Public Health Law and Indigenous Health Project

Aboriginal and Torres Strait Islander Communities: Local Governance, Land Tenure and Land Management Systems in Queensland

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Abbreviations

ABS	Australian Bureau of Statistics
ACC	Aboriginal Coordinating Council
AHMAC	Australian Health Ministers' Advisory Council
AMS	Aboriginal Medical Service
ARHP	Aboriginal Rental Housing Program
Arts QLD	Arts Queensland
ATSIH	Aboriginal and Torres Strait Island Housing (in DPWH)
ATSIIP	Aboriginal and Torres Strait Islander Infrastructure Program (in DATSIPD)
Aust Sports Com	Australian Sports Commission
ATSIC	Aboriginal and Torres Strait Islander Commission
BRACS	Broadcasting for Remote Aboriginal Communities Service
CDEP	Community Development Employment Program
CHIP	Community Housing and Infrastructure Program
COAG	Coalition of Australian Governments
CES	Commonwealth Employment Service
CSHA	Commonwealth State Housing Agreement
DATSIPD	Department of Aboriginal and Torres Strait Islander Policy and Development
DCILGPS	Department of Communication and Information, Local Government, Planning and Sport
DCS	Department of Corrective Services
DES	Department of Emergency Services
DETIR	Department of Employment, Training and Industrial Relations
DETYA	Department of Education, Training and Youth Affairs
DEWRSB	Department of Employment, Workplace Relations and small Business
DFYCC	Department of Families, Youth and Community Care
DFACS	Department of Families and Community Services
DHAC	Department of Health and Aged Care
DIMA	Department of Immigration and Multicultural Affairs
DJAG	Department of Justice and Attorney General
DMR	Department of Main Roads
DNR	Department of Natural Resources
DOGIT	Deed of Grant in Trust
DPC	Department of Premier and Cabinet
DPWH	Department of Public Works and Housing
DSS	Department of Social Security
DT	Department of Transport
DTSR	Department of Tourism, Sport and Recreation
EPA	Environment Protection Agency
FAIRA	Foundation of Aboriginal and Islander Research Action
GMCBF	Gaming Machine Community Benefit Fund
HACC	Home and Community Care
HREOC	Human Rights and Equal Opportunity Commission
ICC	Island Coordinating Council
ILC	Indigenous Land Corporation
ILUA	Indigenous Land Use Agreement
LRT	Land and Resources Tribunal
NAHS	National Aboriginal Health Strategy
NPHPG	National Public Health Partnership Group
NTRB	Native Title Representative Body

OATSIHS	Office of Aboriginal and Torres Strait Islander Health Services (in DHAC)
PBC	Prescribed Body Corporate
QH	Queensland Health
State Lib	State Library
TSRA	Torres Strait Regional Authority
WTM Plan	Wet Tropics Management Plan

Executive Summary

Overview

Legislation has been demonstrated historically to be one of the most effective measures available to public health policy makers and is recognised as an important element in a comprehensive approach to improving public health. In addition to providing a policy tool to enable direct action in ameliorating public health risks, legislation gives structure to governance and management systems which shape how public health determinants are responded to and managed at local, State and national levels. As an organised societal effort to protect, promote and restore people's health, public health works within and through the legislated systems, structures and processes, and to a considerable extent, depends on them functioning at a high level.

Problems have been identified with laws that directly and indirectly impact on public health determinants in Australia's Aboriginal and Torres Strait Islander communities. Excess morbidity and mortality in Indigenous communities continue at unacceptably high levels, and in rural and remote areas, much of this is attributable to poor living conditions and inadequately developed services. The 1997 review of public health law[Ref 1)] undertaken on behalf of the NPHP, noted that 'little is known about the impact of public health laws on Indigenous peoples, and that the impact of such laws remains problematic. Problems noted include the demands of standards that are inappropriate to remote and culturally different communities, and lack of enforcement leading to public health problems being ignored.

This report provides an overview of laws that are instrumental in shaping local governance, land tenure and land management systems as these apply in Queensland's remote, sparsely populated, primarily Indigenous communities. This report provides information about the environment in which laws are applied to assist in the subsequent analysis of those laws that more directly affect public health risks and determinants.

Local government systems

While most local governments in Queensland are established under the *Local Government Act 1993*, 32 Aboriginal and Island councils are established under the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* and a further two local governments are established at Aurukun and Mornington under the *Local Government (Aboriginal Lands) Act 1978*. Many discrete Indigenous communities are also located in mainstream local government areas.

The 32 community councils are modeled to some extent on Queensland's mainstream local governments, but their small size, poverty, lack of administrative and governance experience and the urgency of their basic survival needs necessitates a practical focus on service provision and associated administration in line with grant funding conditions. Many discrete communities in mainstream local government areas also have very low levels of servicing by their respective local governments.

Several Queensland Government reports[Refs 2 & 3)] have noted the inappropriateness of Western models of government to such communities and found incompatibility and conflict between customary and traditional community governance and the imposed legislative and administrative framework.

Socioeconomic status and health

Over past decades, the relatively low income status of Indigenous peoples has remained effectively unaltered and welfare dependency remains high. In rural and remote areas, Indigenous employment opportunities are linked to the CDEP scheme.

There is a strong link between economic poverty or relative deprivation and poor health among Australians generally, with Indigenous people two to three times more likely to be impoverished than non-Indigenous people. However, the *distribution* of health problems in Indigenous households is only weakly linked to income with high income Indigenous families only 1.2 per cent less likely to experience long-term health problems than low income Indigenous families[Ref 4, p 15]. Poverty in Indigenous communities is multifaceted with non-monetary poverty (such as health, housing, justice) endemic along with income poverty. Research shows that health stands out as a major aspect of non-monetary poverty with long-term health problems evident in one third of Indigenous households in both low and high income groups. Therefore, it is inappropriate to focus only on income poverty. Access to health programs, housing and justice are as essential to improving Indigenous poverty as income.

Indigenous cultures are being re-asserted increasingly in the context of the return to homelands movement, particularly with regard to social relations Indigenous people have developed to control the production, distribution and circulation of goods and services in community economies, with an emphasis on the accumulation of 'social' capital rather than purely 'economic' capital. This presents an opportunity for the redevelopment of legislated governance systems and structures to enable more appropriate governance structures, funding mechanisms and transfer payment arrangements consistent with the self-determination agenda.

For public health, the challenge is to develop strategies to work within this context, to identify and monitor public health determinants and their interaction in situ, and to design public health actions that are culturally and geographically specific.

Land tenure

The land on which most remote Indigenous communities is located is primarily 'community land'. This takes many legal forms such as State land subject to a time-limited lease, perpetual lease, reserve status or a Deed of Grant in Trust; transferred or claimed Aboriginal and Torres Strait Islander land (inalienable freehold); and land claimed (or being claimed) as native title. These are mostly non-rateable, except where used for commercial or residential purposes, although local government utility charges may apply where local government services are provided.

For community or infrastructure development proposals, these multiple legal forms and accompanying and varying interests in land lead to requirements for consultation with a number of legitimate 'owners'. However, the reconciliation of particular interests may not be readily achievable.

A further issue is the disinclination and/or inability of local governments to provide services to Indigenous communities under their responsibility, owing to the non-rateability of much community land.

Land management regimes

In addition to the range of land tenure interests, some Queensland Indigenous communities are located in areas protected by legislated land management regimes. In community and settlement development, a number of Indigenous communities must take into consideration the provisions of the *Wet Tropics World Heritage Protection and Management Act 1993* and the *Great Barrier Reef Marine Park Act 1975* (Cwlth). Although systems are enabled by the legislation to consider the needs of residents, delays, increased costs and less than optimal outcomes can result for Indigenous peoples from processes designed to protect the environmental integrity of the Great Barrier Reef and the Wet Tropics World Heritage Area.

Revenue

While most local government revenue is obtained from rates and charges (58 per cent across Australia), the limited rateability of the land on which Indigenous communities are located, and the low socioeconomic status which prevails generally in such communities, leaves the communities substantially dependent on Commonwealth and State government grants (70 per cent of receipts).

Commonwealth grants are provided mostly by and through ATSIC and by at least six additional departments. The latter provide direct funding and untied grants through Queensland's LGGC. The main focus of ATSIC expenditure is on the employment program (CDEP) and the housing and infrastructure program (which target funds areas of greatest need, prioritised by health impact assessments and other surveys, through the National Aboriginal Health Strategy).

Queensland State Government grants are provided through at least 14 departments, the most significant of which are DATSIPD (particularly for infrastructure and local government services), DPWH (for housing and related infrastructure) and DCILGPS (for Commonwealth grants, roads and drainage and other infrastructure). These grants are made annually to the 32 community councils by means of a fragmented, non-integrated approach to be expended on specific purposes. This complexity does not facilitate a coordinated approach to community development or the emergence of local leadership in community governance.

Purchaser/provider roles

At a time when mainstream local governments are reforming in line with the requirements of National Competition Policy, the community councils have increasingly assumed the role of service provider rather than service purchaser. This leads to a situation in which intensive management requirements of direct service provision tend to take precedence over a more desirable focus on longer term strategic issues and the further development of appropriate and functional governance processes.

In discrete Indigenous communities located in local government areas in which the mainstream local government does not actively manage infrastructure provision, administrative provider organisations, such as housing organisations, may take on 'governance roles' by default.

ATSIC functions and developments

Overlaid on this complex system of governance at the State and local level is the role played by the Commonwealth-funded ATSIC. ATSIC undertakes a significant planning and funding role in these communities. This is in addition to its strategic roles in providing advice, advocacy and government agency performance monitoring. ATSIC is currently exploring 'regionalisation' as a means of maximising the participation of Indigenous peoples in the formulation and implementation of government policies that affect them, and of ensuring that flexible local or regional models are available to Indigenous peoples for purposes such as local government services, land management and the preservation of their cultures and traditions. Regionalisation is believed to offer organisationally synergistic gains and pooled funding opportunities. However, it raises questions of a structural nature regarding the potential role of community councils and considerations of Indigenous communities in mainstream local government areas under such an arrangement.

Service delivery policy

Related to the topic of appropriate governance structures is the issue of how services should be provided in a policy environment characterised by a move to Indigenous self-determination and economic empowerment agendas. For example, full-time paid employment in administrative agencies is dominated by non-Indigenous staff and a high degree of inter-agency conflict is reported to be endemic between non-Indigenous agencies and staff resident in discrete Indigenous communities. If regionalisation is to become the dominant level of governance, then service delivery policy should address a range of issues concerning the employment of Indigenous personnel and the recruitment and support of non-Indigenous personnel. More appropriate models of service delivery and an increased range of employment arrangements could be supported legislatively.

Conclusions

Authority and responsibility for government and funding in Queensland's remote Indigenous communities is shared between three levels of government and many government departments. Coordination problems are evident and reflected in service delivery problems. The fragmented approach to funding tends to constrain community councils to traditional service provider roles. In turn, the administrative requirements and workloads that characterise service provision reduce the opportunity for community government and leadership to develop expertise in strategic management. It also encourages dependence upon government departments and traditional, rather than entrepreneurial, management practices.

These are serious structural and operational weaknesses, especially when combined with a relative lack of experience and expertise in making and administering grant applications. It reduces the capacity of councils to manage their own affairs, reduces the status of the council and its elected members, and delays development by virtue of the time required to apply for, negotiate with and account to agencies for funds. A system based on general or block grants would require more sophisticated community planning systems and management to achieve planned outcomes, but would have to be accompanied by a period of training and education in related processes and techniques.

The dilemma posed by this situation is not new and efforts continue to improve the system at strategic levels and through internal departmental management systems. However, effective and functional governance mechanisms are fundamental to how public health determinants are responded to and managed at local, State and national levels. In relation to the communities' capacity to plan for, manage and evaluate their public health strategies and actions, the consequence of the limitations identified is that this capacity is strictly constrained. If these limitations to community governance are not addressed, then the likelihood of any rapid or widespread improvement in public health in the communities is not likely to occur.

1 Introduction

1.1 Background

This paper is a key component of the Public Health Law and Indigenous Health Project (PHLIHP). During its early stages, the PHLIHP was an initiative of the National Public Health Partnership and reported through the Legislation Reform Working Group, and subsequently the Aboriginal and Torres Strait Islander Working Group, with Queensland Health as the lead agency. It is currently managed and resourced by Queensland Health and is accountable to the State manager, Public Health Services. The purpose of the PHLIHP is to improve the appropriate use of legislative strategies in response to the key determinants of public health in Queensland's Indigenous communities.

The PHLIHP is being undertaken in two phases. The objective of phase one is to improve knowledge about the impact of Commonwealth, State and local laws that affect public health in Indigenous communities, strengthen understanding of the problematic impacts of such laws, and increase awareness of positive impacts by:

- examining the impact of selected laws on Indigenous communities
- describing, analysing and summarising the problems and the responses
- identifying examples of effective legislative strategies.

Phase two will build on phase one with action to improve the use of legislative strategies that impact on public health in remote Indigenous communities.

Phase one is further segmented into stages. The objective of phase 1 (stage 1) is to examine, from a public health perspective, the impact of laws relating to 'water quality', 'health aspects of waste management' and 'hazards in the built environment' in Queensland's Indigenous communities. These laws operate under the jurisdictions of the Commonwealth, State and local governments. The approach used to undertake the impact analysis is being piloted for future application to a broader range of health action areas. Following the pilot stage, the impact of other laws may be similarly analysed.

During the scoping stage of the PHLIHP, it was determined that an analysis of the impact of laws would require an understanding of:

- the governance context in which laws operate
- the tenure[1] of land to which laws are applied
- legislated land management systems which apply in some geographic environments.

The three-tiered system of government that applies in Queensland contains structures, mechanisms and systems that are important components in the achievement of government policy intent. The project's impact analysis will consider, among other things, the application of laws through these legislated structures, mechanisms and systems. Of particular interest is their application in the context of remote, sparsely populated, primarily Indigenous communities where socio-economic conditions are often at subsistence level and there is a degree of incompatibility between Indigenous customs and traditions and the 'imposed' Western style of governance.

[1] The term 'tenure' refers to a lease or freehold which conveys possession of land to a person. For convenience, in this paper, the term is used to include additional forms of occupation.

Matters of governance, land tenure and land management are also important because laws sometimes differentiate between governments, authorities, owners, occupiers and the holders of other interests in assigning processes and responsibilities for matters that impact on public health determinants. Requirements may exist to consult with particular parties who have an interest in land for which activities and developments are proposed. Additionally, a typical feature of land management regimes is the development of a management plan involving governance and tenured stakeholders.

The purpose of this paper is to overview the legislation that is instrumental in shaping governance, land tenure and land management as these apply in Queensland's remote Indigenous communities and identify issues concerning the application of that legislation. It provides contextualising information about the legislative environment in which 'public health' laws are applied to assist in the next activity in the PHLIHP – the examination of the impact of laws directly affecting public health determinants.

Through this overview, issues of particular relevance to applied public health are noted and discussed. These are issues which require attention in the design of public health programs to ensure appropriateness and effectiveness. This overview also highlights the legitimate interest of public health custodians in the level of functionality of the systems which constitute the service delivery environment.

1.2 Structure of the paper

The *Executive Summary* summarises the key issues arising from the overview and analysis of the contextualising laws presented in section 2.

Section 1 - Introduction briefly explains the purpose of the paper and its part in the PHLIHP methodology.

Section 2 - Overview summarises issues concerning the application of local governance, land tenure and land management laws, with particular regard to issues which are significant in shaping how 'public health' laws may be applied and enforced.

Section 3 – Review of legislation provides an overview of each of the Acts listed below (in section 1.3). The reviews particularly focus on provisions that are relevant to the PHLIHP but incorporate additional information about structures, systems and mechanisms where this has been readily accessible within the timeframe of the paper's development. Every effort has been made to ensure that the essence of legal policy intent can be readily understood by non-legal public health professionals.

Section 4 – Aboriginal and Island council receipts presents summarised information about the composition of Indigenous council receipts for use in the funding discussions in section 2.

1.3 Acts reviewed

Local governance legislation:

- the *Local Government Act 1993*
- the *Local Government (Aboriginal Lands) Act 1978*
- the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984.*

Because of its importance in service delivery and funding functions at the local government level, as well as in national policy making, the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cwlth)[2] is also reviewed. (This Act also contains provisions relating to native title which are relevant to land tenure.)

Land tenure legislation:

- the *Land Act 1994*
- the *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* and the *Aboriginal and Torres Strait Land (Consequential Amendments) Act 1991*
- the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*
- the *Native Title Act 1993* (Cwlth)
- the *Native Title (Queensland) Act 1993*.

Land management legislation:

- the *Wet Tropics World Heritage Protection and Management Act 1993*
- the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

[2] In this paper, all Acts are Queensland legislation unless specifically indicated as Commonwealth legislation.

2 Overview

The purpose of this section is to overview issues arising from an examination of the local governance, land tenure and land management laws. These issues are of interest to public health and shape how 'public health' laws are applied and enforced.

2.1 System of local government in Queensland

Background

While the jurisdictions of the Commonwealth and States of Australia are enshrined in the *Commonwealth of Australia Constitution Act*, the jurisdiction of local government derives from State statutes. These mandate electoral systems for local governments, establish boundaries and regulate the services to be provided by local governments, while retaining a state role in overseeing local government operations. Traditionally, local governments have provided services such as garbage collection and road maintenance. Following recent reviews, local governments are increasingly developing roles as agents for a range of government services and becoming involved in a broader range of issues.

Queensland's local government statutes

The *Local Government Act 1993*[3] (see section 3.1 of this paper) provides a legal framework for Queensland's system of local government and gives recognition to the jurisdiction of local government. Most local governments in Queensland are constituted under this Act. Some Indigenous communities are located geographically within the boundaries of such local government areas and are subject to the jurisdiction of the area's respective local government.

However, two local governments are established under another Act - the *Local Government (Aboriginal Lands) Act 1978* (see section 3.2 of this paper) – but are deemed to be established under the *Local Government Act 1993* with the functions, powers, duties and obligations of a local government. The *Local Government (Aboriginal Lands) Act 1978* provides for the creation of two local governments and local government areas for the primarily Indigenous communities at Aurukun and Mornington. Before this Act, the areas were reserves. Through the legislation, the two shire councils were granted a 50-year lease of the shire land, to be held in trust for the benefit of the people who reside there.

While the Aurukun and Mornington local governments are legislatively more similar to local governments constituted under the *Local Government Act 1993* than to Aboriginal and Island councils established under the Community Services Acts (discussed below), there are significant differences between them and mainstream local governments. Major differences include the leasing of land to the councils, the consequent non-rateability of most land, restrictions to entry to the shires and the capacity to appoint Aboriginal police.

[3] Brisbane City Council is also governed by separate legislation, the *City of Brisbane Act 1924*.

The *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* (see section 3.3 of this paper) are the statutes from which 15 Aboriginal councils and 17 Island councils[4] derive their incorporation and legislative charter, including to discharge the functions of local government in their respective areas. Unless otherwise specified, only specific provisions of the *Local Government Act 1993* apply to Indigenous councils. (These provisions concern the creation of joint local government areas, joint local governments, and joint action by local governments – provisions which have rarely been used by Indigenous councils.) However, the Local Government Grants Commission, provided for by the *Local Government Act 1993*, allocates financial assistance to all local governments including Aboriginal and Island councils.

Administrative responsibility for the *Local Government Act 1993* and the *Local Government (Aboriginal Lands) Act 1978* lies with the Queensland Department of Communication and Information, Local Government, Planning and Sport (DCILGPS). However, primary administrative responsibility for the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* lies with the Department of Aboriginal and Torres Strait Islander Policy and Development (DATSIPD).

Thus, there are two distinct systems of local governance in Queensland – one relating to the 32 Indigenous councils and one relating to all other local governments. This is a key structural arrangement for consideration in public health policy and action because the two systems are quite different in many important respects.

Aboriginal and Island councils

Before the creation of Aboriginal and Island councils, the Indigenous communities lived on State Government reserves and missions, administered by church and State Government organisations. The existing legally-constituted community councils operating on reserves, missions and communities had a primarily advisory role. The Community Service Acts were initiated in response to pressure from Indigenous groups for greater self-determination for Indigenous communities.

In the change-over to government by Indigenous councils, the existing administrative and bureaucratic functions were passed to the emerging councils. Among other things, the administrative functions included a focus on peace, order, discipline, comfort, health, moral safety, convenience, food supply, housing and welfare. However, in the legislation, these welfare and service functions co-exist with responsibilities to discharge the functions of local government. The outcome appears to be a hybrid arrangement in which Indigenous councils are responsible for governance/leadership and welfare/service provision.

While mainstream local governments derive most revenue from property rates and provide property-oriented functions and services, Indigenous councils derive most revenue from government grants and provide administrative and associated services to achieve the purposes of the grants.

[4] The term 'Indigenous councils' is sometimes used in this report to refer to Aboriginal councils and Island councils collectively.

There appears to have been inadequate transition planning, particularly with respect to the emergence of the governance functions and to the development of alternative arrangements for the host of welfare/service provision functions. By default, it appears that local government processes focussed on welfare/service, perhaps at the expense of a more strategic, long-term approach to community planning and leadership.

This dual role is much broader than the role of local governments under the *Local Government Act 1993*. Of particular note, this is occurring while nationally, the trend for local governments is towards reform options such as full-cost pricing, commercialisation or corporatisation of councils' business type activities in line with National Competition Policy (NCP) reforms. While the NCP goal of increasing the competitive environment may not be particularly relevant to remote communities (because of the general absence of a competitive market economy), an issue worth exploring is the desirability and feasibility of increasing councils' focus on the core business of governance. Given that the Community Services Acts designate these broader functions to the Indigenous councils, it is reasonable to anticipate that councils' focus (and general purpose funding) will gravitate to more immediate survival and welfare services, particularly given the level of social, health, housing, educational and welfare disadvantage which was a legacy of the former regime.

The housing rental debt owing to Aboriginal councils may be seen as an example of an outcome of the dual local governance/service provider role. The Queensland Auditor-General (Ref 5) noted that a debt of $4.5 million owing to Aboriginal councils and a debt to Island councils of $0.728 million was attributable to housing rental debtors. The report quotes the Palm Island audit on the issues relating to debtors:

> "There is no doubt that a problem exists in the area of housing rent collections and the appointment of a specific officer improved the situation. However, as there is no other housing on the island except for that which is owned by the Council, the recourse of Council to get a housing debt paid is very limited. The ultimate recourse of any landlord is eviction. This option becomes very difficult in the Palm Island situation as another problem of homelessness is created which is also a responsibility of Council."

The highlights the structural issue embodied in the dual, sometimes conflicting roles of Indigenous councils. In most mainstream local governments, both functions - lessor under the *Residential Tenancies Act 1994* and provider of emergency welfare housing - would be considered service provider roles undertaken by the private sector or specialist welfare agencies rather than by local governments.

The Commonwealth's role

The Commonwealth has adopted a role in local government of promoting fiscal equity and performance improvement and facilitating local governments' contribution to national economic, social and environmental performance. This has been achieved primarily through untied financial grants (for general purpose assistance and identified local road funding) provided under the *Local Government (Financial Assistance) Act 1995* and distributed in a manner that aims to bring all councils within a jurisdiction up to the same fiscal level (horizontal equalisation).

Local government is also funded directly by the Commonwealth for Commonwealth programs such as aged care services, child care services and training for Aborigines.

However, the most significant Commonwealth organisation which influences local government Indigenous affairs is the Aboriginal and Torres Strait Island Commission (ATSIC) which combines both an elected arm of Indigenous politicians with an administration staffed by public servants.

In brief, ATSIC is a democratically elected organisation representing Aborigines and Torres Strait Islanders living on the mainland. It is the principal organisation in the Commonwealth's Aboriginal and Torres Strait Islanders Affairs portfolio. Thirty-five Regional Councils are grouped into 16 zones each represented by a Commissioner who is elected to the ATSIC Board, along with one Commissioner representing the Torres Strait. There are four ATSIC zones in Queensland. Section 113 of the *Aboriginal and Torres Strait Islander Commission Act 1989* (see section 3.4 of this paper) notes the desirability of providing for Regional Council elections to be conducted in a manner similar to the manner in which elections for Parliament are conducted with a view to increasing Aboriginal and Torres Strait Islander understanding of, and participation in, elections for the Parliament.

However it is important to differentiate the roles and functions of ATSIC from the roles and functions of democratically elected local governments, including Aurukun and Mornington, and the Aboriginal and Island councils created under Queensland's Community Services Acts.

ATSIC's role is to advise governments, advocate on issues, and monitor performance of government agencies. ATSIC is also responsible for making decisions on the funding of certain programs set up to combat Indigenous disadvantage, and for administering Commonwealth funding. Regional Councils formulate regional plans to improve the social, economic and cultural life of local Indigenous people and make decisions on certain ATSIC expenditure in their regions. Other services provided by ATSIC include legal aid, native title representation and maintaining Indigenous culture and identity.

As noted in section 2.6 below, ATSIC is the single greatest funding source for Queensland's Indigenous councils. However, coexisting with ATSIC's strategic, planning and funding functions are the functions of the Aboriginal and Island councils including 'planning, development and embellishment of the area'. The desired nature of the relationship between these two elected organisations, provided for separately by Commonwealth and State legislation and covering different geographical areas, is not articulated in either the ATSIC Act or the Community Services Acts. However, a pattern that can be observed through the funding arrangements is that ATSIC's funding role appears to support Indigenous councils adopting service provider roles. For example, in most Indigenous council areas, the Indigenous councils administer the Commonwealth/ATSIC Community Development and Employment Program (CDEP).

2.2 Appropriateness of local government model to Indigenous communities

In addition to problems of inadequate transition planning in the emerging Indigenous councils, others have questioned the appropriateness of the Community Services Acts, particularly in regard to the Western model of government and the implicit assumptions underlying it. Reviews of the legislation by the Parliamentary Committee of Public Accounts[(Ref 2)] (PCPA) and the Queensland Legislation Review Committee[(Ref 3)] (LRC) in the 1990s found a fundamental incompatibility and conflict between the customary and traditional ways in which Aboriginal and Torres Strait Islander communities operate and the legislative and administrative framework under which councils were required to operate. It was also noted that community councils took on a much wider role than solely the delivery of local government services.

The PCPA expressed the view that the inappropriateness of the system was the underlying cause of financial accountability problems, stating:[(Ref 2, p 5)]

> "The most important finding of the inquiry focuses on the Councils themselves and their inherently limited ability at present to be effective and internally accountable community representative bodies and thereby provide an efficient community government financial administration. The Committee believes that this limitation is attributable to the fact that the present structure and composition of the Councils is based on a culturally inappropriate model which does not recognise the realities of the social and political organisation (one of the cultural fundamentals) of each of the communities."

The report recommended that negotiations be entered into with each community to determine the appropriate structure and constitution for a local authority representative Council in each community.

In finding that the Community Services Acts and the Local Government (Aboriginal Lands) Act do not provide Aboriginal and Torres Strait Islander residents with a culturally appropriate structure for government, the LRC recommended the development of new 'community government' legislation to ensure their equal participation in government. It was proposed that new legislation could endow councils with broad local government powers and service delivery responsibilities such as justice administration, education, housing and natural resource conservation. However, the then Government did not accept the overall recommendation to pass broad framework legislation to enable negotiated local governance structures, preferring an incremental approach to reforms.

The LRC report also proposed that further discussion take place regarding development of a State-level commission to be responsible for Indigenous affairs, similar to ATSIC at the Commonwealth level. The LRC noted that its scope was to review Queensland legislation, rather than Commonwealth, and so, with regard to the relationship between ATSIC regional councils and Queensland's Indigenous councils, the LRC made no recommendations and took the view that a forthcoming review would be a more appropriate time to consider those issues.

The Alternative Governing Structures Program (AGSP) was set up subsequently by the State Government to provide funding to individual Indigenous communities to develop alternative governing structures. However, the program had much more appeal to communities with no governing structure (such as the T.R.A.W.Q. communities[5] on Thursday Island and the re-establishing community at Mapoon) than communities with existing councils and vested interests.

Funding was subsequently expanded to planning governing or decision-making structures for priority issues such as health and housing. Despite the loss of the initial focus on governance structures, the AGSP became a key tool in community planning -still somewhat reflective of the broad objective of facilitating self-determination for Indigenous communities. It later merged with other planning and development programs in the Community Development Program managed by DATSIPD.

A further legislative review took place in 1995 and Community Government Bills were drafted. The primary purpose of the review was not governance structures but improving financial accountability. Large parts, mainly mechanical, of the new *Local Government Act 1993* were adopted, but for a number of reasons the Bills were never tabled.

During consultations for the 1997 review of the operation of the ATSIC Act (Cwlth), considerable interest was shown by Indigenous people in ways to gain greater control over their affairs, particularly following frustrations about the many different agencies they have to relate to and the effect on them of decisions taken far away. A key issue was to increase regional and local autonomy, through ATSIC and through other structures(Ref 6).

ATSIC has released a discussion paper titled *Regional Autonomy for Aboriginal and Torres Strait Islander Communities*(Ref 6) with the objectives of:

- maximising the participation of Aboriginal and Torres Strait Islander peoples in the formulation and implementation of policies at all levels of government that affect them
- ensuring that flexible models are available to Indigenous peoples at the local or regional level for a range of purposes including local government services, land management and to preserve their cultures and traditions.

The paper identifies the key issue as the extent to which Indigenous peoples relate to and conform with mainstream values and practices or seek to legitimate their own traditions and cultures. However, through its legislation, ATSIC is not funded to substitute for the provision of services through mainstream government agencies and allocates resources rather than provides services directly to communities.

The new approach to increased regional autonomy could require the Commonwealth, state/territory and local government agencies to channel some funds through ATSIC at the regional level. The Discussion Paper notes that the Commonwealth Grants Commission has been requested to inquire into and develop a method that can be used to determine the relative needs of groups of Indigenous Australians across all services provided or funded by the Commonwealth directly, or indirectly through the states and territories or local government.

[5] 'T.R.A.W.Q. communities' means the communities living in the suburbs of Tamwoy, Rose Hill, Aplin, Waiben and Quarantine on Thursday Island.

In addition to funding, other issues canvassed in the paper include accountability (focus on outputs rather than inputs), partnerships (such as bilateral agreements) and the establishment of regional authorities (including, among other things, the nature of the relationship between strengthened regional authorities and local and state/territory governments.)

Regionally dispersed self-governance models have also been proposed (Ref 7). Regional service delivery agreements, developed for specific geographic areas, provide a potential mechanism for enhancing the regionalisation agenda - particularly by enhancing processes for the institutional coordination of service delivery at all levels but especially by linking local to regional structures. These could be used to define mutual organisational roles and obligations, outline respective funding sources and responsibilities, develop purchaser/provider arrangements, and establish agreed performance indicators and outcomes. The authors note that, among other things, one critical advantage of such agreements could be their use in setting down the rights and interests of traditional owners of land and other Indigenous residents of a region.

A different concept that emerged during consultation on this paper was to strengthen the local government functions of Indigenous councils in line with a phased approach towards recognition of Indigenous councils under the Local Government Act. This would require departments to relinquish some control functions in favour of a mentoring role, although current grant funding mechanisms may remain initially.

The issue of more appropriate governing/resourcing structures for Indigenous communities in Queensland (and elsewhere) remains a priority for the Queensland Government (in terms of accountability), for Indigenous communities (for self-determination and self-governance through appropriate and effective structures), and the Commonwealth Government and ATSIC (for structures that legitimate the traditions and cultures of Indigenous people).

In summary, sections 2.1 and 2.2 have indicated that Indigenous communities in remote areas are subject to a complex, many-layered system of governance. The system has never been planned as a whole, is subject to three levels of government, often of differing party-political persuasion, and has undergone substantial change in recent years. Within such a context, it is difficult to see how planned effective public health systems could have developed. While the capacity to develop effective public health systems may result from the changes that have taken place, this is by no means certain. The lack of systematic change planning for the transition to greater Indigenous self-governance, combined with the time it will take for community councils to develop more effective strategies and administrative capacities, suggest strongly that public health will suffer for some time to come.

2.3 Service delivery policy

Related to the topic of appropriate governance structures is the issue of how services may be best provided in a context in which Indigenous self-determination and economic empowerment are broader policy objectives.

A high degree of endemic inter-agency conflict among non-Aboriginal staff resident in remote Indigenous communities has been noted [Refs 8 & 9] making coordinated approaches to community service delivery almost impossible to achieve. This interagency tension is reported to be a factor which destructively "undermines the potential for community self-determination or self-management". A common vision for the community through coordinated inter-agency policy has not yet developed[Ref 10].

In one study of the relationship between perceptions of cultural differences and government service delivery in a remote Queensland Aboriginal community[Ref 10], the author identified problems among government personnel as including:

- sense of isolation and minority group status
- feelings of living inside a total institution
- lack of access to the facilities and choices routinely available in urban life
- lack of personal privacy
- balancing pressures of negotiating a credible professional existence with the tensions of personal adjustment to the lack of facilities, professional and social support
- managing cross-cultural social relations
- feeling safe in an unknown 'frontier' environment.

Although money is identified as an important incentive to service providers, tensions are described as overwhelming and morale is poor. Poor morale is at least in part attributable to the lack of incentives to promote Indigenous self-management through training programs and a common view about the impossibility of change and that 'Aboriginal residents were incapable of effectively operating the services'[Ref 10]. Respondents also reported an absence of systemic support from the parent service agency for alternatives for changing the present dynamics.

In many Indigenous communities, full-time paid employment is monopolised by non-Indigenous people. The employment of Indigenous people is an opportunity for practical progress to be made towards self-determination. The recent Queensland Health initiative of Environmental Health Worker positions in many Indigenous communities provides a potential model for other positions, although further support is required through a consistent local government award and professional recognition.

Service delivery policy is clearly a matter for employing authorities. The divisive problems evident currently suggest that service delivery policy could better address issues relating to the employment of non-Indigenous personnel (recruitment, selection, training, orientation, induction to the community and cultural environment, professional and personal support, performance monitoring of aspects of cross-cultural service delivery, workplace health and safety) and Indigenous personnel (education and training, employment opportunities, appropriate job design, career structures and awards).

2.4 Income and non-income poverty and health

Australia's Indigenous people are about two to three times more likely to be impoverished than the non-Indigenous population regardless of the measurement methodology used[(Ref 11)]. In 1996, the average income of Indigenous adults was about $189 per week for males (compared with $415 per week for non-Indigenous males) and $190 per week for females (compared with $224 per week for non-Indigenous females). Indigenous people were less likely to own their own home and less likely to have completed studies after school compared with non-Indigenous people. Indigenous people constitute 12 per cent of adults using the Supported Accommodation Assistance Program (SAAP) because of homelessness or risk of homelessness, even though less than 2 per cent of Australia's adult population are Indigenous people.

In examining the relative economic status of Indigenous Queenslanders between the 1991 and 1996 censuses[(Ref 12),] Taylor notes that the relatively low income status of Indigenous people remained effectively unaltered and welfare dependency remained high. In rural areas, increasing employment was linked to the sustained expansion of the Community Development Employment Projects (CDEP) and to the (now defunct) 'Working Nation' employment-related labour market programs.

The 1992 National Health Strategy[(Ref 13)] confirmed the strong correlation between socioeconomic status, income and health status among Australians with the increased prevalence of risk factors among people on low incomes strongly related to the increased incidence of disease and injury in that group. However, the *distribution* of health problems in Indigenous households is only weakly linked to income with high income Indigenous families only 1.2 percentage points less likely to experience long-term health problems than low income Indigenous families. Similarly, living in relatively affluent households is not an effective means for Indigenous Australians to avert negative experiences with the justice system, and overcrowded housing is an issue even for relatively advantaged Indigenous families.

Using the argument that Indigenous living standards are qualitatively and quantitatively different to other poor and rich Australians, Hunter [(Ref 4)] has proposed the metaphor that Australia contains three 'Nations'[6] – the rich, the poor and Indigenous Australians. His argument for this metaphor primarily centres on the multi-faceted nature of Indigenous poverty - both income poverty and non-monetary (such as health, housing, justice) poverty. Hunter argues that since poor non-monetary indicators of poverty are endemic among Indigenous households, it is inappropriate to focus solely on income poverty.

Hunter notes in particular that of all facets of Indigenous poverty, health stands out as a major concern. Long-term health problems are evident in one-third of Indigenous households in both low and high income groups. Access to health programs, housing and justice are as essential to improving Indigenous poverty as income.

[6] This follows on from Benjamin Disraeli's use of the term 'Two Nations' in 1845 to characterise the chasm between rich and poor in Victorian England.

The constituents of Aboriginal and Islander communities in remote, sparsely settled areas are among the poorest in Australia. The concept of 'locational disadvantage' is used to characterise such Indigenous communities not well connected to mainstream market economies.

In rural and remote Queensland, private sector income and revenue generating opportunities exist in mining, pastoral and tourism ventures. These tend to be localised in their effect, capital intensive rather then employment generating, highly dependent on resources and subject to market fluctuations (Ref 12) . Such ventures can take the pressure off alcohol retailing and the CDEP scheme. However, the extent to which this applies varies between communities (Ref 14) .

Another perspective to the concept of 'locational disadvantage' is provided by Taylor(Ref 15, pp163-184) who argues that, in Aboriginal terms, the move to outstations makes for 'locational advantage', as culturally and socially appropriate lifestyles can be pursued in conjunction with access to minimal government resources.

As Indigenous people return to homelands and small outstations develop in areas remote from services, labour markets and commercial opportunities, options to alleviate poverty (as measured by social indicators) are limited. In addition, mainstream measures of well-being, such as home ownership and low household population densities are either not options for Indigenous Australians (owing to residential location on communally-owned land) or are low cultural priorities (Ref 4, p 2) . However, Indigenous peoples have expressed aspirations to own their homes and there are several recent initiatives to develop strategies to increase home ownership, even on communally owned land. In addition, significant efforts are being made to correct the private housing market failure and resultant overcrowding through State and Commonwealth funding for public rental housing.

In returning to country, Indigenous cultures are being asserted increasingly. Martin(Ref 16) has noted that this assertion includes economic values and practices including particular forms of social relations which Aboriginal people have established to control the production, consumption and circulation of goods and services in a community economy. His research shows how cash and new organisational forms, such as enterprises, have been transformed by Aboriginal people to accord with their own values, particularly the emphasis placed on the accumulation of 'social' capital rather than purely 'economic' capital. That is, economic development should be understood as a process through which financial and other material resources can be brought to bear on maintaining and enhancing the viability of Aboriginal societies, rather than as one concerned solely with developing infrastructure and wealth. Martin notes that there is also considerable evidence for distinctive economic values and practices in rural and urban Australia which may well be incompatible with integration into the mainstream economy.

Similarly, Schwab(Ref 17) has also noted how sharing and reciprocity can be understood as a mechanism through which Aboriginal people display and confirm their social relationships with each other. Such sharing involves careful strategic decision-making and behaviours around kin networks which are quite different to non-Indigenous understandings of kinship. The cultural rules underpinning sharing and reciprocity are relevant to a broad range of policy issues, such as housing, and to poverty measurements.

The return to country and homelands by Indigenous peoples and the development of outstations are late 20th century movements which reflect the need to return to and strengthen Indigenous culture following past injustices. Assuming this to be an expression of Indigenous self-determination and an important stage in a cultural restoration process, the challenge for public health is to develop strategies to work within this context, to identify and monitor public health determinants and to design public health actions which are culturally and geographically specific.

An important challenge affecting the context in which public health programs are to be delivered is the development of appropriate governance structures, funding mechanisms and transfer payment arrangements which more adequately reflect the Government's self-determination agenda for Indigenous people. Current tokenistic Westernised governance models and fragmented 'silo' funding arrangements are inadequate to facilitate Indigenous leadership in dealing with the depth, complexity and intransigence of Indigenous economic and non-economic poverty.

2.5 Land tenure

The tenure of land on which many discrete Indigenous communities are located is governed by a number of Acts in quite complex legal arrangements.

Reserves
Under Queensland's protectionist and assimilationist regimes earlier this century, Aborigines and Torres Strait Islanders resided on reserves. Some reserves continue to exist under that tenure today.

Reserves were areas of Crown land[7] granted as leases under provisions of the *Land Act 1962* (see section 3.5 of this paper) by the Governor-in-Council for a designated public purpose - in this case, an 'Aboriginal purpose' - and managed by a State Government department. The *Aboriginals Protection and Restriction of the Sale of Opium Acts* of 1897 and 1901 contained legislative powers compelling Aborigines to be on reserves and requiring the superintendent's permission to leave. The *Torres Strait Islanders Act 1939* did not require removal of Torres Strait Islanders to reserves, but allowed for Island councils with local government functions. While the *Aborigines Act 1971* contained provisions to continue Government supervision and management, some restrictions were eased.

Deeds of Grant in Trust (DOGIT)
Between 1962 and 1988, a series of changes to the *Land Act* enabled this system to be replaced by a new system of Deeds of Grant in Trust (DOGIT). In particular, the *Land Act (Aboriginal and Islander Grants) Amendment Act 1982* and the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1984* provided mechanisms and controls to issue DOGITs for the benefit of Aboriginal and Islander inhabitants.

Unlike the lease system for former reserves, the DOGIT is regarded as inalienable freehold. This means that it cannot be bought or sold.

Under this system, land is granted in trust to a trustee who is usually, but not necessarily, an Aboriginal or Island council. The trustee may be any statutory or incorporated body, or an individual or group. Trustees are considered to be the land's owners for the purpose of legal proceedings.

[7] The term 'Crown land' is used in this document, reflecting its use in the legislation. The term 'State land' is now more commonly used.

DOGITs issued under the *Land Act 1994* may not be mortgaged, but DOGITs issued before the *Land Act 1994* may be mortgaged. Leases can also be granted with the approval of the Minister for Natural Resources.

Excluded from DOGIT land are State-owned improvements (apart from residences of authorised Indigenous residents) and the land on which they are located, as well as aerodromes, landing strips, ports, roads, stock routes, bridges and railways.

The Act specifically provides that land administered under the Act must be dealt with in a way that is not inconsistent with the *Native Title Act 1993* (Cwlth) (see section 3.8 of this paper) and the *Native Title (Queensland) Act 1993* (see section 3.9 of this paper). That is, any action such as reserving land, dedicating land as a road, granting land, issuing a lease, permit or licence, and so on, must be taken in a way that is not inconsistent with the Native Title Acts.

Perpetual leases

The *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* (see section 3.6 of this paper) enabled Aborigines, Torres Strait Islanders and other recognised community members in DOGIT areas to obtain a perpetual lease for land up to one hectare in size. For land over one hectare in size, an appropriate tenure could be obtained for the use to be made of the land.

The legislation was intended to promote individual land ownership, particularly for house-blocks, and free enterprise on larger holdings. One effect of the granting of perpetual leases was to undermine the inalienability of DOGIT land as control shifted from community trustees to individuals.

The Act separates structural improvements on land from the land itself. This is somewhat atypical as land and improvements are usually held by the same entity. The Act contains a provision for the lessee to purchase the improvements if the owner agrees to sell them. If the lessee is not purchasing the improvements, the lessee must pay rent, insure, and maintain the improvements in the condition, order and repair they are in at the commencement of the lease, fair wear and tear and damage by fire excepted.

With the enactment of the *Aboriginal and Torres Strait Land (Consequential Amendments) Act 1991*, the *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* was amended such that applications for leases could be made no longer. However, the *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* was not repealed and its provisions continue in relation to leased land and applications for leased land made before the enactment of the *Aboriginal and Torres Strait Land (Consequential Amendments) Act 1991*.

During the time when applications were able to be made, 208 leases were issued, and 207 still exist. However, many land lease applications approved by councils, which subsequently should have been issued, were not finalised. The result is that there are 268 Torres Strait applications and 88 mainland applications which have not been dealt with, despite the lack of discretionary powers in the Act. The current legal standing of the land that is the subject of unfinalised lease applications is unclear. Some applicants may believe they have been granted a lease on the rationale that they applied for it and it was approved by the council. Another view is that the land has been released from its tenure as DOGIT land and is currently Crown land awaiting the issue of a lease.

In some cases, new houses have been built on land, and people have been given residential tenancy, on land over which leases have been approved for another person. As leased land, a lease fee is payable to the Aboriginal or Island council. However, it does not appear that these have been charged.

The lack of clarity surrounding land tenure may have implications for jurisdiction, responsibility and management of a range of matters relating to water, waste and hazards in the built environment.

Land leased under this Act later became transferable land under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

Aurukun and Mornington Shires - lease land

The land which was leased to the Aurukun and Mornington Shire Councils under the *Local Government (Aboriginal Lands) Act 1978* became eligible for conversion to freehold Aboriginal land under the *Aboriginal Land Act 1991*. Although parts of Mornington have been transferred under this provision, much remains transferable.

With conversion of land to Aboriginal land under the *Aboriginal Land Act 1991*, land becomes rateable if used for residential or commercial purposes. In addition, the trustees are required to obtain the consent of the Aboriginal people particularly concerned with the land before granting an interest, such as an interest in a mining lease. This would allow the trustees the power to veto prospecting permits. Under this Act, a percentage of mining royalties would be payable to the grantees of land for the benefit of the people.

As discussed in section 1.2, a significant difference between Aurukun and Mornington local governments and other local governments is that the land in the council area is leased to council rather than being privately owned. This restricts its rateability.

Aboriginal land and Torres Strait Islander land

The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* (see section 3.7 of this paper) provide two mechanisms by which Indigenous people can acquire ownership of land - the transfer and claims processes. Under the transfer process, certain lands such as Indigenous Deeds of Grant in Trust and reserves, and the Mornington and Aurukun Shire leases can be directly transferred to the ownership of Indigenous persons. Under the claims process certain lands, including unallocated State land and national parks, can be declared claimable land, over which Indigenous persons can lodge and be granted a claim.

The inalienable freehold title that issues upon the transfer or grant of land under these Acts is the most secure form of title that can be given under Queensland law.

Following consultation and agreement, the grantees of claimed or transferred land may create an interest in transferred land by granting a lease or licence over all or part of the land for a period of less than 10 years. However, the land cannot be sold. In some cases, Indigenous people prefer to use the native title claim process to gain rights and interests. However, freehold ownership of land cannot be obtained through a native title claim.

The laws of the State apply to Aboriginal and Torres Strait Islander land. To allay any doubt, the *Aboriginal Land Act 1991* declares that, except as provided by that Act or any other Act, the laws of the State apply to Aboriginal land, persons and things on Aboriginal land, and acts and things done on Aboriginal land, to the same extent, and in the same way, as if the land were not Aboriginal land. A similar provision exists in the *Torres Strait Islander Land Act 1991*.

These Acts were pre-emptive of native title and the preambles give extensive acknowledgment to prior occupation of the land by Aboriginal and Torres Strait Islander peoples and to the ongoing spiritual, social, historical, cultural and economic importance of land. The preamble notes that the Queensland Parliament is satisfied that Indigenous peoples' interests and responsibilities in relation to land have not been adequately or appropriately recognised in law despite the establishment of reserves and DOGITs, and that this has contributed to a general failure of previous policies in relation to Indigenous peoples. These Acts were introduced as special measures to rectify the consequences of past injustices and to foster the capacity for self-development, self-reliance and cultural integrity.

The transfer of land under the Acts does not affect native title as provision is made in the Acts for the continuation of interests, such as native title, when land is transferred or granted. However, on some rare occasions, the transfer or granting of land can be delayed to allow proper discussions with all people with an interest in the land.

Thus, these Acts enable significant land holdings to be held by Indigenous persons as freehold title. To date, 78 parcels of land, being some 540,000 hectares consisting mainly of parcels of reserve land, have been transferred. Only one land holding has been successfully claimed and granted. The claimants of claimable national parks have rejected perpetual lease-back requirements and consequently, many claims have not progressed to final joint management arrangements under the Acts. This matter is currently being investigated by the Government.

It usually takes about 18 months for a transfer of land to occur. Land management issues are complicated and before a title can issue, the Department needs to ensure that all issues have been addressed. Extensive consultation with Indigenous people occurs to identify potential grantees. In addition, technical pre-title administrative matters, including ensuring that the land has dedicated access and is surveyed, are finalised before a title can issue.

Aboriginal and Torres Strait Islander land is not rateable unless used for commercial or residential purposes.

Native title

Native title is the rights and interests, acknowledged under traditional laws and customs, of Aboriginal peoples and Torres Strait Islanders in relation to land or waters where those people have maintained their connection with the land and where the title has not been extinguished by acts of government. The *Native Title Act 1993* (Cwlth) (see section 3.8 of this paper) aims to recognise and protect, to a practicable extent, the native title rights of Aborigines and Torres Strait Islanders.

The Act provides for a 'future act' regime in which native title rights are protected and conditions imposed on acts affecting native title land and waters. It gives certain procedural rights (such as the 'right to negotiate') to native title holders and native title claimants in relation to the doing of certain acts (such as the granting of mining leases) which may affect native title.

The Queensland Government has enacted the *Native Title (Queensland) Act 1993* (see section 3.9 of this paper), indicating its intention to participate in the national scheme for the recognition and protection of native title and for its coexistence with the existing land management systems. Queensland's Land and Resources Tribunal has assumed certain native title functions, such as determining native title claims and arbitrating matters in the right to negotiate process.

Indigenous Land Use Agreements (ILUA) are key negotiation mechanisms in achieving agreements registerable in the Federal Court. Registration by the National Native Title Tribunal enables ILUAs to become binding and provides legal certainty. The Queensland Government is strongly supportive of negotiated local agreements between councils and native title holders. Once in place, these negotiated agreements provide a vehicle for future development work of a local government nature.

Aboriginal/Torres Strait Islander Representative Bodies are authorised to represent the interests of native title holders and claimants in certain circumstances. These bodies can facilitate claims, assist in the resolution of conflicting claims, and represent recognised native title holders in future mediations or negotiations.

An Aboriginal/Island council and a Prescribed Body Corporate (PBC) may hold land and may negotiate agreements – the former as trustees of the land for the Indigenous people of the area and the latter on behalf of native title holders. As trustees, councils have a legal responsibility to manage the land and a duty of care for the land involved and responsibility for protecting and maintaining all improvements.

The Queensland Government has taken the view(Ref 18) that the granting of a DOGIT is a 'category D'[8] past act which does not extinguish native title. The Queensland Government's view is that:

- native title is not extinguished by the DOGIT, and the DOGIT remains an interest over the land following a determination of native title
- if a DOGIT ceases to exist, such as if land is transferred to a land trust under the *Aboriginal Land Act 1991*, native title may no longer be suppressed and the situation may change
- community development, including all council roles and responsibilities, can proceed legally
- past council acts are valid if done in accordance with the powers and authorities relating to land ownership and local government functions conferred on the councils.

Councils can legally develop anything necessary to provide good local government service delivery without the consent and formal approval of native title holders. This includes houses, roads, health services, schools, rubbish disposal and water-related infrastructure. However, they are required to consult with the traditional owners of the land. Where native title is proven, consultation may be through the relevant PBC 'in accordance with the customs and practices of the Aborigines/Islanders concerned'.

[8] The Native Title Act 1993 validates grants made before 1 January 1994 which were invalid because of the existence of native title. It validates Commonwealth grants and allows validation by states and territories of the following categories:
Category A: Freehold and certain leases
Category B: Leases not covered by category A (other than mining leases)
Category C: Mining leases
Category D: All other grants including licences and permits.

Councils are required to continue providing services to all residents. Similarly, holding native title over land where an Indigenous council is in place does not give native title holders exemption from local government authority. This means the exercise of native title rights is subject to council by-laws and regulations.

Of relevance to the PHLIHP, native title processes and mechanisms add a layer of interest in land – an interest which must be considered in water, waste and built environment developments. In practical terms, this imposes additional requirements for consultation.

For example, the Cape York Land Council, the Native Title Representative Body for the Kudu Yalanji people, is currently preparing a native title claim in the area of Mossman Gorge in the Douglas Shire. The community settlement is located on two titles – one is Aboriginal land (under the *Aboriginal Land Act 1991*) and one is freehold land. Large numbers of tourists also impact on the Mossman Gorge community's built environment, particularly as the road to Mossman Falls runs directly through the middle of the settlement. In addition, Mossman Gorge is directly adjacent to the Wet Tropics World Heritage Area and is in an environmentally sensitive area which includes a section of the Mossman River and rainforest covered hillslope. Clearing and other development required for the settlement and its infrastructure may be subject to State Government legislation and local government planning scheme and local laws. While the area of the settlement is excluded from the claim, there are ongoing negotiations regarding land tenure, settlement and usage which affect the settlement. While the issues of land tenure and land ownership are not problematic in themselves, the decisions will affect management of the community settlement planning area. A management mechanism may need to be negotiated with the stakeholders, including native title holders.

Yarrabah is another area where native title claims are pending. Yarrabah is an Aboriginal Council Area located 65 kilometres south of Cairns. Presently, three claims are registered, extending over the DOGIT area. This number of claims results from the law not recognising that historically the communities were mobile and more than one clan may have a cultural connection albeit at different times of the year. There are difficulties obtaining the traditional owners' consent with regard to infrastructure developments including water supply and housing. For example, running a pipe through land for water supply to residences may require numerous consents.

Summary

Several land tenure types are in place in Indigenous communities and these are very different from the privately-owned freehold land tenure familiar to people in Queensland's urban areas. Land is valued for reasons additional to its commodity value and is non-rateable except where chargeable local government services are provided such as in residential and commercially developed areas. Even where land has a market commodity value, it is inalienable from its owners through legislation. Thus, land in Indigenous communities does not operate as a basis for tradeable wealth. However, this does not legally prohibit land being used for wealth generating purposes from viable venture opportunities.

In addition, the existence of concurrent legal interests in land increases the complexity in dealings involving land. Consultations regarding developments must include all tenured stakeholders and this may increase the time and cost of consultation, although undoubtedly some complexity stems from poor misunderstanding.

A number of Government departments and other organisations are involved in aspects of land tenure. Primary administrative responsibility for the *Land Act 1994*, the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* lies with the Department of Natural Resources (DNR). Responsibility for the *Aboriginal and Torres Strait Land (Consequential Amendments) Act 1991*, and the *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* also involves DATSIPD as well an DNR.

There is also considerable misunderstanding and confusion about the separate nature of legislation concerning land tenure and Indigenous councils. This is exemplified by recurring references to 'DOGIT councils' – presumably a reference to Aboriginal councils and Island councils. The land in such council areas includes tenures as DOGITs, Aboriginal land, Torres Strait Islander land, perpetual leases and so on. Similarly, not all DOGITS are issued to Aboriginal and Island councils, and at least one DOGIT (at Eulo) does not have a corresponding Aboriginal council.

2.6 Local government revenue

Revenue sources

Across Australia, most local government revenue is obtained from rates and charges, government grants, and interest and loan sources. Table 1 indicates the proportions of revenue from these sources in Australia and in Queensland specifically in 1997-98.

Table 1: Australian and Queensland local government revenue sources 1997-98

	Australia	Queensland
Rates and charges	58%	47%
Government grants	23%	19%
Interest and loan sources	15%	19%
Public trading enterprises (net operating surplus)	4%	15%

Source: National Office of Local Government 1999, *Local Government National Report, 1998-99 Report on the Operation of the Local Government (Financial Assistance) Act 1995*

This pattern of revenue raising does not apply in Aboriginal and Island council areas.

In such areas:

- land is not typically constructed with high-value residential properties
- reserve land is non-rateable although utility charges may apply
- Aboriginal/Islander land in council areas is non-rateable unless used for commercial or residential purposes[9]
- there are few industrial or commercial enterprises/properties
- private ownership of housing is not a major form of property ownership
- the constituency of Indigenous council areas is among the poorest in Australia.

Rateability of land is also low in discrete Indigenous communities located within the geographical boundaries of local government areas and falling within the jurisdiction of that local government under the *Local Government Act 1993*. Table 2 indicates some of the circumstances of tenure of such communities and their liability for rates and charges.

As local government revenue is primarily derived from property rates, local government functions and services are oriented towards property, particularly outside the major metropolitan centres (Refs 14, 19 & 20) . Noting that rates are a potent symbol of the independence of local governments and the likelihood of ongoing local government identification with rate-payer interests, Sanders(Ref 14) suggests that it may well be inadvisable strategically for Aboriginal land owners to attempt to remove Aboriginal land from the rateable estate of local governments.

Some researchers(Refs 14 & 20) have reported on difficulties associated with the liability for rates among Indigenous people as Indigenous land ownership has increased. Clearly, local governments are concerned about their financial capacity to provide services to impoverished areas requiring significant injections of both capital and recurrent expenditure.

[9] However, under s 957(3) of the *Local Government Act 1993*, if part of a parcel of land is used for commercial or residential purposes and the remainder is not, the remainder is not rateable.

Table 2: Indigenous communities in local government areas: tenure and application of rates and charges

Tenure	Application of rates and charges
1. Reserves set aside under the Land Act	• Non-rateable Crown land (unless leased or granted a permit to occupy) • Utility charges apply if the trustees have requested services • Utility charges apply to State-owned land if occupied (eg. schools, police stations, employee housing) and services have been requested
2. Aboriginal land or Torres Strait Islander land	• Non-rateable unless used for commercial or residential purposes • Utility charges apply if the grantees have requested services
3. DOGIT land (This only applies to one land holding – Eulo in the Shire of Paroo.)	• Non-rateable Crown land • Utility charges apply if the trustees have requested services
4. Freehold land in shire towns	• General rate applies • Additional special, separate and utility rates and charges may apply
5. 'Squatter camps' in the local government area	• No basis to levy rates and charges

Aboriginal and Island council revenue

In contrast with the revenue patterns of local governments in Queensland and Australia, the main revenue source for Aboriginal and Island councils is Commonwealth and State Government grants. In 1997-98, Aboriginal and Island councils collectively received $112 million in State and Commonwealth Government Grants(Ref 5). These amounts represent over 70 per cent of total receipts of all councils from all sources. Other sources were canteen/other enterprises and levies/charges.

Twenty-two Queensland Indigenous councils also have established various types of enterprises such as canteens, fuel outlets, general stores, aged hostels, fishing operations and livestock husbandry.

However, it is noteworthy that the Auditor-General's Report to Parliament 1998-99 (Ref 5, p9) notes that enterprises (excluding canteens) resulted in net trading losses or minimal profits. Eight Aboriginal councils and five Island councils conducted canteen enterprises in 1997-98 with a net trading profit of $2.934 million for Aboriginal councils and $1.026 million for Island councils. The Auditor-General expressed the view that there is a need for serious consideration to be given to the long-term viability of many enterprises and the community benefits to be derived from the continuation of those enterprises as council businesses rather than as community service type operations (Ref 5, p34) . This reliance on canteen revenue to fund council operations is also problematic in the context of expressed community concern about the links between excessive alcohol consumption and health and social problems.

In addition, the level of gross debt to councils remained high at $9.4 million with poor prospects of recovery. This was particularly due to arrears in house rental charges and personal loans not controlled through signed loan agreements. Tables 3 and 4 indicate the amounts received by individual councils from grants and enterprises in 1997-98.

Table 3: Aboriginal councils' revenue sources, 1997-98

Aboriginal councils	Grants $'000	Enterprises $'000	Total* $'000
Cherbourg	9,418	233	11,247
Doomadgee	2,720	-	3,038
Hope Vale	7,082	415	9,645
Injinoo	4,395	382	6,100
Kowanyama	7,531	2,625	12,346
Lockhart River	4,422	1,169	6,218
Mapoon**	-	-	-
Napranum	6,565	1,225	8,662
New Mapoon	2,376	-	3,134
Palm Island	4,689	2,491	8,840
Pormpuraaw	7,130	1,602	9,627
Umagico	2,162	2,366	5,875
Woorabinda	4,113	1,344	6,304
Wujal Wujal	4,115	905	5,607
15. Yarrabah	13,175	1,402	16,249
Total	79,924	16,159	112,892

Source: Queensland Audit Office 1999, *Auditor General's Report to Parliament, Audit Report No. 8*

* Total includes sources of receipts other then grants and enterprises.

** Mapoon was not legally created until March 2000.

Table 4: Island councils' revenue sources, 1997-98

Island Councils	Grants $'000	Enterprises $'000	Total $'000
1. Bamaga Island Council	5,051	1,886	8,534
2. Badu Island Council	5,288	1,659	8,183
3. Boigu Island Council	2,283	116	3,418
4. Coconut Island Council	1,261	-	2,327
5. Darnley Island Council**	-	-	-
6. Dauan Island Council	1,245	3	1,563
7. Hammond Island Council	960	395	1,494
	1,271	-	1,502
8. Kubin Island Council	1,372	4	1,534
9. Mabuiag Island Council	1,667	648	2,475
10. Murray Island Council	1,993	369	2,595
11. Saibai Island Council	1,261	1,958	3,441
12. Seisia Island Council	2,709	-	3,711
13. St Pauls Island Council	181	-	218
14. Stephen Island Council	1,502	106	1,826
15. Sue Island Council	2,252	4	2,738
16. Yam Island Council	2,172	79	2,728
17. Yorke Island Council			
TOTAL	32,468	7,227	48,287

Source: Queensland Audit Office 1999, *Auditor General's Report to Parliament, Audit Report No. 8*

* Total includes sources of receipts other then grants and enterprises.

** The Darnley Island Council audit was unfinalised at the time the QAO Report was published.

The 1999 QAO report does not provide information on the breakdown of grants. However, the audit statements of individual Indigenous councils for 1998-99 show that collectively, Commonwealth grants totaled about $72.5 million and State Government grants totaled about $54.3 million, indicating that the Commonwealth Government is the most significant grant funding source.

As indicated in section 2.7, a myriad of Commonwealth and State Government departments provide both minor and significant grants to Indigenous councils and for Indigenous communities in mainstream local government areas. These are purpose-specific, not well coordinated, often overlapping, and require accountability to the funding source. Gaps between projects can lead to less than optimal use of infrastructure. Sustainability of operating costs and ongoing repair/maintenance costs have also at times been poorly considered. The use and application of appropriate technology and solutions have not been major considerations by the centralised, metropolitan-based decision-making and funding approach.

2.7 Government grants

Section 4 of this paper contains a breakdown by departmental source of Commonwealth and State grants received in 1998-99 by Indigenous councils and a brief itemisation of non-cash grants which were transferred as assets (rather than as receipts). The purpose of this current section is to overview the sources, purposes and size of such grants specifically made to the Aboriginal and Island councils.

2.7.1 Commonwealth Government funding

Commonwealth funds distributed through LGGC
The Commonwealth provided 100 Indigenous community councils nationally with $15.6 million in financial assistance grants in 1998-99.

In Queensland, Commonwealth funds are provided under the *Commonwealth Local Government (Financial Assistance) Act 1995* to local governments and Aboriginal and Island councils through the LGGC established under the *Local Government Act 1993* and administered by the DCILGPS. The LGGC's primary role is to make recommendations about the distribution of general purpose financial assistance grants made available by the Commonwealth in accordance with the 'uniform national principles'. It does this through two components – the fiscal equalisation component and the identified road component.

The former component can be increased by a council having less rateable land than another council, but other factors can outweigh this factor and all councils receive at least a minimum grant. The latter part of this grant is distributed on a formula using population and road length.

A formula is used to calculate the amounts of the Commonwealth Financial Assistance Grant to be distributed, on the recommendation of the LGGC, to individual councils. This formula uses ABS population data for local government areas. However, as DOGITs are not excised from local government areas, DOGIT populations are included in the published population attributed to the surrounding local government area. To account for this, the LGGC obtains population data for each Aboriginal and Island council area, and subtracts this from the surrounding local government population for the purpose of determining the respective grant. The DOGIT/council area populations are then used to determine the grants for the Aboriginal and Island councils.

As the 1996 census does not reflect accurately the populations of the DOGITs, the LGGC has in the past sought advice from a number of sources. In the past couple of years the LGGC has used ABS-supplied figures, but has asked the Island Coordinating Council (ICC) and Aboriginal Coordinating Council (ACC) to comment on the accuracy of the figures. For example, the Shire of Duaringa has a population of 8811, but for the purposes of the LGGC grant formula, 1059 (ABS population estimated at 1000 in 1996) is deducted and attributed to Woorabinda Aboriginal Council Area. A full listing of the population estimates used by the LGGC and the ABS 1996 census figures is presented at Appendix 1. Appendix 2 indicates the amount of Commonwealth Financial Assistance Grants distributed through the LGGC in 1999/2000.

Other Commonwealth Government departments

In addition to the untied financial assistance grants distributed through the LGGC, the Commonwealth provides current and capital purpose payments directly to local governments for specific purposes related to Commonwealth programs. This is intended to support the work of local governments in providing child care, aged care services, disability services, natural disaster relief, training for Aborigines and local government performance improvement. Section 4 of this paper itemises such grants to each Indigenous council for 1998-99.

The main Commonwealth grant sources are:

- The Office for Aboriginal and Torres Strait Islander Health Services (OATSIHS) in the Department of Health and Aged Care (DHAC) administers funding for primary health care, mental health and substance abuse prevention, mainly through community-based Aboriginal Medical Services (AMS)[10].
- The Department of Education, Training and Youth Affairs (DETYA) administers Indigenous educational assistance programs such as ABSTUDY.
- The Department of Family and Community Services (DFACS) operates the Aboriginal Rental Housing Program which allocates funds via the Queensland Government.
- The Department of Employment, Workplace Relations and Small Business (DEWRSB) is responsible for mainstream labour-market policies affecting Indigenous Australians and the new Indigenous Employment Program.
- Environment Australia is responsible for administration of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.
- The Department of Social Security (DSS) provides small grants for employment of a community DSS agent.

Project funding

The Commonwealth Government funds a network of Aboriginal Policy Officers and the Aboriginal Local Government Reference Group. In 1998-99, it also funded six new projects nationally at a total cost of $462,000. The Queensland project is "Regional Refuse Disposal in a Sensitive Environmental Area" which aims to provide an economical, environmentally acceptable method of refuse disposal in a particularly sensitive area adjacent to Wet Tropics Heritage areas. (This is a joint initiative of three local governing bodies – Wujal Wujal Aboriginal Council, Cook Shire Council and Douglas Shire Council.)

[10] In 1995, ATSIC and DHAC signed a Memorandum of Understanding to provide for involvement of ATSIC's elected arm in policy development and program delivery on Indigenous health matters.

ATSIC

The most significant Commonwealth Government funding to local governments is sourced through ATSIC and the Torres Strait Regional Authority (TSRA). Section 4 of this paper provides information which indicates that ATSIC is the most significant funding source for Indigenous council areas. In addition, ATSIC funding is expended on Indigenous communities in other local government areas.

The 1999-2000 budget administered by ATSIC is about $1 billion. About two-thirds of the budget is spent on the Community Development Employment Projects (CDEP) and the Community Housing and Infrastructure Program (CHIP). This funding role does not remove the responsibility of other government agencies to provide services to Indigenous people, with funds intended to supplement rather than replace basic services. However, ATSIC claims that, in many areas, the programs have substituted for basic service delivery that is more properly a jurisdictional responsibility(Ref 21, p11).

State, territory and local governments have prime responsibility for providing public and community housing and essential infrastructure to residents in need. CHIP aims to supplement this to address the backlog of housing and infrastructure problems. Funds are provided to community organisations, community councils, and state and territory governments. ATSIC has bilateral agreements with most states/territories to pool funds. However, at the time of writing, negotiations have not concluded with Queensland.

The Community Housing and Infrastructure Program builds and repairs houses and installs water supplies, sewerage, roads and other infrastructure. In 1998-99, ATSICs CHIP expenditure was $231.5 million. About $38 million was expended in Queensland - greater amounts were expended only in the Northern Territory ($67 million) and Western Australia ($57.5 million).

This work is often undertaken in partnership with communities through Indigenous Housing Organisations which own about one-third of all housing rented to Aboriginal and Torres Strait Islander people. Areas of very high need are targeted through the National Aboriginal Health Strategy (NAHS). CDEP workers are sometimes involved in constructing and maintaining housing and infrastructure and in the provision of municipal services.

ATSIC also operates a self-funding home loans scheme to assist first home buyers with low to middle incomes and modest deposits. In 1998-99, about $12 million was expended in Queensland, second only to New South Wales with $16.5 million. This program contributes to social and economic empowerment and the creation of an economic base that can be passed on to future generations.

In remote areas, the CDEP is often the only alternative to employment. CDEP accounts for about one quarter of Indigenous employment. In 1998-99, CDEP expenditure nationally was about $378 million, with $78 million expended in Queensland. CDEP expenditures were higher in Western Australia with about $111 million and in the Northern Territory at $97 million(Ref 21).

A matter warranting further consideration is the nature of the relationship between ATSIC and Indigenous councils, particularly given the significance of the Commonwealth's financial contribution through ATSIC, and ATSIC's level of planning and decision-making autonomy. With the exception of three councils (Doomadgee, Woorabinda and Palm Island), councils administer the CDEP locally. It has been suggested during consultation for this paper, that the opportunity cost of the Indigenous council role as 'service provider' rather than 'purchaser', may be a more strategic focus on community leadership and planning. (This issue is discussed in section 2.1 of this paper.)

2.7.2 State Government grants

In Queensland, the State Government provides a range of grants to local governments. In 1997-98, local governments in Queensland received $193 million from the State. The two major focus areas of total grant funding of $420 million were transport/ communications and housing/cultural amenities.

Grants are distributed to Indigenous councils from a range of Queensland Government departments. The major contributing State Government departments are:

- Department of Aboriginal and Torres Strait Islander Policy and Development (DATSIPD)
- Department of Public Works and Housing (DPWH)
- Department of Communication and Information, Local Government, Planning and Sport (DCILGPS).

Department of Aboriginal and Torres Strait Islander Policy and Development

The main grants provided by DATSIPD to support local governance functions are as follow:

- the Aboriginal and Torres Strait Islander Infrastructure Program (ATSIIP) to provide essential infrastructure and related works to Aboriginal and Torres Strait Islander communities to enhance environmental health and support the promotion of social well-being and self-determination (about $25 million in 1999-2000)
- the Financial Accountability Improvement Program (FAIP) to assist with meeting financial accountability obligations
- the Motor Vehicle and Heavy Equipment Replacement Program (MVHERP) for infrastructure maintenance and development and essential local government services
- State Government Financial Aid (SGFA) (about $19 million per annum) to assist the 32 Indigenous councils to meet costs associated with the provision of local government services such as water and sewerage.

Department of Public Works and Housing

Aboriginal and Torres Strait Islander Housing is a discrete service area within DPWH providing rental housing specifically for Aboriginal and Torres Strait Islander people. Rental housing is managed by either the department or Indigenous councils. There are two major facets of program delivery – the rental program and the community program.

As indicated earlier, the Commonwealth contributes Aboriginal Rental Housing Program (ARHP) funds of $25.227M annually under the *"Commonwealth State Housing Agreement 1999-2003* (CSHA). In 1996, the State and Commonwealth Housing Ministers agreed to pursue Indigenous Bilateral Agreements on housing and related infrastructure to underpin partnerships between Indigenous people, the State, Commonwealth and ATSIC. In January 2000, a separate Torres Strait Bilateral Agreement on Housing and Infrastructure was signed by the TSRA, ICC, State and Commonwealth Governments. It is now being implemented and includes, among other things, a Torres Strait Health and Infrastructure Committee. A Housing and Infrastructure Agreement for mainland Queensland is being developed with ATSIC.

These Agreements provide a framework for the needs-based planning, coordination and delivery of housing and related infrastructure, with a key objective of improving environmental health outcomes for Aboriginal and Torres Strait Islander people.

In 1999-2000, Aboriginal and Torres Strait Islander Housing (ATSIH) commenced a five-year capital works plan for Indigenous council areas, at a cost of $173 million. The plan focuses on areas of priority need. A total of $11.4 million of Commonwealth funding is allocated annually from the CSHA funds towards meeting the costs of the plan.

These funds are provided as cash grants to the councils and are expended by councils either through their own or contracted project management services, with approval for progress payments authorised by Aboriginal and Torres Strait Islander Housing's Northern and Southern Construction Units.

Housing need is established on the basis of information from:

- the ACC 1995 Housing Needs Assessment and ACC Housing Needs Monitor
- the 1996 ICC Torres Strait Housing Report
- the 1997 ATSIH Construction (Northern) Survey
- the ATSIH 1997-98 Annual Plan
- ATSIH records
- the ATSIC Needs Survey
- community consultation
- the 1997-98 Funding Agreements for the 32 Aboriginal and Island councils and Aurukun and Mornington Shire Councils.

The current plan aims to address:

- the total housing needs of Palm Island, Aurukun, Kowanyama, Mornington, Badu Island, Mer Island and Saibai Island
- the total housing need of all Northern Peninsula Area communities (which is the site of a coordinated Demonstration Project) – Bamaga, Seisia, Injinoo, New Mapoon and Umagico
- 60 per cent of housing needs of Yarrabah
- the priority housing shortlist in the remaining 21 communities
- the development, establishment and implementation of long-term tenancy and asset management capacity within Aboriginal and Torres Strait Islander communities to increase the viability of housing programs by:
    - improving the effectiveness of community organisations as managers of community housing services
    - assisting councils to establish and implement community housing management policies and procedures
    - assisting councils to establish processes which will lead to increased rent collections and improved housing repairs and maintenance programs

- assisting councils to improve assets management and planning
- assisting councils to develop systems which will provide improved tenancy and asset information recording and data collection
- improving access and participation in community housing administration and management training and skills development opportunities for council delegates, housing staff and community members
- integrated employment opportunities and training activities for Aboriginal and Torres Strait Islander people.

Department of Communication and Information, Local Government, Planning and Sport (DCILGPS)

Commonwealth funding to local governments is channelled through the Local Government Grants Commission (LGGC) administered by DCILGPS and is the single largest component of DCILGPS funding (see section 4 and appendix 2 for funding amounts).

The DCILGPS provides funding for water, sewerage, community facilities, roads and drainage. The level of subsidy varies from 10 per cent on some items up to 100 per cent for water and sewerage in smaller communities. Local governments may access these funds for services to Indigenous communities or any other communities within their areas. For example, Cook Shire was recently granted $3.1 million to sewer Coen, and the provision of water in Hopevale was jointly funded with ATSIC and DATSIPD (through ATSIIP). Over recent years, specific 'one-off' grants/financial assistance have been provided for infrastructure such as water supply and sewerage for Thursday Island (Torres Shire) and bitumening of town roads and drainage in Aurukun and in Gununa on Mornington Island.

In recognition of the non-rateability of land in Aurukun and Mornington Shires, an annual operating grant is paid through DCILGPS to assist in providing local government services. The grant can be used for any lawful capital or recurrent purpose of local government. The grant is currently $1.1 million for each council per annum.

Other departments

Other departments contributing less significant amounts include:

- Arts Queensland
- Department of Emergency Services (DES)
- Department of Employment, Training and Industrial Relations (DETIR)
- Queensland Health (QH) for Home and Community Care (HACC)
- Department of Main Roads (DMR)
- Department of Natural Resources (DNR)
- Department of Tourism, Sport and Racing (DTSR)
- Gaming Machine Community Benefit Fund (GMCBF)
- Environmental Protection Agency (EPA) for a Great Barrier Reef Marine Park project
- State Library
- Department of Justice and Attorney-General (DJAG).

2.8 Land management regimes

In Queensland, two Acts provide for additional environmental protection measures in specified geographical areas in which Indigenous communities are settled. These areas are the Wet Tropics World Heritage Area and the Great Barrier Reef Marine Park.

A number of other Acts, including the *Environmental Protection Act 1994*, provide for environmental protection and management in Queensland, but these are not covered in this paper as they apply generally to Queensland rather than to specific geographic areas. In the PHLIHP, such Acts are considered in the review of 'public health' laws rather than in this review of contextualising laws. However, the *Wet Tropics World Heritage Protection and Management Act 1993* and the *Great Barrier Reef Marine Park Act 1975* (Cwlth) do provide comprehensive management regimes for specific areas.

Wet Tropics World Heritage Area

The *Wet Tropics World Heritage Protection and Management Act 1993* (see section 3.10 of this paper) establishes almost 900,000 hectares of the north-east Queensland coast between Cooktown and Townsville as a World Heritage Area. Rainforest Aborigines are the traditional custodians of the region. There are 16 language groups with cultural connections to the land in and near the area, each with customary obligations for management of their country.

The Area contains nearly 700 parcels of land including private land, national parks, state forests and a range of leases. Fourteen local governments, including two Aboriginal councils - Yarrabah and Wujal Wujal, have part of their council area within the World Heritage Area. The communities of Mona Mona[11] and Buru[12] lie entirely within the Wet Tropics Area. The Aboriginal communities at Mossman Gorge and Jumbun[13] in Cardwell Shire border the area. There are no non-Indigenous communities in the Area.

The World Heritage Area is superimposed over existing land tenures and does not change tenure or ownership. Day-to-day management of the Area is the responsibility of the individual land holders and land management agencies such as QPWS, DNR, local governments and Aboriginal councils.

About 80-96 per cent of the Area is potentially claimable by a number of Aboriginal groups under the *Native Title Act 1993* (Cwlth). Sixteen claims have been lodged, but none has yet reached final determination stage.

[11] The people of Mona Mona were removed and sent to missions earlier this century. However, now the original residents and their descendants are returning home and the community is re-establishing. ATSIC infrastructure funding has been delayed due to complex tenure issues.

[12] Buru is land leased as a cattle lease which is being developed as a settlement.

[13] At Jumbun, the Australian Army is the project manager overseeing environmental health works including a sewerage treatment plant, water supply and housing stock refurbishment. Primary administrative responsibility for the Act lies with the Wet Tropics Management Authority which reports to the Minister for Environment and Heritage.

The *Wet Tropics Management Plan 1998* (the WTM Plan), as subordinate legislation to the Act, is the principal mechanism provided by the Act to coordinate and regulate activities within the World Heritage Area. The WTM Plan provides controls which prohibit activities and provide exemptions, with or without a permit, from prohibitions in different zones. Of relevance to the PHLIHP, the building of structures is generally prohibited, but is allowed in specified zones. Operating existing community infrastructure is allowed. Building a residence is an activity allowed by permit. Landholders of freehold title and native title holders may also be issued with permits for domestic activities on their land including, among other things, building a residence and extracting water for domestic use.

The WTM Plan requires that decision makers take into account social, economic and cultural effects of development and the need of the community for the proposed activity. An independent peak Aboriginal representative group, Bama Wabu, is a coalition of Aboriginal tribal and cultural corporations from the region that advises the Wet Tropics Management Authority (the Authority) on issues in common. In addition, the Girringun Elders and Reference Group Aboriginal Corporation represents the Jiddabul, Waragamay, Nwaigi, Warangnu, Banjin and Girramay people on a range of issues including native title, cultural heritage, employment and training and negotiations about land use and protected area management with shire councils and government agencies.

The WTM Plan provides for 'management agreements' as a tool for reconciling the native title and community development aspirations of Aboriginal residents within the Area with the natural values and conservation and protection interests of the Authority.

In addition, permitting protocols have been developed explaining which of the activities must be referred to Aboriginal people for consultation. Where consultation with Aboriginal people is required, the Authority asks permit applicants to consult with Aboriginal people for the country concerned. This provides permit decision makers (the Authority, DNR or QPWS) with information about the nature of native title, cultural, social and/or economic impacts the proposed activity may have on Aboriginal people.

Wujal Wujal, Mona Mona and Buru have recently undertaken planning for infrastructure in the areas of waste, sewerage and fresh water and encountered the requirements of the *Environmental Protection Act 1994*, the *Wet Tropics World Heritage Protection and Management Act 1993* and the *Wet Tropics Management Plan 1998*. Two management agreements have been negotiated successfully between the Authority and the Mona Mona community in relation to community development and resource issues. However, negotiations have not been as successful to date in other regions. Aboriginal communities that have undertaken such planning have had additional costs imposed on them in order to meet the requirements of the Act and WTM Plan.

The community of Wujal Wujal, a predominantly Aboriginal community in the Daintree Rainforest has reportedly become frustrated with the legal requirements, lengthy time-frames and multi-layered approval process required to obtain approvals for developments. The *Wet Tropics World Heritage Protection and Management Act 1993* is one of the implicated Acts. The community also feels disempowered by the extent to which decisions are made outside of the community. Additional costs were imposed on the community to carry out consultancy work required of the approval process. Further, it is reported that health problems in community members have continued to deteriorate during these protracted processes. It is also reported that future development is greatly restricted in Wujal Wujal because of the requirements of the Act and the community is experiencing significant conflict both internally and externally (in relation to State Government officials) as a result of the bureaucratic requirements and processes.

Great Barrier Reef Marine Park

The *Great Barrier Reef Marine Park Act 1975* (Cwlth) (see section 3.11 of this paper) establishes the Great Barrier Reef Marine Park and a statutory authority - the Great Barrier Reef Marine Park Authority (located in Townsville) - to provide for its control, care and development through zoning plans and management plans. The park is the world's largest marine protected area covering some 345,000 square kilometres. Primary administrative responsibility for the Act lies with the Authority and the Commonwealth Department of the Environment and Heritage.

All sections of the park have zoning plans. Zoning plans include objectives and state purposes for which the zone may be used or entered, including activities that are allowed/not allowed and that require a permit. Zoning plans are legally enforceable subordinate legislation and penalties apply for breaches.

The ecosystems of the Great Barrier Reef are reliant on a suitable water quality environment which can be adversely affected by terrestrial run-offs which discharge nitrogen and phosphorus. Reduction in nutrient loads entering the park is one of the most important water quality management issues. Discharge of sewerage effluent and stormwater is problematic, while other impacts stem from the numerous aquaculture developments, the risk of oil spills and poor waste water ballast management.

Urban sewerage discharge in river systems that flow into the waters adjacent to the park may affect ecosystems. However, if outfalls lie outside the park's jurisdictional boundary, there is a need for a complementary policy between the Authority and community authorities.

Palm Island is an isolated Indigenous community and Aboriginal council situated in the Great Barrier Reef Marine Park. Located 70 kilometres north-east of Townsville, it is only accessible by air or sea. One of the significant problems is with waste management of waste from residents and from non-Indigenous agencies providing services on Palm Island. The Environmental Protection Agency has advised that the current waste disposal site is unacceptable in terms of the environmental protection licensing regime. The waste management problems consequently have an adverse impact on the Great Barrier Reef Marine Park. This precipitated urgent long term strategy development for the management of solid waste on Palm Island in 1999.

The Aboriginal council on Palm Island has the authority to make local laws. However, the laws are not monitored and no employee has the authority to enforce the laws. This issue is being addressed by a current review of governance issues with DATSIPD.

Threats to water quality from oil spills, poor waste water ballast management and aquaculture developments are of concern because use of and access to the Great Barrier Reef for hunting and fishing is critical to the subsistence economy of local Indigenous people and cultural traditions. There are current concerns by Indigenous people about the poor health of the Great Barrier Reef waters and subsequent effects on the health and well-being of people and families. (A related problematic issue concerns the permitting system for hunting turtle and dugong – both critical to the cultures and physical health and well-being of Indigenous people.)

These issues are relevant to all Indigenous peoples who access the Great Barrier Reef including the Aboriginal council areas of Yarrabah, Wujal Wujal, Lockhart River and Hopevale, as well as Palm Island.

3 Review of Legislation

3.1 The *Local Government Act 1993*

Main provisions relevant to the PHLIHP
The objects of Queensland's *Local Government Act 1993* include:

- providing a legal framework for an effective, efficient and accountable system of local government
- recognising a jurisdiction of local government sufficient to allow a local government to take autonomous responsibility for the good rule and government of its area with a minimum of intervention by the State
- providing for community participation in the local government system
- defining the role of participants in the local government system
- establishing an independent process for ongoing review of certain important local government issues.

The Act replaced the *Local Government Act 1936* which, while providing councils with a general competence power, had as a primary purpose the provision of a legislative framework for supplying basic community infrastructure and property-related services. A greater emphasis was given in the new Act to the emerging roles of councils in social, economic and environmental matters.

The 1993 Act establishes the various entities and processes of the local government system empowered to perform jurisdictional responsibilities. Local governments are given wide law-making and decision-making powers to carry out their functions. However, the State retains the power to intervene in cases of statutory conflict or in the public interest.

The Local Government Grants Commission (LGGC) is established by the Act. Its main function is making recommendations concerning the distribution of the Commonwealth Financial Assistance Grant and to hold inquiries in that regard. The making of grants by the LGGC applies to local governments constituted under this Act, as well as to Aboriginal and Island councils and to the Shire Councils of Aurukun and Mornington.

Local governments are enabled by this Act to levy rates. This matter must be decided at the annual budget meeting and rates are fixed for the whole of the year. While other rates and charges are discretionary, every council must make a general rate - either a single rate with general application or a differential general rate[14] - to raise revenue from ratepayers for the purpose of discharging its functions. A minimum general rate levy can be set. Councils also have general powers to fix charges for the supply of goods and services or for regulatory approvals. Councils can fix these charges at any time.

Some land in local government areas is deemed to be non-rateable. Non-rateable land includes, inter alia, Aboriginal land under the *Aboriginal Land Act 1991*, and Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*, unless used for commercial or residential purposes.

Section 971 of the *Local Government Act 1993* allows local governments to make 'special rates and charges'. These are levied on particular identified land for the provision of a service that is of special benefit to that land or its occupiers.

[14] Differential general rates are based on categories of land.

Councils tend to use this where the affected ratepayers support its use to fund additional services.

Section 972 allows local governments to levy 'separate rates and charges' on all rateable land in an area to raise revenue for a particular purpose that is of benefit to the whole area, such as an environmental levy.

Under section 973 of the Act, local governments are able to levy 'utility charges' for water, gas, sewerage and cleansing. With the exception of cleansing charges, utility charges may be levied on vacant land as well as occupied land. These are fundamentally intended to ensure that people pay for services actually provided.

Section 974 authorises local governments to set charges for any service or facility they provide. The intent here is to ensure they are reimbursed for the costs of providing a service or facility.

Local governments may make local laws to regulate activities in their area. Local laws may also provide for the making of a subordinate local law to assist implementation. 'Model local laws' are laws that are developed and gazetted by the State Government as suitable for adoption by local governments.

Application of the Act to the Aboriginal and Island councils
Unless otherwise specified, only specific provisions of the *Local Government Act 1993* apply to Aboriginal and Torres Strait Islander councils constituted under the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*. These provisions are:

- Chapter 2 'The local government system' - Part 2 'Joint local governments' and Part 3 'Joint action by local governments'
- Chapter 3 'Interaction with the State' - Part 3 'Local Government Grants Commission'.

Chapter 2, Part 2 'Joint local governments' allows the State to declare the whole or part of two or more local government areas to be a joint local government area. A joint local government, consisting of representatives of the component local governments, is then established for that area. The specific purpose(s) of the joint local government is specified in a regulation. If an Aboriginal or Island council becomes a component of a joint local government, its rights and responsibilities would be determined solely by reference to the *Local Government Act 1993* in the same manner as any other local government.

The provision in the Act for joint local government areas to be established for a specified purpose suggests potential for economies of scale and for reducing duplication of effort. This provision has never been used, although its use has been contemplated on occasions. This remains a potential mechanism for achieving economies in some areas where geographic and demographic factors support communities engaging in joint ventures with a more 'regional' perspective.

Chapter 2, Part 3 'Joint action by local governments' enables joint responsibility and action by local governments in relation to bridges, roads and other infrastructure built along the boundary of two or more local government areas. The local governments are required to enter into cooperative arrangements for exercising their jurisdiction. Joint standing committees are established to enable cooperation. Chapter 3, Part 3 'Local Government Grants Commission' enables the LGGC to make recommendations to the Minister about the allocation of financial assistance to local governments and to Aboriginal and Island councils.

3.2 The *Local Government (Aboriginal Lands) Act 1978*

Main provisions

The *Local Government (Aboriginal Lands) Act 1978* provides for the creation of local governments at Aurukun and at Mornington Island. Under this Act, the Councils of the Shires of Aurukun and Mornington are established as local governments within the meaning of the *Local Government Act 1993*, and are deemed to be constituted under that Act with the functions, powers, duties and obligations of a local government. The provisions of the *Local Government Act 1993* apply to the declared areas and shires and the councils constituted for those shires. The councils may be dissolved under the *Local Government Act 1993* after consultation between the appropriate State and Commonwealth Ministers.

Leased land

These former reserves were de-gazetted and established as shires with 50-year leases over the land, subject to conditions and reservations. All land, referred to as the 'demised land', is deemed to be held in trust for the benefit of persons who reside on the land. The lease may contain provisions to preserve the traditional rights, use and occupancy of the demised land for the benefit of Aborigines who reside there.

Parts of the demised land are set aside for 'prescribed public purposes' such as departmental and official purposes, educational institutions or purposes, health purposes and/or hospitals, and police purposes.

Councils are restricted in their power to sublet or subdivide land, mortgage or sell their interest, or grant a licence to occupy or other right to exclusive possession.

Under the lease arrangements, Aborigines are permitted limited hunting and gathering rights, particularly for personal or domestic consumption or use.

The Crown reserves the right to all minerals and petroleum as well as rights of entry to mine these resources.

Entry into shires

The Act provides that people are not to be in the shires unless authorised by the Act or local laws of the respective councils. Certain people are authorised to enter, reside in and to be in the shires including, among others, Aborigines and their spouses and descendants, people exercising lawful functions and powers, government representatives, and trustees or lease holders. The councils may make local laws that authorise or restrict certain persons' entry or residence in the area.

Law and order in shires

Aboriginal police are appointed by the shires to maintain peace and good order in the shires. Aboriginal police may exercise powers conferred by this Act or local law of the Councils.

Control of possession or consumption of alcohol at Aurukun

The Act contains extensive provisions to control alcohol being brought into Aurukun, deter illegal selling of alcohol, and minimise alcohol-related disturbances. These Act provides a legal framework for the declaration of places as controlled places or dry places to control the quantity or type of alcohol that may be possessed or consumed in Aurukun Shire, and the establishment of a decision-making body, the Aurukun Alcohol Law Council, recognised and operating under Aboriginal tradition.

3.3 The *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*

Main provisions

The *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* provide for support, administrative services and assistance for Aboriginal and Torres Strait Islander communities resident in Queensland, and for management of lands for use by those communities. While one Act concerns Aborigines and the other concerns Torres Strait Islanders, the provisions of the two Acts mirror each other.

These Acts were initiated in response to pressure from Indigenous groups for greater self-determination for Indigenous communities. Before these Acts, the communities were administered by a State Government department while the existing legally-constituted community councils operating on reserves, missions and communities had a primarily advisory role.

The Act provides for a regulation to declare a part of the State to be a 'council area' and for an Aboriginal or Island council to be established for each council area. Under the Community Services Acts, the councils were vested as trustees of DOGIT land granted under the *Land Act 1964* and given full authority for administration of the communities which had existed as reserves and missions.

Aboriginal and Island councils are constituted as bodies corporate. As bodies corporate, the councils have perpetual succession and are capable of suing and being sued, of holding and dealing in real and personal property, and other acts allowed by law of bodies corporate. This is the same as for local governments constituted under the *Local Government Act 1993*.

At present, there are 32 councils established under the two Community Services Acts - 15 Aboriginal councils and 17 Island councils (see Appendix 1 for a complete list). The Governor-in-Council may hold inspections, investigations and inquiries, and may dissolve Aboriginal and Island councils in some circumstances and appoint an administrator.

When an Aboriginal or Island council assumes the discharge of the functions of local government of an area that forms part of a local government area within the meaning of the *Local Government Act 1993*, the local government ceases to have the functions of local government for the area and the local laws cease to have effect.

Resident constituents enrolled on the voters' roll elect Aboriginal/Island council members for four-year terms. People who are enrolled as voters for the purpose of these two Acts are not entitled to vote in local government elections. This is the case even if the area forms part of a local government area under the *Local Government Act 1993*.

Functions of Aboriginal and Island councils

Each Aboriginal/Island council discharges the functions of local government for the area for which it is established and is charged with good rule and government in accordance with the customs and practices of the Aborigines/Islanders concerned.
Councils may make by-laws which adopt local laws, and enforce their observance.
Councils may make by-laws regulating and controlling the possession and consumption of alcohol, and for promoting, maintaining, regulating and controlling:

- the peace, order, discipline, comfort, health, moral safety, convenience, food supply, housing, welfare
- the planning, development and embellishment of the area
- the business and working of local government.

Matters on which an Aboriginal/Island council may exercise its powers and discharge its functions include:

- provision, construction, maintenance, management, control and regulation of the use of roads, bridges, viaducts, culverts, baths and bathing houses, and associated works
- health, sanitation, cleansing, scavenging and drainage, the removal, suppression and abatement of nuisances, public conveniences, water conservation, agricultural drainage, village planning, subdivision of land, use and occupation of land, building, use and occupation of buildings, protection from fire, boundaries and fences, disposal of the dead, destruction of weeds and animals
- anything that local governments are required to do by any other Act (other than the *Local Government Act 1993*).

Where any Act, other than the Local Government Act 1993, requires or authorises a local government within the meaning of the Local Government Act 1993 to do anything (other than the mere making available of information), then, for the purpose of applying that other Act, the expression 'local government' is deemed to include Aboriginal and Island councils, and the Aboriginal/Island council for the area shall be deemed to be the local government for the area.

Area rate and other charges

- Aboriginal and Island councils may make and levy a rate upon such basis as is prescribed by council by-laws, and may impose fees, charges, fares, rents and dues in respect of any property and service which enable it to discharge and exercise its functions and powers.

- However, the main land tenure is DOGIT land which is non-rateable unless used for commercial or domestic purposes. An alternative mechanism of levying a 'charge on residents of residential premises' is currently being used by a number of Aboriginal and Island councils. The Acts were amended in 1999 to clarify the legality of this provision. This charge is used to finance services such as water and sewerage.

By-law enforcement

Police officers have and exercise the same functions as are exercised in any other part of Queensland. In addition, Aboriginal/Island police may be appointed to maintain peace and good order in relation to an Aboriginal/Island council's by-laws. Aboriginal/Island police may also be charged with responsibilities for ambulance, firefighting and emergency services.

Aboriginal/Island Courts (constituted by resident Aboriginal/Torres Strait Islander justices of the peace) may be constituted to exercise jurisdiction in matters relating to Aboriginal/Island council by-laws, but not Commonwealth or State laws. These matters include breaches of by-laws and disputes. The Aboriginal/Island Court's jurisdiction extends to any person, whether Aboriginal/Islander or not, who is in or enters the area. The Governor-in-Council may appoint stipendiary magistrates to inspect the records of the Aboriginal Court and advise on the harshness or leniency of sentences.

Councils can also appoint authorised officers with prescribed powers to protect the natural and cultural resources of the area. Authorised officers may inspect, examine or make inquiries, and stop vehicles or vessels suspected of being used to commit a breach of the by-laws.

Aboriginal Coordinating Council and Island Coordinating Council

The Aboriginal and Island Advisory Councils existing at the commencement of these Acts are continued in being under the Community Services Acts as the Aboriginal Coordinating Council (ACC) and the Island Coordinating Council (ICC). These are constituted by the chairpersons of the Aboriginal/Island councils and one other member from each council. Among other things, the functions of the Aboriginal and Island Coordinating Councils include:

- provide advice and recommendations on matters affecting the progress, development and well-being of Aborigines and Islanders and the administration of this Act
- select people to be members of the Aboriginal Industries Board and Island Industries Board and the executive committees of the councils
- accept grants or loans of money from the Commonwealth or State Government or other sources, and to expend that money in accordance with terms and conditions and in consultation with the council(s) for the area(s) in which the money is to be spent
- establish and operate businesses.

While the roles of the ACC and the ICC are mainly advisory, they also undertake project management functions for a range of State and Commonwealth Government funded projects.

Aboriginal/Island Industries Boards

Aboriginal/Island councils can carry on business enterprises. They may impose fees and charges. An annual budget and annual financial statements are required and must be audited according to the *Financial Administration and Audit Act 1977*.

The Aboriginal Industries Board and the Island Industries Board are constituted as bodies corporate to carry on a range of types of business and acquire buildings, plant and equipment. They may undertake instruction of Aborigines/Islanders, run schools and classes, and enter into contracts of apprenticeship. They have a role encouraging, developing and protecting the trade, commerce and industries of Aborigines/Islanders. If requested, the boards may transfer a business to local control.

Access of areas

Any person is authorised to enter any public place or business, and to enter other places as a guest of or at the request of a community resident, if for a lawful purpose. A number of persons have general authority to access or reside in areas, including resident Aborigines/Islanders, and people discharging legal functions. Others are authorised to enter and be in areas until their purpose is fulfilled – the Governor-General, the Governor of Queensland, religious instructors, people bringing medical aid and material comforts, elected Commonwealth and State Government representatives, and election candidates. Councils may make by-laws that authorise or exclude classes of persons from the area, and may eject such persons.

Residence in council areas is controlled by councils, with the exception of people with statutory rights to residence. However, with respect to Aboriginal land or Torres Strait Islander land within a council area, by-laws on this matter require the consent, obtained through due process, of the grantees of the land.

Rights to certain resources

Aborigines/Islanders are not liable for prosecution for taking marine products or fauna by traditional means for consumption by community members. Similarly, if there is no reservation to the Crown, an Aboriginal/Island council may authorise gathering of forest products or quarry material for use in the area. However, this requires the agreement of the grantees of the land. Aborigines/Islanders who live on non-Aboriginal/Islander land in a council area are not liable to prosecution for taking forest products or quarry materials for non-commercial purposes.

All minerals and petroleum, as well as rights of entry to mine these resources, are reserved to the Crown.

3.4 The *Aboriginal and Torres Strait Islander Commission Act 1989* (Cwlth)

Main provisions

The objects of the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cwlth) are to:

- ensure maximum participation of Aborigines and Torres Strait Islanders in the formulation and implementation of government policies that affect them
- promote the development of self management and self sufficiency among Aborigines and Torres Strait Islanders
- further the economic, social and cultural development of Aborigines and Torres Strait Islanders
- ensure coordination in the formulation and implementation of policies affecting Aborigines and Torres Strait Islanders by the Commonwealth, state, territory and local governments, without detracting from the responsibilities of state, territory and local governments to provide services to their residents.

The Act establishes the Aboriginal and Torres Strait Islander Commission (ATSIC), a Torres Strait Regional Authority (TSRA), an Indigenous Land Corporation (ILC) and an Aboriginal and Torres Strait Islander Commercial Development Corporation.

The Aboriginal and Torres Strait Islander Commission

ATSIC is a democratically-elected Indigenous organisation established under the Act as a Commonwealth statutory authority. It represents Aborigines and Torres Strait Islanders living on the mainland. ATSIC is the principal organisation in the Commonwealth's Aboriginal and Torres Strait Islanders Affairs portfolio, within the Department of the Prime Minister and Cabinet. ATSIC reports annually to the Minister for Aboriginal and Torres Strait Islander Affairs.

ATSICs main aim is to include Indigenous people in the processes of government affecting their lives.

ATSIC has a regional presence through elected Regional Councils and a national-level presence through a fully elected board. ATSICs statutory functions are set out in full in s.7(1) of the Act. It provides advice to all levels of government – Commonwealth, state/territory and local government, advocates issues both nationally and regionally, and monitors the performance of other government service-provider agencies. ATSIC also administers programs in partnership with other organisations.

Elections take place every three years to elect representatives to 35 Regional Councils. Regional councilors represent and advocate for their communities, develop regional plans on ATSIC programs, and lobby government departments and agencies in their region to meet their responsibilities in relation to Aborigines and Torres Strait Islanders.

The regional councils are grouped into 16 zones. For each zone, a commissioner is elected to sit on the ATSIC Board. An additional commissioner is elected from the Torres Strait. These 17 commissioners elect a chairperson, and another zone commissioner is subsequently elected to fill the position previously held by the chairperson – making 18 commissioners in all.

There are four zones in Queensland:

- Queensland (Far North West) includes Cooktown and Mt Isa regions
- Queensland (Metropolitan) includes Brisbane region
- Queensland (North) includes Cairns and Townsville regions
- Queensland (South) includes Roma and Rockhampton regions

Torres Strait Regional Authority

The Torres Strait Regional Authority (TSRA) was established in July 1994 as a body corporate with similar roles to ATSIC, but relating to Torres Strait Islanders living in the Torres Strait. It replaced the ATSIC Regional Council for the Torres Strait. Within the Torres Strait, the TSRA has powers similar to those of ATSIC.

ATSIC's Torres Strait Islander Advisory Board, chaired by the Commissioner from the Torres Strait, has members from each mainland State and the Northern Territory, representing the interests of the Torres Strait Islanders living outside the Torres Strait (about 80 per cent of the 29,000 Torres Strait Islanders counted at the 1996 census).

The TSRA's major functions include recognising and maintaining the special and unique 'Ailan Kastom'[15], formulating and implementing programs, monitoring the effectiveness of programs conducted by other bodies, developing policy proposals and providing advice to the Minister.

Large sections of the Act are mainly mechanical, concerning the structure and processes of the TSRA, for example:

- a TSRA General Manager is appointed by the Minister to manage the day-to-day administration of the TSRA
- staff are appointed as public servants
- the TSRA must formulate 3-5 year Torres Strait Development Plans aimed at improving the economic, social and cultural status of Torres Strait Islanders
- a TSRA Land and Natural Resources Fund is established. Money is paid into the fund by the TSRA for a number of purposes including developing and implementing a marine strategy, developing and maintaining real estate and acquiring land. (A process of negotiation is currently underway and interim arrangements are in place at the time of writing this report.)

The Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund

The Indigenous Land Corporation (ILC) is established as a statutory body to assist Aborigines and Torres Strait Islanders to acquire and manage land, so as to provide economic, environmental, social or cultural benefits. It is required to prepare an annual national Indigenous land strategy covering issues of acquisition, land management and environmental issues. The ILC acquires land for the purpose of making grants to Indigenous corporations, and makes grants available to Indigenous corporations and guarantees loans for that purpose. The Land Fund Reserve is established to make payments to the ILC and ATSIC.

[15] 'Ailan Kastom' means the body of customs, traditions, observances and beliefs of some or all of the Torres Strait Islanders living in the Torres Strait area, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

Native Title Representative Bodies (NTRB) are established and funded by ATSIC to assist native title claimants to prepare and lodge claims, resolve disputes between claimants, and represent claimants in negotiations with those wishing to use native title lands. In Queensland, NTRBs include:

- Torres Strait Regional Authority
- Cape York Land Council
- Carpentaria Land Council
- North Queensland Land Council
- Central Queensland Land Council
- Gurang Land Council
- Goolburri Land Council
- FAIRA[16] Aboriginal Corporation
- application pending from Greater Mt Isa Regional Aboriginal Corporation for central-west Queensland.

The Aboriginal and Torres Strait Islander Commercial Development Corporation

The Aboriginal and Torres Strait Islander Commercial Development Corporation is established as a statutory body and managed by a Board of Directors to assist and enhance self-management and economic self-sufficiency, and to advance the commercial and economic interests by accumulating and using a substantial capital asset. It is required to develop 3-5 year corporate plans outlining objectives and strategies and policies.

[16] FAIRA means Foundation of Aboriginal and Islander Research Action.

3.5 The *Land Act 1994*

Background and main provisions

Under Queensland's protectionist and assimilationist regimes earlier this century, Aborigines and Torres Strait Islanders resided on reserves. Reserves were areas of Crown land granted as leases under provisions of the *Land Act 1962* by the Governor-in-Council for a designated public purpose - in this case, an 'Aboriginal purpose' and managed by a Government department.

The Aboriginals Protection and Restriction of the Sale of Opium Acts of 1897 and 1901 contained legislative powers compelling Aborigines to be on reserves and requiring the superintendent's permission to leave. Provisions included regulation-making power to prohibit certain Aboriginal rites and customs, to control people's property, and to require permission to marry. The *Torres Strait Islanders Act 1939* did not require removal of Torres Strait Islanders to reserves, but allowed for Island councils with local government functions. While the *Aborigines Act 1971* contained provisions to continue Government supervision and management, some restrictions were eased.

However, reserves set aside for an 'Aboriginal purpose' could be, and were, reclassified and/or revoked to be awarded to an alternative purpose.

The *Land Act 1994* has undergone significant revisions with respect to land tenure for Indigenous Queenslanders. Between 1962 and 1988, a series of changes to the *Land Act* enabled this system to be replaced by a new system of deeds of grant in trust (DOGIT). In particular, *the Land Act (Aboriginal and Islander Grants) Amendment Act 1982* and the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1984* provided mechanisms and controls to issue DOGITs for the benefit of Aboriginal and Islander inhabitants.

Under this system, land is granted in trust to a trustee who is usually, but not necessarily, an Aboriginal or Island council. The trustee may be any statutory or incorporated body, or an individual or group. Trustees are considered to be the land's owners for the purpose of legal proceedings, hence, incorporated bodies are the preferred entity for appointment as trustees.

Unlike the lease system for former reserves, the DOGIT is regarded as inalienable freehold. However, DOGITs may be cancelled if the trust stops operating, if the affairs of the trust are not properly managed, if the land is used in a way that is inconsistent with the purpose of the trust, or if the Governor-in-Council considers it in the public interest.

DOGITs issued under the *Land Act 1994* may not be mortgaged, but DOGITs issued before the *Land Act 1994* may be mortgaged. Leases can also be granted with the approval of the Minister for Natural Resources.

Excluded from DOGIT land are State-owned improvements (apart from residences of authorised Indigenous residents) and the land on which they are located, as well as aerodromes, landing strips, ports, roads, stock routes, bridges and railways.

The Act specifically emphasises that land administered under the Act must be dealt with in a way that is not inconsistent with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*. That is, any action such as reserving land, dedicating land as a road, granting land, issuing a lease, permit or licence, and so on, must be taken in a way that is not inconsistent with the Native Title Acts.

3.6 The *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* and the *Aboriginal and Torres Strait Land (Consequential Amendments) Act 1991*

The *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* enabled Aborigines, Torres Strait Islanders and other recognised community members in DOGIT areas to obtain a perpetual lease for land up to one hectare in size. For land over one hectare in size, an appropriate tenure could be obtained for the use to be made of the land. Land could be leased by one or more people.

With the enactment of the *Aboriginal and Torres Strait Land (Consequential Amendments) Act 1991*, the *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* was amended such that applications for leases could be made no longer. However, the *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* was not repealed and its provisions continue in relation to leased land and applications for leased land made before the enactment of the *Aboriginal and Torres Strait Land (Consequential Amendments) Act 1991*.

Under the Act, an application for a lease was made to the trustee council. The Act required the trustee council to exhibit a notice of the application in a public place for 28 days, and within a further 10 days, to determine whether to grant the tenure to the applicant. Upon approval, the title to land was divested from the council to become unallocated State land for the purpose of a lease in perpetuity or other appropriate lease for the applicant. When land became Crown land, it was deemed to be part of the trust area and subject to the local government functions of the Aboriginal or Island council.

Within seven days after the determination, the trustee council was required to notify the applicant of its decision in writing, and within 28 days, to notify the determination in the prescribed form to the Minister who subsequently notified the Minister administering the *Land Act 1994*. Within 28 days after notification, the Minister administering the *Lands Act 1994* notified the applicant in writing that approval had been recorded and that an appropriate lease was in the process of being issued.

In effect, the lack of discretion at ministerial level meant the determination of the trustee council, if made in accordance with the due process, was the main decision-making point. An aggrieved person could make an appeal to the appeal tribunal.

The Act separates structural improvements on land from the land itself. This is somewhat atypical as land and improvements are usually held by the same entity.
The Act contains a provision for the lessee to purchase the improvements if the owner agrees to sell them. If the lessee is not purchasing the improvements, the lessee must pay rent, insure, and maintain the improvements in the condition, order and repair they are in at the commencement of the lease, fair wear and tear and damage by fire excepted.

As the land is leased, a lease fee is payable to the Aboriginal or Island council. The lessee has the right to transfer, mortgage or sublease the tenement to a qualified person, or grant or take an easement. Similarly, the sublessee may enter into a qualified sub-sublease. Leases may be forfeited upon default in rent, non-occupation, or, for land leased for commercial or productive purposes, non-utilisation or non-development. Land leased under this Act later became transferable land under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

3.7 The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*

Main provisions

Under these Acts, land occupied by Aborigines and Torres Strait Islanders may be transferred or granted to a new form of inalienable title. The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* provide for the transfer, and the claim and grant of land as Aboriginal land and as Torres Strait Islander land.

The preambles of the Acts acknowledge that, before European settlement, land was occupied by Aboriginal and Torres Strait Islander peoples in accordance with tradition and customs. The significance of the land's spiritual, social, historical, cultural and economic importance is recognised, as is the dispossession and dispersal of many Aboriginal people following European settlement. It is noted that some Aboriginal and Torres Strait Islander people have maintained their ancestors' traditional affiliation with particular areas of land and that some have a historical association with particular areas of land based on them and their ancestors having lived on or used the land or neighbouring land. It is also recognised that some Aboriginal and Torres Strait Islander people have a requirement for land to ensure their economic or cultural viability.

The preamble notes that the Queensland Parliament is satisfied that Indigenous peoples' interests and responsibilities in relation to land have not been adequately or appropriately recognised in law despite the establishment of reserves and DOGITs, and that this has contributed to a general failure of previous policies in relation to Indigenous people. It is noted that the Parliament is satisfied that special measures need to be enacted to secure adequate advancement of the interests and responsibilities of Indigenous people in Queensland and to rectify the consequences of past injustices. Special measures are enacted by these Acts, for the adequate and appropriate recognition of the interests and responsibilities of Indigenous peoples in relation to land and thereby to foster the capacity for self-development, self-reliance and cultural integrity.

Land Tribunal

A Land Tribunal is established for the purposes of the Act. It consists of the chairperson (requires legal qualifications), deputy chairpersons and other members (requires knowledge of Aboriginal people/tradition and relevant experience) appointed by the Governor-in-Council. A number of provisions in the Act deal with the establishment, membership, organisation and conduct of proceedings of the Tribunal. Decisions of the Tribunal are appealable to the Land Appeal Court.

'Transferable land' and 'claimable land'

Land known as 'transferable land' may be transferred without a claim being made. 'Claimable land' is land that may be claimed by and granted to a group of Aboriginal or Islander people, or a Torres Strait Islander. Land that has been so granted is known as 'Aboriginal land' and 'Torres Strait Islander land'.

The following lands are transferable lands:

- Indigenous DOGITs
- Aboriginal reserve land and Torres Strait Islander reserve land
- Aurukun Shire land
- Mornington Shire land
- available Crown land declared by regulation as transferable land.

Where an Aboriginal or Island council holds title to land under a DOGIT issued under the *Land Act 1994* and a new deed takes effect over the whole or part of the DOGIT, the DOGIT is cancelled to the extent of the new deed. Similar provisions exist when a deed of grant takes effect over the whole or part of Aurukun Shire or Mornington Shire lease land.

With regard to claimable land, a group of Aboriginal or Islander people must make a claim within 15 years (of 1991) on grounds of:

- traditional affiliation ('customary affiliation' for Torres Strait Islanders) – a common connection with the land based on spiritual and other associations, with rights in relation to, and responsibilities for, the land under Aboriginal tradition (or Island custom)
- historical association – an association with the land based on them or their ancestors having, for a substantial period, lived on or used the land or land in the district or region, and/or
- economic or cultural viability – to assist in restoring, maintaining or enhancing the capacity for self-development, and the self-reliance and cultural integrity, of the group.

The Land Tribunal must consider the views of elders in claims of traditional affiliation and historical association.

The Act includes a hierarchy to determine competing claims. Traditional affiliation is a stronger basis than historical association, and both are preferred over economic or cultural viability. Land can be granted jointly to different groups.

The Land Tribunal recommends to the Minister that freehold title to the land be granted if the claim is established on the ground of traditional affiliation or historical association. If the claim is made on the ground of economic or cultural viability, the recommendation will be that the land be granted by way of a lease in perpetuity or for a specified term with specified terms and conditions.

Following consultation and with the agreement of the Aboriginal or Torres Strait Islander people who are 'particularly concerned with the land', the grantees of claimed or transferred land may transfer, grant or otherwise create an interest in transferred land by granting a lease or licence over all or part of the land to an Aborigine/Islander particularly concerned with the land, to the Crown, or to another person for a period of less than 10 years or with the prior consent of the Minister. They may consent to the creation of a mining interest in the land, grant an easement or surrender it to the Crown. However, the land cannot be sold.

An interest in granted land (other than land granted as a lease on the ground of economic or cultural viability) cannot be resumed except by an Act that expressly provides for that.

If land is occupied or used by the Crown at the time it becomes Aboriginal or Torres Strait Islander land, the Crown is entitled to continue to occupy or use it as required. No rent is payable by the Crown. Servants of the Crown are also entitled to enter and cross Aboriginal or Torres Strait Islander land, on commonly used routes, or agreed alternatives from time to time, for the purpose of gaining access to the land.

The laws of the State apply to Aboriginal and Torres Strait Islander land.

Aboriginal and Torres Strait Islander land is not rateable unless used for commercial or residential purposes.

3.8 The *Native Title Act 1993* (Cwlth)

Background and main provisions

In the decision *Mabo v Queensland (No. 2)* (1992) 175 CLR, the High Court of Australia decided that the common law recognises a form of native title to land which exists in accordance with the laws and customs of Indigenous people. The court found that native title can exist where Indigenous people have maintained their traditional connection with the land, and where their title has not been 'extinguished' by a legislative or other act of government. Since the *Racial Discrimination Act 1975* makes it unlawful for governments to discriminate on the basis of race in relation to the right to own property, native title must be treated equivalently to other forms of land tenure. The Commonwealth Parliament legislated to protect native title, and to articulate the circumstances in which government acts can extinguish native title - resulting in the *Native Title Act 1993*.

The *Native Title Act 1993* aims to recognise and protect, to a practicable extent, the native title rights of Aborigines and Torres Strait Islanders – rights which already exist under common law. Native title is the rights and interests, acknowledged under traditional laws and customs, of Aboriginal people and Torres Strait Islanders in relation to land or waters where those people have maintained their connection with the land and where the title has not been extinguished by acts of government.

At the time that the original Native Title Act was passed there was a widely held view that native title could not exist over pastoral leasehold land because the grant of the pastoral lease would have extinguished native title over this land. Subsequently, in 1996, the High Court's Wik decision (*Wik Peoples v Queensland* 1996 187 CLR 1) found that the grant of a pastoral lease had not necessarily extinguished native title as there had been no legislative intention to confer exclusive possession of land on the lessees. However, the Court found that native title interests must yield to the rights of the pastoral leaseholder where these rights are inconsistent. This decision suggested that some government acts which had been done in relation to pastoral leasehold land since the original Native Title Act was passed in 1993 may have been invalid for purporting to affect native title rights and interests in a manner that was not permitted under this Act.

In response to the Wik decision, and a number of other court decisions, the Commonwealth amended the Native Title Act. Among other things, these amendments allowed states and territories to validate certain acts that they had done before the Wik decision in relation to pastoral leasehold land. They also confirmed that pastoralists can lawfully carry on current primary production activities and that the exercise of pastoral rights prevails over the exercise of native title rights on pastoral leases.

The Native Title Act sets out basic principles in relation to native title. It provides for the validation of certain 'past acts' of governments which may otherwise have been invalid because of the existence of native title, and confirms that native title has been extinguished in some circumstances. It also provides for a 'future act' regime in which native title rights are protected and conditions imposed on acts affecting native title land and waters. It gives certain procedural rights (such as the 'right to negotiate') to native title holders and native title claimants in relation to the doing of certain acts (such as the granting of mining leases) which may affect native title. In certain circumstances it also gives native title holders the right to compensation where their native title interests have been extinguished or impaired.

The Act provides a process by which claims for native title and compensation can be determined. The claims process involves the Federal Court and the National Native Title Tribunal (NNTT). The NNTT is not a court and does not decide whether native title exists. Its role is to assist in the resolution of issues arising from native title and in making agreements about the use of the land. Its role includes mediating native title applications referred to it by the Federal Court and if requested, assisting in negotiations about proposed tenements, compulsory acquisition of land by government for transfer to third parties, Indigenous land use agreements and pastoral lease agreements. It may also make determinations about proposed tenements and acquisitions if no agreement is reached.

The Act establishes three public registers, maintained by the Native Title Registrar:

- the Register of Native Title Claims (for claims)
- the National Native Title Register (for native title determinations)
- the Register of Indigenous Land Use Agreements (for registered agreements).

The Act provides for the recognition of Aboriginal/Torres Strait Islander Representative Bodies, and authorises such bodies to represent the interests of native title holders and claimants in certain circumstances. These bodies can facilitate claims, assist in the resolution of conflicting claims, and represent recognised native title holders in future mediations or negotiations.

The Act allows states and territories to have a role in native title matters. It allows state and territory native title legislation to operate instead of certain provisions of the Commonwealth Act (namely the 'right to negotiate' provisions) where criteria set out in the Commonwealth Act are satisfied. It also makes provision for state/territory bodies to assume certain native title functions, such as determining native title claims and arbitrating matters in the right to negotiate process. (See section 3.9 of this paper regarding Queensland's Land and Resources Tribunal.)

[Note: The National Aboriginal and Torres Strait Islander Land Fund, initially established under the 1993 Act to assist with securing native title, has now been removed and it, along with provisions concerning the Indigenous Land Corporation (ILC), has been added to the *Aboriginal and Torres Strait Islander Commission Act 1989*.]

3.9 The *Native Title (Queensland) Act 1993*

In connection with the Commonwealth's *Native Title Act 1993*, the Queensland Government enacted the *Native Title (Queensland) Act 1993*, indicating its intention to participate in the national scheme for the recognition and protection of native title and for its coexistence with the existing land management systems. The Act has been significantly amended following amendments to the Commonwealth Act.

The *Native Title (State Provisions) Act 1998* validates and confirms past acts of the government relating to land tenures, thereby increasing certainty and security of lease-holders following the Wik decision. Its objects are to validate past acts and intermediate period acts, invalidated because of the existence of native title and to synchronise Queensland law with Commonwealth standards. It also establishes State-based mechanisms for deciding native title claims that are complementary to and consistent with the mechanisms established by the Commonwealth Act.

Indigenous Land Use Agreements (ILUA), provided for by the Commonwealth legislation, are key negotiation mechanisms in achieving agreements registerable in the Federal Court. Registration in the National Native Title Tribunal enables ILUAs to become binding and provides legal certainty. ILUAs are binding on all native title holders, including native title holders who were not identified at the time the agreement was made, even if some were not signatories to the final document. The Queensland Government is strongly supportive of negotiated local agreements between councils and native title holders. Once in place, these negotiated agreements provide a vehicle for future development work of a local government nature.

The *Native Title (Queensland) State Provisions Amendment Act (No.2) 1998* contains provisions for dealing with native title issues in proposed mining developments. Its main aim is to achieve negotiated agreements and avoid costs and delays associated with litigation. The *Land and Resources Tribunal Act 1999* establishes the Land and Resources Tribunal (LRT) as the independent judicial arbitral body to hear objections and determine outcomes where negotiated agreements cannot be reached. The LRT does not have jurisdiction to determine native title claims. The Federal Court and the NNTT manage the process of deciding if claimants hold native title as well as their rights and interests.

Traditional owners of land can form an organisation to become a Prescribed Body Corporate (PBC) under the *Native Title Act 1993*. Once a claim is determined, the PBC can hold the land on behalf of the traditional owners.

The Aboriginal/Island council and a PBC may both hold land and may negotiate agreements – the former as trustees of the land for the Indigenous people of the area and the latter on behalf of native title holders. As trustees, councils have a legal responsibility to manage the land and a duty of care for the land involved and responsibility for protecting and maintaining all improvements.

The Native Title Act is silent on the matter of Aboriginal and Torres Strait Island councils established on DOGIT and other land. However, the Native Title Act (Cwlth) provides in section14 for the validation of past Commonwealth acts. Section 19 enables states and territories to validate their past acts on the same terms. Past acts are legislation made before 1 July 1993 and administrative acts, such as the granting of freehold estate, leases, licences and permits, effected before 1 January 1994.

3.10 The *Wet Tropics World Heritage Protection and Management Act 1993*

Background

The Wet Tropics World Heritage Area stretches over 899,000 hectares along the north-east coast of Queensland between Cooktown and Townsville. Declared in 1988, it is one of 11 Australian World Heritage sites and is recognised for its natural values, that is, forests and fauna, including endangered species.

This designation was facilitated by the World Heritage Convention which came into effect in 1975 after 20 countries, including Australia, agreed to identify, protect, conserve and rehabilitate their heritage sites of outstanding worldwide importance. Heritage sites are called World Heritage Properties or World Heritage Areas, and are placed on the World Heritage List.

Rainforest Aborigines are the traditional custodians of the region. There are 16 language groups with cultural connections to the land in and near the area, each with customary obligations for management of their country. The natural features of the World Heritage Area are interwoven with Rainforest Aboriginal peoples' spirituality, economic use (including food, medicines, tools) and social organisation.

The area contains nearly 700 parcels of land including private land, national parks, state forests and a range of leases. Fourteen local governments, including two Aboriginal councils - Yarrabah and Wujal Wujal, have part of their council area within the World Heritage Area. The World Heritage Area is superimposed over existing land tenures and does not change tenure or ownership. Day-to-day management of the area is the responsibility of the individual land holders and land management agencies (Queensland Parks and Wildlife Service, Department of Natural Resources, local governments, Aboriginal councils and so on).

In addition, about 80-96 per cent of the Area is potentially claimable by a number of Aboriginal groups under the *Native Title Act 1993* (Cwlth). Sixteen claims have been lodged, but none has yet reached final determination stage.

Main provisions

The *Wet Tropics World Heritage Protection and Management Act 1993* (the Wet Tropics Act) provides for the protection and management of the Wet Tropics of Queensland World Heritage Area in line with the United Nations' World Heritage Convention. The Commonwealth and Queensland agreed to the broad structural and funding arrangements for management of the area as enshrined in this Act. The significant contribution of Aboriginal people to the future management of cultural and natural heritage in the area is recognised, particularly through joint management agreements.

The Wet Tropics Management Authority (the Authority) is a statutory body responsible to a board of directors (which includes an Aboriginal representative) with the functions of:

- developing and implementing management policies and programs and performance indicators
- providing advice and making recommendations to the Ministerial Council
- preparing and implementing management plans for the Wet Tropics
- entering into cooperative management agreements with land holders, Aboriginal people particularly concerned with the land, and others
- research and information provision; community education; promotion of the area; liaison; monitoring.

A scientific advisory committee and a community consultative committee are established to provide advice. An independent peak Aboriginal representative group, Bama Wabu, also provides formal advice to the Board of Directors.

Bama Wabu is a coalition of Aboriginal tribal and cultural corporations from the region that advises the Authority on issues in common, such as Aboriginal rights, issues and views. In addition, the Girringun Elders and Reference Group Aboriginal Corporation represents the Jiddabul, Waragamay, Nwaigi, Warangnu, Banjin and Girramay people on a range of issues including native title, cultural heritage, employment and training and negotiations about land use and protected area management with shire councils and government agencies. The Aboriginal Resource Management Program of the Authority contracts these two organisations to provide three Aboriginal Community Liaison Officers to work with Rainforest Aboriginal people.

The *Wet Tropics Management Plan 1998* (Qld) (the WTM Plan), as subordinate legislation to the Act, is the principal mechanism provided by the Act to coordinate and regulate activities within the World Heritage Area. As a statutory management plan, it divides the area into four management zones (called A, B, C and D respectively) where activities that have a detrimental effect on the area's natural heritage values are either prohibited, allowed or allowed under permit. It also prescribes offences, fixes penalties, and prescribes and exempts prohibited acts.

- Land in Zone A has a high degree of integrity and is remote from disturbance. Visitors may expect to find solitude and no obvious management presence.
- Zone B has a high degree of integrity but is not necessarily remote from disturbance. It is either recovering from disturbance or becoming remote from disturbance. Limited evidence of management presence may be expected. The WTM Plan should result in disturbed land being restored, although existing facilities or infrastructure would not be forcibly removed. Restored land may be transferred to Zone A.
- Zone C land is still in a mostly natural state but contains disturbances, often in association with existing community infrastructure. It is intended that the majority of new and existing infrastructure and facilities will be accommodated in this zone. This zone will be managed to minimise any adverse impact of these facilities and associated activities.
- Zone D land contains well-developed visitor facilities. It is managed to minimise adverse impacts of activities and facilities, and to protect and rehabilitate the land.

The WTM Plan requires that decision makers take into account social, economic and cultural effects and the need of the community for the proposed activity.

The final WTM Plan is submitted for approval to the Ministerial Council (consisting of two members each from Queensland and the Commonwealth) for a recommendation to Governor-in-Council.

The WTM Plan provides controls on how the land is used and managed. The main way in which activities are controlled is under s.56 of the Act, which prohibits destruction of forest products. In addition, the WTM Plan provides controls which prohibit activities and provide exemptions from prohibitions in different zones. Exemptions allow certain activities, with or without a permit.

The WTM Plan lists activities for which people must seek a permit before engaging in them.

- 'Prohibited activities' include keeping undesirable plants and animals, mining and quarrying, interfering with a water course, building and maintaining roads and structures and operating vehicles. Many prohibited activities are actually allowed in specified zones.
- 'Allowed activities' include activities for the urgent protection of life and property, fire control, driving on certain roads, grazing, mining, and operating existing community infrastructure. The Chief Executive of the Department of Environment and the Authority may also carry out activities in certain circumstances.
- 'Activities allowed by permit' include activities that are part of a native title right, building a residence, maintaining a road or structure, clearing vegetation around a structure, building a walking track and driving on certain types of roads. Landholders of freehold title and native title holders may also be issued with permits for domestic activities on their land including, among other things, building a residence and extracting water for domestic use.

The WTM Plan provides for 'management agreements' as a tool for reconciling the native title and community development aspirations of Aboriginal residents within the World Heritage Area with the natural values and conservation and protection interests of the Authority. Management agreements are voluntary, negotiated, cooperative agreements (legal contracts) between land holders, Rainforest Aboriginal people and the Authority. Among other things, they can be used to negotiate with the Authority to carry out an activity which normally is unlawful under the Act. The Authority financially assists Aboriginal people in finding and securing independent legal advice to ensure their interests are being met in the negotiation of management agreements.

A recent review of Aboriginal involvement in the management of the Wet Tropics World Heritage Area concluded in 1998. About one third of the recommendations of the review were implemented immediately, with the remainder to be resolved by an Aboriginal negotiating team and a government negotiating team through an 'Interim Negotiating Forum'.

Permitting protocols have been developed explaining which of the activities must be referred to Aboriginal people for consultation. Where consultation with Aboriginal people is required, the Authority asks permit applicants to consult with Aboriginal people for the country concerned. This provides permit decision makers (the Authority, Department of Natural Resources, or Queensland Parks and Wildlife) information about what native title, cultural, social and/or economic impact the proposed activity may have on Aboriginal people. Local authorities' decisions on matters including approvals, consents, permits and so on, must be consistent with management plans. In the event of an inconsistency, the Minister must determine which plan is to prevail.

3.11 The *Great Barrier Reef Marine Park Act 1975* (Cwlth)

Main provisions

The *Great Barrier Reef Marine Park Act 1975* (Cwlth) establishes the Great Barrier Reef Marine Park and a statutory authority - the Great Barrier Reef Marine Park Authority (located in Townsville) - to provide for its control, care and development through zoning plans and management plans. The Authority consists of a chairman and two other members appointed by the Governor-General.

An appointed consultative committee, consisting of 12 or more stakeholders, furnishes advice to the Minister and the Authority. Largely mechanical provisions of the Act outline the process for regulation, public involvement in zoning and so on. Zoning plans are prepared making provision for purposes for which the zone may be used or entered. Regulations must have regard to the conservation of the Great Barrier Reef as well as the reasonable use of the Great Barrier Reef Region. Activities that exploit the resources of the Reef may be minimised through regulation of activities, and some areas may be reserved for public enjoyment and appreciation. Other areas may be retained undisturbed for no purpose other than scientific research.

Zones may only be used for purposes permitted under the zoning plan and financial penalties apply to breaches ($10,000 for a natural person and $50,000 for a body corporate).

Generally, it is an offence to discharge waste in the Marine Park unless authorised by permission given under the regulations.

The Act takes precedence over most other legislation. The Act provides for a statutory right of reasonable use of the marine park, but prohibits drilling and mining. The Act enables environmental management charges to be levied and collected. The Authority may appoint inspectors who have the power to arrest a person and to search a person or vessel without a warrant. Confiscated vessels, aircraft and other articles may be forfeited to the Commonwealth if involved in the commission of an offence.

4 Aboriginal and Island council receipts

4.1 Summary

This section presents summarised information about the composition of Aboriginal and Island council receipts. The purpose of this section is to identify significant funding patterns. This information is used in section 2 of this paper in the discussion concerning how Indigenous councils are funded and significant funding sources.

In particular, the following observations can be made of funding arrangements:

- Most Indigenous council funding is derived from government grants.
- Some Indigenous councils are very small and receive only small amounts of funding. For example, in 1998-99, Stephen Island had a population of 99 and grant funding of $181,000 dollars. The largest council was Palm Island with a population of 2155 and grant funding of $7,785,316.
- Commonwealth Government funding is mainly provided through ATSIC ($69.5 million in 1998-99), but other departments provide funding for Commonwealth programs. These include DHAC, DETYA, DEWRSB, DFACS and DSS. In 1998-99, total Commonwealth grant funding was about $72.5 million.
- State Government funding is mainly provided through DATSIPD/DFYCC ($22 million), DPWH ($16.1 million) and DCILGPS ($12.1 million), but up to 12 other departments provide smaller grants. In 1998-99, total State Government grants were about $54.3 million.
- Some significant amounts of State and Commonwealth (through ATSIC) Government funding ($28.3 million) do not appear as receipts and expenditure. These amounts are counted as assets. This is because the funding is held in trust while work is undertaken by a project manager, such as an engineering or construction firm. The completed works are then transferred to the Indigenous councils as assets. In the attached statements, these are referred to as 'non-cash grants'.
- Most grant funding is expended on the purpose and within the period specified in the terms of the grant.

4.2 Notes to financial statements of Aboriginal and Island councils

a) There is variation between council statements in the line items attributed to DATSIPD and DFYCC. This is possibly due to changing administrative arrangements for grants during the financial year. Consequently, grants from these two departments have been combined.
b) A number of non-cash grants appear in the Statement of Assets and Liabilities. Funds are usually held in trust or by a project manager. These grants are included here because they show significant funding for community infrastructure relevant to the PHLIHP.
c) Items within the Yorke Island receipts were not consistently available on a departmental basis. Some items have been attributed to departments on the basis of how similar items are attributed in the statements of other councils. The total figures are not altered. Yorke Island total receipts from grants ($2,939,157) are very small in comparison to some other councils, so this is not considered to be material.
d) There is variation in the names attributed to both Commonwealth and State Government departments. To some extent, this reflects name changes around that period. In order to standardise these accounts, some discretion has been exercised in allocating items to particular departments.

e) During the 1998-99 financial year, Mapoon was a part of Cook Shire. The Aboriginal Council for the area was not formed until 2000. Thus, there is no financial statement for Mapoon.

4.3 Total Aboriginal and Island councils' receipts 1998-99

Commonwealth Government departments	**$**
ATSIC/TSRA	69,408,547
DHAC	1,869,268
DEWRSB	648,495
DSS	171,791
DETYA	250,853
DFACS	30,786
DIMA	30,000
Aust Sports Com	1,500
DSR	37,401
CES	2,767
Sub-total	72,451,408

Queensland Government departments	**$**
DATSIPD/DFYCC	22,069,742
DPWH	16,148,697
DCILGPS	12,119,241
Arts QLD	96,100
DES	54,228
DETIR	534,063
QH	324,494
HACC	728,529
DMR	1,196,811
DNR	113,209
DTSR	571,466
GMCBF	60,072
DCS	20,000
DJAG	27,750
EPA	21,120
DT	231,000
Sub-total	54,316,522
Other – *subtotal*	473,664
Total cash grants	127,241,594
Total non-cash grants	28,272,072
Total grants	155,513,666

4.3.1 Cherbourg Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	5,908,173
DHAC	223,359
DEWRSB	303,878
DSS	27,840
Sub-total	6,463,250
Queensland Government Departments	
DATSIPD/DFYCC	1,285,442
DPWH	540,581
DCILGPS	122,333
Arts QLD	15,000
DES	1,500
DETIR	85,000
HACC	180,146
DMR	20,900
DNR	50,500
DTSR	471,490
GMCBF	14,272
Sub-total	2,787,164
Other	
Aboriginal Hostels Limited	61,436
Total cash grants	9,311,850
Non-cash grants	
ATSIC to Thomas Moore: Duplex, house	268,700
Sporting complex	262,050
3 houses	325,800
Workshop/joinery	20,000
ATSIC to Ove Arup: NAHS housing project	1,297,989
DHAC to Gutteridge Haskins & Davey: Medical centre	24,567
DCILGPP: Upgrade water supply	781,000
Total non-cash grants	2,980,106
Total grants 1998-99	12,291,956

4.3.2 Doomadgee Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
DHAC	56,254
DETYA	47,000
DSS	23,354
Sub-total	126,608
Queensland Government departments	
DATSIPD/DFYCC	1,179,033
DPWH	383,760
DCILGPS	206,548
DES	1,500
DMR	716,684
Sub-total	2,487,525
Other	
Aboriginal Hostels Limited	555
Total cash grants	2,614,688
Non-cash grants	
DPWH: Community housing	4,563,469
NAHS Housing Program: Road, water, sewerage infrastructure	343,250
Total non-cash grants	4,906,719
Total grants 1998-99	7,521,407

4.3.3 Hopevale Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	5,366,293
DFACS	21,376
DEWRSB	181,891
Sub-total	5,569,560
Queensland Government departments	
DATSIPD/DFYCC	1,264,876
DPWH	543,873
DCILGPS	185,815
DES	1,500
HACC	173,688
DMR	69,184
EPA	5,000
DTSR	11,963
Sub-total	2,255,899
Other	
Apunipima - life promotion	66,075
Total cash grants	7,891,534
Total grants 1998-99	7,891,534

4.3.4 Injinoo Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	2,181,659
DHAC	20,345
Sub-total	2,202,004
Queensland Government departments	
DATSIPD/DFYCC	689,218
DPWH	345,566
DCILGPS	219,091
DES	1,500
DETIR	34,000
Sub-total	1,289,375
Total cash grants	3,491,379
Non-cash grants	
ATSIC:	
NAHS - internal roads and drainage	1,251,670
Total grants 1998-99	4,743,049

4.3.5 Kowanyama Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	5,600,504
DSS	18,384
Sub-total	5,618,888
Queensland Government departments	
DATSIPD/DFYCC	1,603,312
DCILGPS	1,501,799
ARTS QLD	16,100
DETIR	72,674
HACC	134,026
DMR	128,293
GMCBF	31,000
State Library	2,650
DJAG	27,750
Sub-total	3,517,604
Total cash grants	9,136,492
Total grants 1998-99	9,136,491

4.3.6 Lockhart River Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	2,926,231
DSS	4,134
Sub-total	2,930,365
Queensland Government departments	
DATSIPD/DFYCC	983,282
DCILGPS	2,126,626
Arts QLD	15,000
DES	1,500
DTSR	12,576
EPA	3,000
DT	206,000
Sub-total	3,347,984
Total cash grants	6,278,349
Non-cash grants	
DCILGPS - Sewerage scheme	416,628
Total grants 1998-99	6,694,977

4.3.7 Napranum Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	4,993,815
Aust Sports Com	1,500
Sub-total	4,995,315
Queensland Government departments	
DATSIPD/DFYCC	980,486
DCILGPS	2,045,679
DES	1,500
DTSR	10,213
EPA	3,000
GMCBF	5,000
Sub-total	3,045,878
Total cash grants	8,041,193
Total grants 1998-99	8,041,193

4.3.8 New Mapoon Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	1,352,568
DETYA	2500
Sub-total	1,355,068
Queensland Government departments	
DATSIPD/DFYCC	613,777
DPWH	207,000
DCILGPS	188,345
Arts QLD	15,000
DES	1,500
DETIR	13,000
DTSR	3,000
Sub-total	1,041,622
Total cash grants	2,396,690
Non-cash grants	
DPWH:	
House maintenance	248,840
Total non-cash grants	248,840
Total grants 1998-99	2,645,530

4.3.9 Palm Island Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	414,318
DHAC	1,103,370
DSS	17,832
DSR	37,401
DIMA	30,000
Sub-total	1,602,921
Queensland Government departments	
DATSIPD/DFYCC	2,593,512
DPWH	2,562,420
DCILGPS	821,244
QH	84,276
DMR	100,000
Sub-total	6,161,452
Other	
Rio Tinto and other	20,943
Total cash grants	7,785,316
Total grants 1998-99	7,785,316

4.3.10 Pormparaaw Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	3,937,870
DSS	4,134
Sub-total	3,942,004
Queensland Government departments	
DATSIPD/DFYCC	938,675
DPWH	821,609
DCILGPS	1,198,399
Arts QLD	5,000
DES	1,500
HACC	104,169
DMR	29,250
Sub-total	3,098,602
Other	
Apprenticeship/training, Pormpur Paanth Aboriginal Corporation	75,541
Total cash grants	7,116,147
Non-cash grants	
ATSIC:	
Health infrastructure priority project	180,160
Total grants 1998-99	7,296,307

4.3.11 Umagico Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	1,540,804
DSS	24,367
Sub-total	1,565,171
Queensland Government departments	
DATSIPD/DFYCC	417,068
DPWH	70,653
DCILGPS	160,698
DES	1,500
Sub-total	*649,919*
Total cash grants	2,215,090
Non-cash grants	
DPWH	700,000
Total grants 1998-99	2,915,090

4.3.12 Woorabinda Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	785,439
DHAC	326,425
DSS	8,122
CES	2,767
Sub-total	1,122,753
Queensland Government departments	
DATSIPD/DFYCC	1,559,459
DPWH	776,652
DCILGPS	149,076
Arts QLD	15,000
DETIR	72,000
DMR	122,500
DNR	23,300
EPA	5000
DSR	54,591
DCS	20,000
Sub-total	2,797,578
Total cash grants	3,920,331
Total grants 1998-99	3,920,331

4.3.13 Wujal Wujal Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	2,245,451
DETYA	121,413
Sub-total	2,366,864
Queensland Government departments	
DATSIPD/DFYCC	767,244
DPWH	125,780
DCILGPS	85,252
DES	1,500
DETIR	7,200
Sub-total	986,976
Other	
Crèche Kindergarten	41,752
Total cash grants	3,395,592
Non-cash grants	
ATSIC:	
Upgrade water supply, construct 2 houses	442,061
Total non-cash grants	442,061
Total grants 1998-99	3,837,653

4.3.14 Yarrabah Aboriginal council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	9,537,745
DHAC	139,515
DEWRSB	42,494
DSS	24,367
Sub-total	9,744,121
Queensland Government departments	
DATSIPD/DFYCC	1,900,068
DPWH	1,583,117
DCILGPS	263,766
Arts Queensland	15,000
DES	2,700
DETIR	73,689
QH	230,218
DNR	30,000
EPA	5,120
GMCBF	9,800
Sub-total	4,113,478
Other	
Aboriginal Hostels Limited	72,846
Aust Council for Arts	40,000
National Library of Australia	7,000
Reg Abor Language M'ment Com	4,150
Sub-total	123,996
Total cash grants	13,981,595
Non-cash grants	
DCILGPS:	
Sewerage infrastructure upgrades	590,230
Total grants 1998-99	14,571,825

4.3.15 Badu Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	3,376,207
DEWRSB	120,232
Sub-total	3,496,439
Queensland Government departments	
DATSIPD/DFYCC	579,389
DPWH	2,165,068
DCILGPS	271,638
DES	1,500
DETIR	31,000
Sub-total	3,048,595
Other	
ICC	10,629
TOTAL CASH GRANTS	6,555,663
Non-cash grants	
TSRA:	
BRACS digital upgrade	4825
DPWH:	
4 duplexes, 12 houses (partial)	121,058
Total non-cash grants	125,883
Total grants 1998-99	6,681,546

4.3.16 Bamaga Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	2,230,441
ATSIC	186,940
Sub-total	2,417,381
Queensland Government departments	
DATSIPD/DFYCC	786,338
DPWH	927,906
DCILGPS	376,378
DES	1,500
HACC	136,500
DTRS	50,000
DT	25,000
Sub-total	2,303,622
Total cash grants	4,721,003
Non-cash grants	
TSRA: BRACS digital upgrade	9,688
ATSIC: housing, roads, sewerage	5,767,140
Total non-cash grants	5,776,828
Total grants 1998-99	10,497,831

4.3.17 Boigu Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,923,676
DFACS	9,410
Sub-total	1,933,086
Queensland Government departments	
DATSIPD/DFYCC	325,584
DPWH	437,746
DCILGPS	164,154
DES	1,500
DETIR	26,000
Sub-total	954,984
Total cash grants	2,888,070
Non-cash grants	
DES	
fire fighting equip, shed	35,644
TSRA	
Community hall	300,000
DATSIPD	
Com hall funding and accom	700,000
ATSIH and others	
Housing, roads, levee	1,110,154
TSRA and State Govt	
Upgrade water supply	521,010
Total non-cash grants	2,666,808
Total grants 1998-99	5,554,878

4.3.18 Coconut Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,174,304
Sub-total	1,174,304
Queensland Government departments	
DATSIPD/DFYCC	317,221
DPWH	36,634
DCILGPS	96,889
DES	1,500
DETIR	13,000
Sub-total	465,244
Total cash grants	1,639,548
Non-cash grants	
DPWH:	
Building materials and freight	574,126
TSRA:	
BRACS	4,285
Total non-cash grants	578,411
Total grants 1998-99	2,217,959

4.3.19 Darnley Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,159,492
DSS	6,419
Sub-total	1,165,911
Queensland Government departments	
DFYCC/DATSIPD	308,116
Dept of Premier and Cabinet	5,000
DCILGPS	175,320
DETIR	26,000
Sub-total	514,436
Total cash grants	1,680,347
Total grants 1998-99	1,680,347

4.3.20 Dauan Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	838,163
DETYA	26,840
Sub-total	865,003
Queensland Government departments	
DATSIPD/DFYCC	243,282
DPWH	442,496
DCILGPS	89,773
DES	1,500
QH	10,000
Sub-total	787,051
Other	
Cairns Region Group Training	16,252
Island Coordinating Council	1,000
Sub-total	17,252
Total cash grants	1,669,306
Non-cash grants	
DPWH:	
Housing materials and freight	354,713
TSRA:	
BRACS	4,825
Total non-cash grants	359,538
Total grants 1998-99	2,028,844

4.3.21 Hammond Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	734,465
Sub-total	734,465
Queensland Government departments	
DATSIPD/DFYCC	255,248
DES	1,500
DCILGPS	163,006
DPWH	471,926
General Council Operations	477,680
Sub-total	1,369,360
Total cash grants	2,103,825
Non-cash grants	
ATSI Housing:	
Housing	553,119
Total non-cash grants	553,119
Total grants 1998-99	2,656,944

4.3.22 Kubin Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	808,997
DETYA	37,600
Sub-total	846,597
Queensland Government departments	
DATSIPD/DFYCC	204,762
DPWH	28,773
DCILGPS	108,530
DES	1,500
Sub-total	343,565
Total cash grants	1,190,162
Non-cash grants	
ATSI Housing:	
Renovation of 11 houses	772,602
DMR:	
Upgrade of airstrip	300,000
Upgrade Kubin access road	451,993
Total non-cash grants	1,524,595
Total grants 1998-99	2,714,757

4.3.23 Mabuiag Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	743,698
DETYA	15,500
Sub-total	759,198
Queensland Government departments	
DATSIPD/DFYCC	227,608
DPWH	360,000
DCILGPS	133,945
DES	1,500
DNR	9,409
Sub-total	732,462
Total cash grants	1,491,660
Non-cash grants	
DPWH: Housing materials and freight	135,949
TSRA: BRACS contribution	4,825
Total non-cash grants	140,774
Total grants 1998-99	1,632,434

4.3.24 Murray Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,207,961
DSS	6,419
Sub-total	1,214,380
Queensland Government departments	
DATSIPD/DFYCC	431,419
DPWH	1,131,068
DCILGPS	273,416
DES	3,000
DETIR	29,000
Sub-total	1,867,903
Other	
Native Title Office	5,000
Total cash grants	3,087,283
Non-cash grants	
DFYCC: New office building	740,000
Total non-cash grants	740,000
Total grants 1998-99	3,827,283

4.3.25 Umagico Island council receipts, 1998-99

Commonwealth Government departments	**$**
ATSIC	1,540,804
DSS	24,367
Sub-total	1,565,171
Queensland Government departments	
DATSIPD/DFYCC	417,068
DPWH	70,653
DCILGPS	160,698
DES	1,500
Sub-total	649,919
Total cash grants	2,215,090
Non-cash grants	
DPWH	700,000
Total grants 1998-99	2,915,090

4.3.26 Seisia Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,161,560
Sub-total	1,161,560
Queensland Government departments	
DATSIPD/DFYCC	209,066
DES	7,014
DCILGPS	88,953
Sub-total	305,033
Total cash grants	1,466,593
Non-cash grants	
DPWH:	
ATSI Housing Program	175,942
Total non-cash grants	175,942
Total grants 1998-99	1,642,535

4.3.27 St Pauls Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,161,560
Sub-total	1,161,560
Queensland Government departments	
DATSIPD/DFYCC	209,066
DCILGPS	88,953
DES	7,014
Sub-total	305,033
Total cash grants	1,466,593
Non-cash grants	
DPWH: ATSI Housing Program	175,942
Total non-cash grants	175,942
Total grants 1998-99	1,642,535

4.3.28 Stephen Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	76,855
Sub-total	76,855
Queensland Government departments	
DATSIPD/DFYCC	125,556
DCILGPS	41,869
DES	1,500
DETIR	16,000
Sub-total	184,925
Total cash grants	261,780
Non-cash grants	
DATSIPD: Accommodation	300,000
Total non-cash grants	300,000
Total grants 1998-99	561,780

4.3.29 Sue Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,090,121
Sub-total	1,090,121
Queensland Government departments	
DATSIPD/DFYCC	187,988
DPWH	390,639
DCILGPS	172,026
DES	1,500
DETIR	2,500
Sub-total	754,653
Total cash grants	1,844,774
Non-cash grants	
DATSIPD: Council chambers	702,841
DPWH: ATSI Housing - materials and freight	397,061
TSRA: BRACS contribution	4,825
Total non-cash grants	1,104,727
Total grants 1998-99	2,949,501

4.3.30 Yam Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,625,478
Sub-total	1,625,478
Queensland Government departments	
DATSIPD/DFYCC	257,458
DPWH	290,000
DCILGPS	153,797
DES	1,500
DETIR	20,000
Sub-total	722,755
Other	
ICC	12,985
Total cash grants	2,361,218
Non-cash grants	
TSRA: BRACS digital upgrade	4,825
Total non-cash grants	4,825
Total grants 1998-99	2,366,043

4.3.31 Yorke Island council receipts, 1998-99

Commonwealth Government departments	**$**
TSRA	1,674,660
Sub-total	1,674,660
Queensland Government departments	
DATSIPD/DFYCC	272,149
DPWH	49,553
DCILGPS	241,427
DES	1,500
DTSR	12,224
Consolidated other	674,644
DETIR	13,000
Sub-total	1,264,497
Total cash grants	2,939,157
Total grants 1998-99	2,939,157

Appendix 1

Aboriginal and Island councils and estimated populations

Aboriginal councils	ABS pop'n 1996*	LGGC pop'n estimate 1999****
Cherbourg	1063	1123
Doomadgee	649	580
Hope Vale	671	637
Injinoo	320	362
Kowanyama	819	807
Lockhart River	461	455
Mapoon	unknown***	169
Napranum	722	701
New Mapoon	258	297
Palm Island	1946	2155
Pormpuraaw	475	489
Umagico	200	248
Woorabinda	1,000	1,059
Wujal Wujal	280	211
Yarrabah	1879	1868
TOTAL	10,743	

Island councils	ABS pop'n 1996*	LGGC pop'n estimate 1999****
Badu	530	604
Bamaga	609	813
Boigu	224	260
Coconut	388**	161
Darnley	207	256
Dauan	117	137
Hammond	192	214
Kubin	399**	172
Mabuiag	171	192
Murray	405	449
Saibai	243	296
Seisia	117	205
St Pauls	399**	304
Stephen	89	99
Sue	388**	418
Yam	150	161
Yorke	250	306
TOTAL	4,091	

* Population statistics are from the 1996 Census.

** Population statistics for Coconut Island and Sue Island, and for St Pauls Island and Kubin Island were not separately identified in the 1996 Census. Consequently, the total population is halved and attributed equally to each island.

*** Mapoon was included in Cook Shire at the time of the 1996 Census.

**** These 1999 estimated figures are used by the LGGC in the formula for distributing grants. They are based on information received from the ACC and the ICC.

Appendix 2

Distribution of Commonwealth Financial Assistance Grants through LGGC to Aboriginal and Islander councils and to Aurukun and Mornington Shire Councils, 1999-2000

	Aboriginal councils	1999/2000 cash grant: equalisation component $	1999/2000 cash grant: road component $
1	Cherbourg	88,442	13,891
2	Doomadgee	104,559	44,931
3	Hope Vale	84,696	48,369
4	Injinoo	136,159	37,085
5	Kowanyama	142,015	73,483
6	Lockhart River	88,903	59,053
7	Mapoon*	-	-
8	Weipa Napranum**	199,560	8,197
9	New Mapoon	145,423	22,922
10	Palm Island	212,573	29,841
11	Pormpuraaw	61,062	45,971
12	Umagico	110,027	8,734
13	Woorabinda	67,064	26,012
14	Wujal Wujal	57,292	7,960
15	Yarrabah	177,775	22,951
	Island Councils		
1	Bamaga Island Council	242,197	15,411
2	Badu Island Council	371,346	7,491
3	Boigu Island Council	141,206	2,948
4	Coconut Island Council	75,842	1,047
5	Darnley Island Council	151,135	4,185
6	Dauan Island Council	67,774	1,999
7	Hammond Island Council	103,927	3,228
8	Kubin Island Council	80,541	7,989
9	Mabuiag Island Council	110,564	3,381
10	Murray Island Council	248,383	5,033
11	Saibai Island Council	190,007	4,489
12	Seisia Island Council	54,203	4,750
13	St Pauls Island Council	198,232	6,144
14	Stephen Island Council	50,611	1,394
15	Sue Island Council	286,870	3,523
16	Yam Island Council	131,925	1,872
17	Yorke Island Council	216,537	4,890
	Aurukun and Mornington Shire Councils		
1	Aurukun	248,747	64,837
2	Mornington	363,359	73,624

Source: Local Government Grants Commission 1999, *Twenty-third Report on Financial Assistance for Local Government 1999*

* Mapoon was a new council in 2000.

** Amounts provided only for 'Weipa Napranum'

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