	Total Population	%
No. of dwellings with dogs inhabiting them	86	144	60	1393	1812	77
Prone to bushfire with no fire-fighting equipment	80	89	89.9	79	104	76
Prone to cyclones with no evacuation plan	42	50	84	48	63	76.2

Table 3 summarises the EHNS outcomes relating to the availability of community services:

Table 3

Provision of community services by community population size

Provision of community services	Communities with population <20			Communities with population >20		
	No.	Total No.	%	No.	Total No.	%
No onsite or visiting Environmental Health Officer	49	100	49	31	167	19
No onsite or visiting Essential Services Officers/Operators	65	95	68	59	142	42
Inadequate health clinic	101	103	98	112	171	66
No onsite or visiting health professional	48	101	48	31	169	18
No onsite or visiting dentist	91	94	97	127	150	85
No regular access to fresh fruit and vegetables	24	100	24	22	169	13
Community store without a nutrition based policy	5	6	83	22	48	46

It is evident from the above tables that the physical facilities and community services available to meet the environmental health needs of small communities are substantially poorer than those available to larger communities. However it appears that this does not necessarily correlate with health outcomes, as indicated by Table 4.

Table 4**Communities reporting major health concerns by community population size**

Reports of major health concerns	Communities with population <20			Communities with population >20		
	No.	Total No.	%	No.	Total No.	%
Diabetes	10	88	11	61	161	38
Hearing or eyesight problems	5	88	6	36	161	22
Water/mosquito problems	18	88	21	20	161	12
Substance abuse	2	88	2	32	161	20
Skin conditions	3	88	3	17	161	11
Renal/kidney problems	4	88	5	15	161	9
Asthma and respiratory problems	2	88	2	14	161	10
Poor nutrition	0	88	0	16	161	10
Gastro/diarrhoea	2	88	2	13	161	8
Flu	4	88	5	8	161	5
Inadequate health services or infrastructure	5	88	6	5	161	3

The above tables indicate that there may be significantly better health outcomes for the residents of the smaller communities, particularly given concerns relating to diabetes, substance abuse and nutrition, although there is reason to exercise some caution. While the Western Australian EHNS data available for housing do not distinguish outcomes for smaller (less than 20) and larger communities, other data do. As indicated, these indicate that while housing in outstations is far

from ideal it appears significantly less overcrowded than in other communities.¹⁵⁶ Overcrowding is acknowledged as a significant factor contributing to a number of health and social issues, including family violence and abuse:

*Overcrowding is often associated with the risk of infectious disease. Some of these are thought of as third world diseases that had been eradicated from contemporary western countries, as well as respiratory conditions and intestinal worms, and rheumatic heart disease. Overcrowding also exacerbates other health conditions. For example, diabetes, which is already a significant health issue for Aboriginal people. It has also been associated with family breakdown caused by cramped living conditions; with crime; family violence and property damage leading to debt, eviction and child abuse.*¹⁵⁷

Therefore the good outcomes for smaller communities may well in part be attributable to the better housing in these communities. There is also likely to be an element of ‘self-selection’ contributing to these outcomes, for example, with very ill people less likely to move away from the better resourced larger community, and with those engaged in substance abuse may also choosing to avoid communities where access to those substances is more difficult, or alternatively, who may not be welcome. It would be wrong, too, to ignore the often symbiotic relationship between the smaller and the larger communities, with the larger communities acting as a service centre for people in smaller communities, and smaller communities providing useful opportunities to get away from the pressure of the larger and often less cohesive larger groupings which are the result of historical practices of forcible removal and segregation of a number of disconnected groups.¹⁵⁸

Nonetheless there are other data which support the notion that the opportunity to reside in outstations, in spite of the relatively poor resourcing, may positively contribute to better health outcomes. Professor Altman highlights that, consistent with the 1987 Homelands Report, access to traditional lands and foods and the opportunities to engage more fully with cultural activities and obligations, are likely to continue to be significant for Aboriginal people.¹⁵⁹ This is also consistent with the recent research conducted by Mr Kevin Rowley, from the University of Melbourne, which reportedly found that the 1,000 residents of Utopia, who live in 16 small outstations in the central Australian desert, had mortality rates 40 per cent lower than the rest of the Northern Territory, less heart disease, low smoking rates and almost no obesity.¹⁶⁰

¹⁵⁶ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, pp8-10.

¹⁵⁷ Equal Opportunity Commission, *Finding a Place, An Inquiry into The Existence of Discriminatory Practices in Relation to the Provision of Public Housing and Related Services to Aboriginal People in Western Australia*, Equal Opportunity Commission, [Perth], 2004, p107.

¹⁵⁸ See for example, Counterpoint, ‘What is the future of Aboriginal Homelands?’, 28 August 2006, Available at <http://www.abc.net.au/rn/counterpoint/stories/2006/172438.htm>.

¹⁵⁹ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006.

¹⁶⁰ ABC News Online, ‘Researchers find Indigenous Health Utopia’, 11 October 2006; ‘NT community bucks Indigenous health trend’, Available at: <http://www.abc.net.au/news/newsitems/200610/s176024.htm> Accessed 11 October 2006.

The recent evaluation of the Indigenous Protected Areas (IPA) Programme also appears significant with respect to the potential for sustainability in small remote communities. It not only found the programme to be remarkably successful in addressing contemporary environmental issues through the re-establishment of land management traditions in a cost effective way, but also because of its considerable social and cultural outcomes:

... the IPA Programme is a suitable vehicle for facilitating the transfer of traditional knowledge and engaging young people in positive educational experiences centred on the exchange of western science and traditional knowledge.

...

Gainful employment through the IPA Programme also contributes to social cohesion within communities by providing for an increased sense of worth and the framework for members of the community to work together.

The following statistics, generated from internal reporting, support the argument that IPAs deliver improved social outcomes:

- 95% of IPA communities report economic participation and development benefits from involvement with the Programme;*
- 60% of IPA communities report positive outcomes for early childhood development from their IPA activities;*
- 85% of IPA communities report that IPA activities improve early school engagement;*
- 74% of IPA communities report that their IPA management activities make a positive contribution to the reduction of substance abuse; and*
- 74% of IPA communities report that their participation in IPA work contributes to more functional families by restoring relationships and reinforcing family and community structures.¹⁶¹*

In light of the above findings, and in particular the economic and educational potential associated with an expansion of the IPA programme, the comments of 'an Australian Indigenous leader' highlighted in the recent Price Waterhouse Coopers review of the Community Housing and Infrastructure Program are not perhaps as self-evident as they might otherwise have seemed:

No Government can justify keeping on building houses in the middle of nowhere where there is no school, no healthcare, no law and order, unreliable power and water, no jobs... and no hope for another generation of our young people.¹⁶²

¹⁶¹ Gilligan, B, *The Indigenous Protected Areas Program - 2006 Evaluation*, Department of Environment and Heritage, Canberra, 2006, pp3,4.

¹⁶² Price Waterhouse Coopers, *Living in the Sunburnt Country*, 2007, p2.

However the apparent benefits of retaining the option of outstation living for Aboriginal people, particularly in relation to health status and substance abuse, do need to be weighed in the context of other considerations. Dr Gary Johns, former Minister and current President of the Bennelong Society, indicated that many of these communities have no economic base and that the:

children who are performing worst in education in Australia are Aboriginal children in remote communities, and ... "Children who leave school early, die early".¹⁶³

As indicated above, there may be reason to doubt that remoteness is necessarily correlated to poor health outcomes for Aboriginal people, but there is evidence of both poorer western educational outcomes in outstations,¹⁶⁴ and greater reliance upon CDEP, rather than participation in the 'real economy', in all discrete communities.¹⁶⁵ Although a strong advocate of Indigenous peoples' retaining their connection to traditional lands, the twin issues of education and participation in the real economy which have been a focus of Mr Noel Pearson's 'Cape York Agenda' and his proposals will be the subject of a later Report by this Committee.

To conclude this discussion paper, however, some comments should be made about the opportunities presented to the State in relation to remote Aboriginal communities given the future directions in Commonwealth/State relations of Indigenous affairs.

¹⁶³ Counterpoint, 'What is the future of Aboriginal Homelands?', 28 August 2006, Available at: <http://www.abc.net.au/rn/counterpoint/stories/2006/172438.htm>.

¹⁶⁴ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, p11.

¹⁶⁵ The EHNS indicated that 96.7 per cent of communities participated in CDEP (Environmental Health Needs Coordinating Committee, *Environmental Health Needs of Indigenous Communities in Western Australia: The 2004 Survey and its Findings*, Environmental Health Needs Coordinating Committee, [Perth, WA], 2005, p167).

CHAPTER 4 FUTURE DIRECTIONS

4.1 The Commonwealth

It is evident from the material already presented in this Report that the Commonwealth has historically been the primary contributor to funding for housing and infrastructure in remote Aboriginal communities. With the demise of ATSIC and current Commonwealth policy direction, it appears that the State is expected to assume an increasing responsibility for the provision and maintenance of housing and infrastructure to all remote Aboriginal communities. Significantly, the current Bilateral Agreement for Aboriginal Housing and Infrastructure requires that:

The Governments agree to work towards achieving one level of service delivery for the provision of housing, infrastructure, essential and municipal services to all Indigenous communities in Western Australia by 30 June 2008. This should be the Western Australian Government and local governments respectively for services they would normally provide to comparable non-Indigenous communities.

Specific Western Australian obligations are to include:

- assume ‘full responsibility for housing and essential services’ for town based Indigenous communities from July 2007;
- ‘progressively assume increased responsibility for all aspects of essential services delivery’ to large Indigenous communities (over 50);
- develop joint funding with the Commonwealth for housing services and infrastructure for smaller communities; and
- enter into an agreement with the Commonwealth to transfer activities undertaken with Commonwealth Municipal Services funding to State and local government responsibility.

The Committee believes there are two key aspects of this Agreement which warrant further consideration: the future role of the State and of Local Government.

4.2 The State

The Bilateral Agreement has significant implications for the State. The Minister for Housing and Works has expressed concerns to the Committee that the Bilateral Agreement will result in:

- the attempt to shift responsibility for municipal services solely to the State;
- potential Commonwealth funding gaps for town based Aboriginal communities;
- potential Commonwealth funding gaps for small communities, especially those with a population of under 50; and

- the possible withdrawal by the Commonwealth from all responsibility for Aboriginal Housing and Infrastructure from 1 July 2008, when the current Bilateral expires.¹⁶⁶

Other state governments, local councils and remote communities have expressed concerns about these proposed new arrangements.¹⁶⁷

It is of note, however, that this State already receives substantial Commonwealth funding to address Aboriginal disadvantage under the distribution of Goods and Services Tax (GST) revenue. For example, in 2005/06, in addition to Indigenous specific grants, the State's allocation from the Commonwealth in untied funding included an amount the equivalent of additional \$97.70 per capita as a result of '*Indigenous influences*' which recognises the higher costs of provision of service to Indigenous people in WA as a result of the large proportion who live in remote areas and their very poor health and other demographic outcomes.¹⁶⁸ This totalled some \$195 million dollars for the financial year - almost three percent of Commonwealth funding to the State and over one percent of the State's budget.¹⁶⁹ In this context it should be noted that although contributing one of the highest per capita expenditures on Aboriginal health,¹⁷⁰ the specific appropriation from State Treasury for the infrastructure and housing needs for all Aboriginal people throughout this State in 2005/06 was \$18.5 million,¹⁷¹ or 0.1 per cent of the State's Budget.

The Federal Minister, Hon Mal Brough, recently stated:

We need to move beyond the fact that because a community is largely Indigenous that state and local governments relinquish their responsibilities for providing municipal and other basic services. There is no moral nor constitutional basis for that view. Making the

¹⁶⁶ Letter from the Minister for Housing and Works, 19 September 2007, p2.

¹⁶⁷ See, for example, Premier and Ministers South Australia, 'News: Aboriginal Affairs Minister seeks Federal commitment on services to remote communities', Available at: <http://www.ministers.sa.gov.au/news.php?id=645> Accessed 7 March 2007; ABC News Online, 'Ceduna council criticises Federal Government Indigenous plan', and Available at: <http://www.abc.net.au/news/newsitems/200703/s1861136.htm> Accessed 2 March 2007.

¹⁶⁸ Commonwealth Grants Commission, *Relative Fiscal Capabilities of the States 2006*, Commonwealth Grants Commission, Canberra, 2006, pp24,151. This allocation is in addition to the calculation of State expenses which allow for the increased cost of regional and remote services.

¹⁶⁹ *Budget 2006-07 Building for the Boom Fact Sheet*, 'The Budget - Where the money comes from and how it is spent', p1.

¹⁷⁰ WA's average per capita expenditure was \$3,850 per Indigenous person, second only to the NT. This is, at least, in part, attributable to the large proportion of Indigenous people living in remote areas (Australian Institute of Health and Welfare, *Expenditures on Health for Aboriginal and Torres Strait Islander Peoples, 2001-02*, AIHW, Canberra, 2005, p35).

¹⁷¹ Government of Western Australia, *2006-07 Budget - Budget Papers*, Vol. 2 2006, p603. Increasing to \$24 million in 2006/07. This is consistent with the State's per capita expenditure on housing in WA, which is the third lowest of all States and Territories, with a recovery of more than two-thirds of this as '*user charges*' (WA's average per capita expenditure on housing was \$155.65 per person with \$104.62 recovered as '*user charges*': Australian Institute of Health and Welfare, *Expenditures on Health for Aboriginal and Torres Strait Islander peoples, 2001-02*, AIHW, Canberra, 2005, p141)

*transition will be difficult but there is a lot of goodwill and a commitment to make the change.*¹⁷²

Subject to the State negotiating a satisfactory financial arrangement with the Commonwealth in the terms outlined below at 4.3, the Commonwealth's relinquishing of responsibility for remote Aboriginal communities may not necessarily be an altogether bad thing. Professor Altman has highlighted that there has been '*excessive Commonwealth responsibility*' in the area of outstations which has given it '*too much influence in policy development*':

*Paradoxically, in the past 30 years Indigenous people have looked to the Commonwealth to facilitate and underwrite outstations development. Now in a rapidly changing policy environment outstation residents might be unduly exposed to broad Commonwealth policy priorities.*¹⁷³

The future responsibility of the State for remote Aboriginal communities provides an opportunity to make serious inroads into Aboriginal disadvantage. To do so, however, the State needs to engage in a debate about the future of outstations, and other remote communities, that is informed by '*outstation people themselves*' and has '*reference to local and regional knowledge*'.¹⁷⁴ It also needs to rely upon evidence-based initiatives and not simply the dismantling of existing frameworks in the absence of '*more viable economic alternatives*'.

Currently it appears, however, that with its increased responsibility, the State, consistent with views expressed for the past 20 years,¹⁷⁵ is intending to primarily direct its resources to housing and infrastructure for larger communities. The funding of outstation communities has traditionally been seen by the State to be the responsibility of the Commonwealth Government and the communities themselves. The State government also argues that funding of outstations should not take precedence over the identified needs of larger, permanent communities.¹⁷⁶ There is an indisputable logic to this in light of the 82 per cent of inhabitants of discrete Aboriginal communities who live in the larger communities in WA.

However, it is important not to simply ignore the lessons of the past. The House of Representatives noted in 1987 that:

The tendency by both State and Territory governments has been to give priority to the larger established communities despite a number of indicators which suggest that the support for these communities in the longer term does not enhance the lives of Aboriginal people, particularly in the area of economic independence.

¹⁷² Minister for Families, Community Services and Indigenous Affairs, 'Blueprint for Action in Indigenous Affairs', Available at http://www.atsia.gov.au/media/speeches06/05_12_06.aspx Accessed on 7 March 2007.

¹⁷³ Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006, p15.

¹⁷⁴ *ibid.*

¹⁷⁵ See Chapter 2.4.

¹⁷⁶ 'Western Australia's Comments on the Commonwealth Grants Commission's Indigenous Funding Inquiry Draft Report', 2000.

Presently, there appears at both State and Commonwealth level:

... a real danger that in seeking imagined economic independence... new government policy will reinvent the extreme dependence that many of today's outstation residents experienced at townships ... in the 1960s and chose to leave in the 1970s.

The little evidence that is available, discussed at Chapter 3.3, indicates that there is substance to these concerns.

Proposed Finding 1

There is little available evidence to demonstrate the benefits of recentralisation from small to large remote Aboriginal communities; and there is some evidence to the contrary, particularly in relation to health outcomes.

Research into the viability or otherwise of these small communities, informed, at least in part by the views of the residents of these and other remote Aboriginal communities, should be obtained before the State embarks on a program that is premised upon:

a view within State government agencies that many of the small remote communities are unsustainable, a view that has recently been supported by statements from the Commonwealth Government and a recent moratorium on new communities (eg CHIP).¹⁷⁷

Proposed Recommendation 1

The State should obtain research into the viability or otherwise of the small remote Aboriginal communities, informed, at least in part by the views of the residents of these and other remote Aboriginal communities.

4.3 Local Government

The Bilateral Agreement also has significant implications for those local governments which include discrete Aboriginal communities within their jurisdiction. It is of note that such local governments were not a party to the Agreement.

¹⁷⁷ Department of Water, *Report for the Minister for Water Resources on Water Services in Discrete Indigenous Communities - Final Report*, [2006], p23.

The recent Western Australian Law Reform Commission inquiry into Aboriginal Customary Laws included a detailed consideration of the existing lack of accountability by local governments for ‘Aboriginal’ funding, and it is useful to include an lengthy reference to its conclusions:

Much of the entrenched disadvantage experienced by Western Australian Aboriginal communities stems from a lack of infrastructure and essential government services. Part of the reason for problems of service provision to Aboriginal communities lies in the complicated nature of relationships between the three levels of government responsible for the delivery of services. ... the Commission ... found that the rhetoric of self-determination has, in the past, allowed governments to abdicate their responsibilities to provide services that are an entitlement of citizenship and which non-Aboriginal Australians take for granted...

A study undertaken by the Department of Indigenous Affairs in 1999 identified a number of factors contributing to the inequality of local government service provision to Aboriginal communities including the difficulty of providing and maintaining infrastructure in remote areas; issues with tenure of land and capacity to levy council rates; the ‘private’ nature of Aboriginal communities (resulting in the perception of inability to access land for the purposes of service provision or infrastructure maintenance); the fact that that because some Aboriginal communities are located on Aboriginal Lands Trust or Crown land, provisions of the Health Act 1911 (WA) and Local Government Act 1995 (WA) are not applicable and cannot be enforced by local government authorities; and the history of federal and state agencies circumventing local government approvals and involvement.

These factors are typically raised by local government to explain the lack of local government service provision to Aboriginal communities. However, a more accurate explanation can perhaps be found in the fact that the lack of rate income generated by Aboriginal communities has fostered a view that Aboriginal people are not genuine constituents of local government and are therefore not seen to be a priority.

... local governments receive state and federal funding according to a formula that specifically recognises Aboriginal population, remoteness and disadvantage factors. However, because this funding is ‘untied’ (that is, the funding authority cannot dictate the way in which the money is spent), there is no direct accountability of local governments to ensure that Aboriginal-specific funding reaches Aboriginal communities. The Commission therefore proposed that the Western Australian government should investigate ways of improving the accountability of local governments for funding provided for the benefit of Aboriginal people in each local government area...

This is not a new issue. It was recognised as far back as 1991 by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) which made two recommendations aimed at improving local government accountability for funding designated for Aboriginal people. At that time the Western Australian Grants Commission (now the Western Australian Local Government Grants Commission) admitted that much inequity was occurring in local government areas in the distribution of funds between Aboriginal and non-Aboriginal people. The Grants Commission reported to the RCIADIC that it had introduced a means of withholding funds from the local government authority where the authority could not demonstrate that funds were being spent in an equitable manner. The Commission is not aware whether the Local Government Grants Commission currently has a means of

ensuring accountability of local governments for equitable distribution of funds to Aboriginal people; however, it is clear that whatever processes may currently be in place, they are not working adequately to protect the interests of Aboriginal people in remote communities.

As recently as June 2006 the Minister for Local Government and Regional Development stated in Parliament that he receives constant 'complaints from remote communities that they are not receiving a fair deal out of local government'. The Commission is concerned about this reality and therefore confirms its recommendation for improved accountability of local governments for funding received for the benefit of Aboriginal people.¹⁷⁸

The Committee hopes that the Law Reform Commission's recommendation is able to remedy a situation described by the Australian National Audit Office (ANAO) as long ago as 2000 as being one where:

If local governing bodies do not actually use FAG [Financial Assistance Grants] funding to provide services in accordance with the Act and the National Principles, that is, to improve the provision of services to Aboriginal and Torres Strait Islander communities, there is nothing in the current statutory arrangements that requires them to do so.¹⁷⁹

It is of note that in that same report, the ANAO emphasised the degree to which ATSIC, through its municipal services funding and CDEP, was making a substantial contribution which enabled residents in remote Indigenous communities to enjoy some of the municipal services available to other citizens. The contribution of those who provided such services, such as CDEP workers, without the benefit of recognised pay rates and conditions should also be acknowledged.

Proposed Finding 2

Previously, Commonwealth funding available to remote Aboriginal communities through the Community Development and Employment Program (CDEP) and the Community Housing and Infrastructure Program (CHIP) substantially subsidised the provision of municipal services in those communities.

As indicated in Chapter 2, both CDEP and Commonwealth municipal services funding are being substantially reformed. The need for alternative arrangements to provide for these municipal services in remote communities, and to ensure accountability by local governments, has therefore become even more pressing.

¹⁷⁸ WA Law Reform Commission, *Aboriginal Customary Laws Final Report*, WALRC, Perth, 2006, pp352-354.

¹⁷⁹ ANAO, *Municipal Services for Indigenous Communities: Aboriginal and Torres Strait Islander Commission*, ANAO, Canberra, 2001, p97.

It is the Committee's view that the previous ATSIC subsidy of municipal services, quite apart from the subsidy by members of those remote communities who undertake skilled work at CDEP and 'top up' rates, to a large part masked the extent to which the provision of municipal services to Indigenous community members was inadequate. The subsidy of municipal services by ATSIC and CDEP has also masked the current inequities of the Commonwealth distribution of municipal funds under the *Local Government (Financial Assistance) Act 1995* (Clth).

That Act specifies that national allocation of the general purpose component of the grant is to be divided amongst the states on a per capita basis.¹⁸⁰ Once the grants are received by the states, however, these have to be distributed according to a number of factors, most significantly, so as to achieve 'Horizontal Equalisation'.¹⁸¹ Recently criticisms have been levelled at the Commonwealth for this 'discriminatory' allocation of funds for Local Government:

The Commonwealth (in partial response to its financial dominance in the federal system) provides around a billion dollars in Specific Purpose Grants to the states and territories for support to local government. However, these funds are allocated on a per capita basis to each state and territory (along with a requirement that each jurisdiction establish a local government grants commission to ensure the available funds are distributed equitably within each jurisdiction). The bizarre result is that jurisdictions like the NT with one sixth of the Australian landmass receive less in local government financial assistance than is notionally allocated for the population of Geelong. The states with large urban populations receive much larger allocations, which are then, through the local government grants commission process, allocated to non-urban councils within that state.

...

*The Federal Government provides some indigenous specific funding for municipal services, but again, at a far lesser level than would flow if the mainstream local government funds were allocated equitably on a national basis.*¹⁸²

¹⁸⁰ Department of Transport and Regional Services, *Local Government National Report - 2004-05 Report on the Operation of the Local Government (Financial Assistance) Act 1995*, Department of Transport and Regional Services, Canberra, 2006, p40.

¹⁸¹ Horizontal equalisation is defined under section 6(3) of the *Local Government (Financial Assistance) Act 1995* (Clth) as being the allocation of funds that:

- (a) ensures each local governing body in the State is able to function, by reasonable effort, at a standard not lower than the average standard of other local governing bodies in the State; and
- (b) takes account of differences in the expenditure required to be incurred by local governing bodies in the performance of their functions and in their capacity to raise revenue.

Department of Transport and Regional Services, *Local Government National Report - 2004-05 Report on the Operation of the Local Government (Financial Assistance) Act 1995*, Department of Transport and Regional Services, Canberra, 2006, p43.

¹⁸² Westbury, N & Dillon, M, 'The Institutional Determinants of Government Failure in Indigenous Affairs', 2006 pp11,12.

If '*Horizontal Equalisation*' was applied these national allocations would be very different and resemble the weightings given in the distribution of Commonwealth GST funds, where the additional costs for services in large and remote areas, and to disadvantaged groups such as Indigenous people, are acknowledged.

The reduction of Commonwealth CDEP and CHIP municipal services funding exposes the inequities of the present national allocation of funds for local government purposes.

Proposed Recommendation 2

In negotiating new financial arrangements within the terms of the State/Commonwealth *Bilateral Agreement for the provision of Housing, Infrastructure and Essential Services for Indigenous People in Western Australia November 2005 - June 2008*, the State should be cognisant of the implications of the Commonwealth's changes to its Community Development and Employment Program (CDEP) and Community Housing and Infrastructure Program (CHIP) and the inequities in the current allocation of Financial Assistance Grants to WA for distribution to local government.

APPENDIX ONE

BRIEFINGS HELD

Date	Name	Position	Organisation
13.09.2006	Ms Anne Hill	Director, Industry and Community	Office of Energy
	Mr Graeme Eley	Manager, Strategic Programs	Horizon Power
	Mr David Martin	General Manager, Public Affairs	Horizon Power
20.09.2006	Mr Daniel Ford	Executive Director, Aboriginal Housing and Infrastructure	Department of Housing & Works
	Mr Robert Thomas	General Manager, Housing Development Services	Department of Housing & Works
	Mr David Carpenter	Manager, Capital Works and Maintenance Programs	Department of Housing & Works
	Mr David Kelly	Principal Policy Officer	Department of Housing & Works
	Ms Teleah McCulloch	A/g Manager, Essential Services	Department of Housing & Works
18.10.2006	Dr Jim Gill	Chief Executive Officer	Water Corporation
	Mr Peter Moore	Chief Operating Officer	Water Corporation
	Mr Kevin Bradley	Manager, Service Delivery	Water Corporation
22.11.2006	Ms Amanda Cattermole	A/Director General	Department of Indigenous Affairs
	Mr Trevor Tann	Assistant Director, Policy and Innovation	Department of Indigenous Affairs

APPENDIX TWO

LEGISLATION

Legislation	State (or Country)
<i>Aborigines Act 1905</i>	Western Australia
<i>Aboriginal Affairs Planning Authority Act 1972</i>	Western Australia
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	Commonwealth
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	Northern Territory
<i>Constitution Act 1889</i>	Western Australia
<i>Commonwealth Electoral Act 1918</i>	Commonwealth
<i>Health Act 1911</i>	Western Australia
<i>Industrial Schools Act 1874</i>	Western Australia
<i>Land Act 1898</i>	Western Australia
<i>Local Government Act 1995</i>	Western Australia
<i>Local Government (Financial Assistance) Act 1995</i>	Commonwealth
<i>Native Administration Act 1936</i>	Western Australia
<i>Native Welfare Act 1954</i>	Western Australia
<i>Waste Lands Act 1842</i>	Imperial
<i>Western Australian Constitution Act 1889</i>	Western Australia

REFERENCES

ABC News Online, 'Ceduna council criticises Federal Government Indigenous plan', Available at <http://www.abc.net.au/news/newsitems/200703/s1861136.htm> Accessed 2 March 2007.

ABC News Online, *Communities feel impact of CDEP changes*, 6 February 2007, Available at <http://www.abc.net.au/news/newsitems/200702/s1841202.htm> Accessed on 6 February 2007.

ABC News Online, 'Brough vows to fix "flawed" trails in Indigenous communities' Available at: <http://www.abc.net.au/news/newsitems/200702/s1855013.htm> Accessed on 23 February 2007.

ABC News Online, 'Researchers find Indigenous Health Utopia', 11 October 2006; and 'NT community bucks Indigenous health trend' Available at: <http://www.abc.net.au/news/newsitems/200610/s176024.htm> Accessed 11 October 2006.

Aboriginal Access and Living Areas Pastoral Industry Working Group, *Final Report*, 2003.

Aboriginal and Torres Strait Islander Commission Act 1989 (Commonwealth), section 7.

Aboriginal Housing and Infrastructure Council, *Aboriginal Housing and Infrastructure Council News*, Issue No. 2, Spring 2003.

Altman J C & Dillon M C, *A Profit-Related Investment Scheme for the Indigenous Estate*, Centre for Aboriginal Economic Policy Research (CAEPR) discussion paper no. 270/2004, CAEPR, Canberra, 2006.

Altman, J C, *In Search of an Outstations Policy for Indigenous Australians*, Centre for Aboriginal Economic Policy Research (CAEPR) working paper no. 34/2006, CAEPR, Canberra, 2006.

Atyeo v The Aboriginal Lands Trust [1997] *Australian Indigenous Law Reporter* 24; (1997) 2 *Australian Indigenous Law Reporter* 45, Supreme Court of Western Australia, 4 November 1996, Perth.

Australia, House of Representatives, Standing Committee on Aboriginal Affairs, *Return to Country: the Aboriginal Homelands Movement in Australia*, 1987.

Australian Bureau of Statistics (ABS), *ABS Views on Remoteness*, cat. no. 1244.0, ABS, Canberra, 2000.

Australian Bureau of Statistics (ABS), *Housing and Infrastructure in Aboriginal and Torres Strait Islander Communities* (CHINS), cat. no. 4710.0, ABS, Canberra, 2002.

Australian Electoral Commission, *History of the Indigenous Vote*, Australian Electoral Commission, ACT, 2006.

Australian Government (Employment and Workplace Services for Australians), Available at: <http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/CommunityDevelopmentEmploymentProjectsCDEPprogramme.htm> Accessed on 13 February 2007.

Australian Government, *Achieving Indigenous Economic Independence: Indigenous Economic Development Strategy*, [undated].

Australian Institute of Health and Welfare (AIHW), *Expenditures on Health for Aboriginal and Torres Strait Islander Peoples, 2001-02*, AIHW, Canberra, 2005.

Australian Institute of Health and Welfare (AIHW), *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander People 2005*, cat. no. 4704.0, AIHW & ABS, Canberra, 2005.

Australian National Audit Office (ANAO), *Municipal Services for Indigenous Communities: Aboriginal and Torres Strait Islander Commission*, ANAO, Canberra, 2001.

Behrendt, L, 'The abolition of ATSIC - Implications for democracy' in *Democratic Audit of Australia* - November 2005, Available at: http://democratic.audit.anu.edu.au/papers/200511_behrendt_atsic.pdf; Accessed on 1 February 2007.

Black, D, '*Political Chronicle*', *Politics and History*, 1986, Vol. 32, No.3.

Budget 2006-07 Building for the Boom Fact Sheet, 'The Budget - Where the money comes from and how it is spent'.

Child Death Review Committee Western Australia, *Annual Report 2005-2006*, Child Death Review committee Western Australia, Perth, 2006.

COAG Indigenous Trial Sites - Evaluation, Available at <http://www.indigenous.gov.au/coag/evaluation/default.html> Accessed on 6 March 2007.

COAG Indigenous Trial Sites, Available at: http://www.indigenous.gov.au/coag/coag_initiative.html Accessed on 6 February 2007.

Commissioner for Aboriginal Planning, *Annual Reports, Years ended 30 June 1974 to 30 June 1984*.

Commonwealth Grants Commission, *Relative Fiscal Capabilities of the States 2006*, Commonwealth Grants Commission, Canberra, 2006.

Community Development Employment Projects NSW, Available at: <http://www.cdep.com.au/default.aspx?id=1> Accessed on 13 February 2007.

Counterpoint, 'What is the future of Aboriginal Homelands?', 28 August 2006, Available at www.abc.net.au/rn/counterpoint/stories/2006/172438.htm

Department of Employment and Workplace Relations, 'Updated Questions and Answers for the CDEP Guidelines 2006-07', Available at: www.workplace.gov.au/NR/rdonlyres/93B45EF0-8908-4FB0-BA43-2534BFE6623A/0/Finalupdate24Oct.pdf Accessed on 5 February 2007.

Department of Employment and Workplace Relations, *Building on Success CDEP - Future Directions*, Department of Employment and Workplace Relations, Canberra, 2005.

Department of Family and Community Services, *Community Housing & Infrastructure Program (CHIP) - Program Guidelines 2005-06*, 5.3.3.

Department of Immigration and Multicultural and Indigenous Affairs, *Fact Sheet Indigenous Affairs Budget: Chronology of Indigenous Policy Achievements*.

Department of Indigenous Affairs (DIA), *Lost Lands Report*, [DIA, Perth], [2003].

Department of Indigenous Affairs (DIA), 'RAESP Management Workshop' 8 November 2005.

Department of Indigenous Affairs (DIA), 'Services to Discrete Indigenous Communities in Western Australia Discussion Paper', 2002.

Department of Transport and Regional Services, *Local Government National Report - 2004-05 Report on the Operation of the Local Government (Financial Assistance) Act 1995*, Department of Transport and Regional Services, Canberra, 2006.

Department of Water, *Report for the Minister for Water Resources on Water Services in Discrete Indigenous Communities - Final Report*, [2006].

E-mail from Manager Service Delivery, Water Corporation, 14 March 2007.

Environmental Health Needs Coordinating Committee, *Environmental Health Needs of Indigenous Communities in Western Australia: The 2004 Survey and its Findings*, Environmental Health Needs Coordinating Committee, [Perth, WA], 2005.

Equal Opportunity Commission, *Finding a Place, An Inquiry into The Existence of Discriminatory Practices in Relation to the Provision of Public Housing and Related Services to Aboriginal People in Western Australia*, Equal Opportunity Commission, [Perth], 2004.

FACS, *Community Housing and Infrastructure Program (CHIP) E-Sub Program Guidelines 2006-07 For Applicant Organisations*.

Gardiner-Garden, J, 'Identifiable Commonwealth Expenditure on Aboriginal and Torres Strait Islander Affairs', *Current Issues Brief*, 18, 1997-98.

Gare, F E, 'Interview with Frank Ellis Gare, last Commissioner for Native Welfare', 1998 [Battye Library, Perth].

Gibbons, W, (Associate Secretary, Department of Families, Community Services and Indigenous Affairs), Commonwealth, Senate, *Standing Committee on Community Affairs - Estimates (Hansard)*, 2 November 2006.

Gilligan, B, *The Indigenous Protected Areas Program - 2006 Evaluation*, Department of Environment and Heritage, Canberra, 2006.

Government of Western Australia, *2006-07 Budget - Budget Papers*, Vol. 2 2006.

Gray, B, *Council of Australian Governments (COAG) Trail Evaluation Wadeye Northern Territory*, 2006.

Horizon Power, Available at: http://www.horizonpower.com.au/about_us/index.html Accessed on 13 February 2007.

Kartinyeri v The Commonwealth [1998] HCA 22 (1 April 1998), pars 26, 30.

Karvelas, P, 'No more bush homes for Aborigines', *The Australian*, 9 March 2007.

Karvelas, P, 'Pearson "playing to white crowd"', *The Australian*, 20 February 2007.

Karvelas, P, 'Remote Aborigines failing in job search', *The Australian*, 13 December 2006.

Laurie, V, 'Land use contracts fail to deliver' in *The Australian*, 30 January 2007.

Laurie, V, 'Overlooked by the boom: Land access deals have failed to deliver jobs and benefits to Aborigines' in *The Australian*, 30 January 2007.

Letter from the Minister for Housing and Works, 19 September 2007.

Mabo and Others v. Queensland (No. 2) [1992] HCA 23; (1992) 175 Commonwealth Law Reports 1, (3 June 1992).

Minister for Families, Community Services and Indigenous Affairs, *Indigenous Fact Sheet 3.1 New Arrangements in Indigenous Affairs* [undated].

Minister for Families, Community Services and Indigenous Affairs, 'Blueprint for Action in Indigenous Affairs', Available at: http://www.atsia.gov.au/media/speeches06/05_12_06.aspx Accessed on 7 March 2007.

Minister for Immigration and Multiculturalism and Indigenous Affairs, 'Deeds more important than words', 9 July 2004.

Morgan Disney & Associates et al, *Synopsis Review of the COAG Trial Evaluations: Report to the Office of Indigenous Policy Coordination*, 2006.

Morgan Disney & Associates Pty Ltd, *A Red Tape Evaluation in Selected Indigenous Communities - Final Report for the Office of Indigenous Policy Coordination*, 2006.

National Archives of Australia, *Fact Sheet 113 - Aboriginal and Torres Strait Islander People*.

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Australia), *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Human Rights and Equal Opportunity Commission, Sydney, 1997

Office of Energy - Town Reserve Regularisation Program, Available at: http://www.energy.wa.gov.au/3/3222/64/town_reserves_r.pm Accessed on 21 February 2007.

Pearson, N, 'Boom and dust lifestyle' in *The Australian*, 3 February 2007.

Pearson, N, *Our Right to Take Responsibility*, Noel Pearson & Associates, Cairns, Queensland, 2000.

Pearson, N, '*The Cape York Agenda*', Address to the National Press Club, Canberra, 30 November 2005.

Premier and Ministers South Australia, 'News: Aboriginal Affairs Minister seeks Federal commitment on services to remote communities', Available at: <http://www.ministers.sa.gov.au/news.php?id=645> Accessed 7 March 2007.

Price Waterhouse Coopers, *Living in the Sunburnt Country*, 2007.

Robbins, J, 'The Price of Power: Essential Services in Remote Indigenous Communities', [2000] *Indigenous Law Bulletin*.

Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry into Underlying Issues in Western Australia*, Australian Government Publication Service, Canberra, 1991.

Salusinszky, Imre, 'Overhaul proposed for black funding', *The Australian*, 31 July 2006.

Schubert, M, 'Aboriginal aid swamped by red tape', in *The Age*, 16 February 2006.

Senator C Evans, Commonwealth, Senate, *Standing Committee on Community Affairs - Estimates (Hansard)*, 2 November 2006.

Taylor, L, 'Wadeye experiment a failure', in *Australian Financial Review*, 2 November 2006.

The Agreements, Treaties and Negotiated Settlements Project database, 'ATSIS', Available at: <http://www.atns.net.au/biogs/A002578b.htm> Accessed on 5 February 2007.

The Commonwealth of Australia and the State of Western Australia, *Bilateral Agreement on Indigenous Affairs 2006-2010*, [2006].

The Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *Agreement for the Provision of Essential Services to Indigenous Communities in Western Australia*, 2000.

The Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *An Agreement for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia July 2002 - June 2007*, 2002.

The Department of Family and Community Services, Community Housing & Infrastructure Program (CHIP) - Program Guidelines 2006-07, 2.5.

Torres Strait Regional Authority, Education, Training and Employment, Available at: <http://www.tsra.gov.au/www/index.cfm?ItemID=256> Accessed on 3 April 2007.

WA Law Reform Commission, *Aboriginal Customary Laws Final Report*, WALRC, Perth, 2006.

Westbury, N & Dillon, M, '*The Institutional Determinants of Government Failure in Indigenous Affairs*', 2006.

Western Australian Treasury, 'Commonwealth Grants Commission Indigenous Funding Inquiry Submission', No. IFI/SUB/0021, (2000).

'Western Australia's Comments on the Commonwealth Grants Commission's Indigenous Funding Inquiry Draft Report', 2000.

Yougarla v Western Australia [2001] HCA 47 (9 August 2001)