

# **FRAMEWORK FOR GOVERNANCE PROJECT REPORT**

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## FRAMEWORK FOR GOVERNANCE - PROJECT REPORT

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## FRAMEWORK FOR GOVERNANCE PROJECT

### Executive Summary

*The Minister for Aboriginal Affairs and Minister for Local Government, the Hon Dorothy Kotz MP, initiated the Framework for Governance Project, which is being advanced by the South Australian Government, jointly through the Department of State Aboriginal Affairs and the Office of Local Government Department for Transport, Urban Planning and the Arts.*

*This project is about the development of a framework for governance to assist Aboriginal Councils prescribed as local governing bodies in out of Local Government Act areas of South Australia fulfil their governance role relating to local government type services in their respective communities. There are five such Aboriginal Councils in South Australia, namely Anangu Pitjantjatjara, Maralinga Tjarutja, Gerard Reserve Council, Nepabunna Community Council, and Yalata Community Council Inc.*

*The aim of the project is to develop a “culturally appropriate” framework for governance underpinned by principles which will enhance the provision of local government type services to people located within the Council’s local governing area*

*The scope of the Framework for Governance project did not extend to a review or analysis of service delivery approaches or frameworks (by State and Commonwealth agencies) relevant to the Nepabunna Community. However, it is important to recognise that this project is being undertaken within the context of these trends, which are emerging at the State and National level.*

*This project involved the development of a Framework for Governance for the Nepabunna Community Council Area, in consultation with the Nepabunna Community Council, as a “model” framework for governance. The Nepabunna Community is located approximately 60 kilometres east of Leigh Creek in the mid-north of South Australia and has a population of approximately 70 people. It is a discrete community township with administrative offices, community centre, municipal depot and workshop, waste depot, effluent system, health centre, women’s centre, education facilities, and youth recreational facilities. The access road from Copley to Arkaroola passes through the Nepabunna Community township.*

*Once developed, endorsed, and evaluated, it is envisaged that the Nepabunna “model” could contribute to discussions about the structures and processes for decision-making about local government type service delivery with the four other prescribed Aboriginal Community Councils located in out of Local Government areas of South Australia.*

*DOSAA established a Working Group Project Team to guide the development of the project. The Project Team comprised representatives of the South Australian Local Government Grants Commission, Office of Local Government, Nepabunna Community Council, Aboriginal and Torres Strait Islander Commission Port Augusta, Aboriginal and Torres Strait Islander State Policy Office, and the Local Government Association of SA.*

*This approach is a new direction for relationships with prescribed local governing bodies in out of Local Government Act areas in South Australia. The process has fostered and contributed to raising awareness of matters of relevance across spheres of Government and the Nepabunna Community Council. Importantly, the project has*

*been advanced in a spirit of mutual respect, co-operation, and goodwill between all parties involved.*

*At the outset, there was a shared understanding that Aboriginal Australian culture is about complex kinship group arrangements, decision making by consensus, information being passed on when necessary – from elders to young people, when people need to know the information – and cultural expressions through art, storytelling and dance.*

*It was also recognised that Aboriginal Australians do not necessarily define “communities” through a Council’s geographic area. Rather, it may be that there are people from a host of different background groups living in a geographic area due to inter-related factors including the mobility of some people (required to survive in harsh environmental conditions - water being the most limiting resource), introduction of exotic animal and plant species, historical changes, and cultural intervention since European settlement.*

*The project has involved a consideration of the interface between Aboriginal community cultural laws and customs relevant to community business, and government agencies as funding and service providers - and their respective policies and legislative requirements.*

*In developing the Framework for Governance, the project initially has sought to build on the traditional, familiar and existing systems of operation in the Nepabunna Community. Nepabunna is an area where familial kinships are not complex, there is strong community respect and appreciation of their land and indigenous culture, and where descendants have not experienced the fullness of their rich heritage and cultural traditions for some decades. The principle aim was to achieve a form of decision making and communication that meets both funding body requirements as well as specific community needs as they relate to local governance in a culturally appropriate way.*

*The Framework of Governance Project Report explores the nature of “local government type services”, the principles of good governance and relevant cultural issues.*

*A generic framework of governance is included, which reflects the outcome of the research and consultation phases of the project. The report concludes with the Framework for Governance for the Nepabunna Community Council Area, developed in close consultation with Nepabunna Community Council Executive Members. The Framework incorporates the principles themes as follows:*

*Membership of Council and Elections  
Roles and Responsibilities - Elected Officers and Staff  
Code of Conduct  
Providing Leadership – Planning for the Future  
Open Decision Making  
Accountability*

*Had it not been for the generosity and willingness of the Nepabunna Community Council Executive to be part of this project, the “model” or generic framework for governance could not have been produced. This significant contribution is acknowledged and has been greatly appreciated by the Project Team, and by the Consultant to the project, Margaret Heylen of Janet Gould + Associates.*

## **1. BACKGROUND TO THE PROJECT**

In 1994, six corporate bodies in out of Local Government Act areas of the State were prescribed as Local Governing authorities for the purposes of the Commonwealth's Local Government (Financial Assistance Act) 1995. Five of these are Aboriginal Community local governing bodies. The sixth is the Outback Areas Community Development Trust. This is further discussed in "2. Out of Local Government Act Areas" in this report.

The five are: Anangu Pitjantjatjara, Maralinga Tjarutja, Gerard Reserve Council, Nepabunna Community Council, and Yalata Community Council Inc.

Since 1994/1995 financial year, these five prescribed local governing authorities have received a share of the overall amount provided to the SA Local Government Grants Commission for allocation to the State's Local Governing councils/Authorities. At the time these communities were identified as already providing a focus for, and/or already providing local government type services to, their communities. With this arrangement an expectation on the five Councils has been placed on the prescribed bodies to continue to deliver "local government type services" to their communities located within their areas. There was no guidance or support given at the time as to what this actually entailed, and it was proposed that this arrangement would be reviewed in five years time. The SA Local Government Grants Commission Triennial Visiting Program has also resulted in a greater understanding and insight into the nature and type of relevant local government services.

The communities are not established under the Local Government Act, but over the past five years eligibility for membership of the LGA of SA has been extended to the prescribed Local Governing Authorities.

In recognition that guidance for these five local governing bodies on their decisions as to provision of local government type services to their communities was required, and at the request of the Minister for Aboriginal Affairs and Local Government, the Framework for Governance project was initiated.

Initially, the Department of State Aboriginal Affairs (DOSAA) established a Working Group Project Team (the Project Team) comprising representatives of DOSAA, the Office of Local Government (OLG), Aboriginal and Torres Strait Islander Commission (ATSIC) Port Augusta, and South Australian Local Government Grants Commission (LGGC).

At the outset, it was recognised that each of the five prescribed local governing bodies, have different statutory arrangements, organisational structures and local government type service arrangements. It was therefore agreed the best approach would be to work with one of the five authorities in the first instance to develop a framework for governance that best met the specific requirements of that particular community.

The Project Team first approached and received support of the ATSIC Nulla Wimila Kutju Regional Council to approach the Nepabunna Community Council.

In March 2001, the Project Team met with the Nepabunna Community Council's Executive, discussed the intent of the proposed project, and explored Council's interest in becoming involved. Council's Executive agreed to participate, and the Project Team was extended to include representatives of the Nepabunna Community Council, and the Local Government Association of SA (LGA). The Aboriginal Lands

Trust also has an interest in the project, and advised they would liaise with DOSAA on progress. Recognising the State-wide nature of the project, ATSIC State Policy Office was also extended an invitation to participate and is also represented on the Project Team.

Three important conditions related to Nepabunna Community Council's engagement in the process. These have been acknowledged and are respected. These conditions are as follows:

- Nepabunna Community Council representatives will be on the selection panel for the consultant appointed to undertake the work;
- Nepabunna Community Council will nominate two internal facilitators to support the project consultant; and
- The consultant will spend time in the community to confer, be around to discuss issues, support internal facilitators in responding to issues that arise, and hear of issues that come up first hand.

The project was initiated, and following a selected tender process, Janet Gould + Associates was the consultant appointed to work with the Project Team in the development of the Framework for Governance Project. Margaret Heylen of Janet Gould + Associates was the consultant project manager. In addition, Bill Mansell of Habitat Solutions was appointed by the Nepabunna Community Council to assist as an interpreter, to support the Internal Community Facilitators and the consultant project manager through the consultation phase of the project.

### 1.1 Project Objective and Methodology

The objective of the Framework for Governance Project is to develop in partnership with the Nepabunna Community Council, an appropriate Framework for Governance underpinned by principles which will enhance the provision of local government type services to people located within the Council's local governing area.

Achieving this objective involved the following steps.

- Facilitating discussions with elected representatives of the Nepabunna Community Council, and gaining an understanding of current practices, and decision-making framework. That is,
  - legal obligations and the obligations (accountability or strategic planning) of any other funding bodies,
  - internal and external systems now used by the Council to carry out its obligations,
  - the interaction between the Council and other funding organisations which may impact on the governance issues of the Council itself,
  - Council-staff relationships where senior staff are not local community members,
  - the strategic planning aspect of Governance with other strategic planning requirements in place, eg ATSIC Regional Planning, and
  - representation of community views.
- Fostering and promoting Community Council awareness of Local Government issues and the role and responsibilities of the Nepabunna Community Council with regard to the decisions they make on behalf of their community.
- Identifying options for a governance framework within which the Nepabunna Community Council can operate. In particular, the framework must be appropriate

to and suit the community culture, and provide for the greatest amount of self-determination.

- Close collaboration with the Internal Community Facilitators nominated by the Nepabunna Community Council, to ensure wider discussion on the developing governance framework.
- Preparing a report on project outcomes, and in particular, the agreed Framework for Governance for the Nepabunna Community Council. This is likely to lead to the development of
  - a short form Governance Policy statement, suitable for circulation and display in the Council Office, and
  - a longer form Framework for Governance, which expands in more detail on the Governance Policy and incorporates any assisting implementation details.

The project methodology will comprise of the following key components.

- Consultation with the Project Team as required, both with individually and together as a group.
- Literature review of governance references, and identifying strategic planning, roles and responsibilities of relevant agencies and statutory bodies (refer Appendix A).
- Data gathering relating to Nepabunna Community Council Inc, in particular its charter, role and practices
- Identifying relevant reference points arising from the Local Government Act, and defining “local government type services” that suit the particular community needs.
- Consultation with the Nepabunna Community, to hear of issues first hand, to be available to discuss any issues that arise, and to support internal community facilitators in responding to relevant issues raised by community members.
- Development of a governance framework for consideration of a trial by the Nepabunna Community Council.
- Final documentation, including any suggestions and recommendations for future arrangements to sustain the process.

Importantly, the project will be advanced in a climate of mutual respect, fostering collaboration, and respecting the need for confidentiality where appropriate.

## **1.2 The Working Group Project Team**

The membership of the Working Group Project Team comprised the following:

Nepabunna Community representatives:

- Denise Wilton, Chair, Nepabunna Community Council
- Dulcie Wilton, Nepabunna Community Council
- Judy Johnson, Internal Community Facilitator, Nepabunna Community Council
- Ian Johnson, Internal Community Facilitator, Nepabunna Community Council
- Phil Wright, Community Advisor (Municipal Services Officer), Nepabunna Community Council

Department of State Aboriginal Affairs

- Andy Robb, Executive Project Officer, Northern Regional Office

Office of Local Government

- Faye Barrett, Senior Project Officer

SA Local Government Grants Commission

- Ms Jane Gascoigne, Executive Officer

Aboriginal and Torres Strait Islander Commission

- Helen Marden, Executive Policy and Advocacy Officer, Northern Areas Region
- Wallace McKittrick, Senior Policy and Advocacy Officer, Northern Areas Region
- Mr Brenton Rigney, Policy Advisor, ATSIC State Policy Office

Local Government Association of SA

- Mr Chris Russell, Director, Policy and Public Affairs.

## 2. OUT OF LOCAL GOVERNMENT ACT AREAS

As previously stated Nepabunna Community Council is one of five Councils situated in an out of Local Government Act areas of SA. These five Councils are as follows:

- Anangu Pitjantjatjara, incorporated by Pitjantjatjara Lands Rights Act 1981;
- Maralinga Tjarutja Inc, incorporated by the Maralinga Tjarutja Lands Rights Act 1984;
- Gerard Reserve Council, Yalata Community Council and Nepabunna Community Council Inc, each of which are located on Aboriginal Lands Trust land, and leased to the respective Community Council within the terms of the Aboriginal Lands Trust Act 1966.

In 1994, a review of services provided to Aboriginal communities in South Australia was undertaken. The review, titled *“Local Governments Belong to Aboriginal People Too”*<sup>1</sup> identified a funding inequity. That is, the above five Community Councils not in Local Government areas incorporated under the Local Government Act did not benefit from the Financial Assistance Grant funding provided by the Commonwealth for local government services in South Australia. The Report subsequently recommended as follows:

*“The LGA advise the Minister for Local Government that it supported the following Aboriginal communities, not situated within existing local government incorporated areas, as local governing bodies for the distribution of Financial Assistance Grants:*

- *Anangu Pitjantjatjara*
- *Maralinga Tjarutja*
- *Gerard*
- *Nepabunna*
- *Yalata”*

This recommendation was further progressed following a review of the service provision, policy, and administrative arrangements in Anangu Pitjantjatjara, as a case study to assist in identifying ways that Aboriginal communities could operate as local governing bodies.<sup>2</sup>

Subsequently, in 1994 the above five Community Councils, were prescribed as Local Governing Authorities under the Local Government (Financial Assistance) Act 1995 (Cwth), for the purpose of Financial Assistance Grant allocations. It is again to be noted that similar arrangements apply to the Outback Areas Community Development Trust, which covers pastoral areas as well as townships in outback areas of South Australia.<sup>3</sup>

As a result, since 1995, all six prescribed Local Governing Authorities have received direct Financial Assistance Grant funding through the SA Local Government Grants Commission, specifically to deliver “local government type” services to their

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<sup>1</sup> Morton Consulting Services Pty Ltd *Local Councils Belong to Aboriginal People Too – Local Government and Aboriginal Populations Access and Equity Project*, 1994 (funded by ATSIC)

<sup>2</sup> *Mayatja Manta Nyangaku Kutju: Local government for Aboriginal communities*, prepared for Anangu Pitjantjatjara by the Pitjantjatjara Council Inc, 1994 (Author: Susan Gilmour an employee of Pitjantjatjara Council Inc)

<sup>3</sup> Note: The Framework for Governance Project does not involve the Outback Areas Community Development Trust. A separate review and planning process is addressing governance issues relevant to the Trust’s area of responsibility.

communities. The funds are provided in two components – a General Purpose Component, and an Identified Road Component. The total allocation of funds, including the Identified Road Component, is “untied” which means that it is up to the Council (as is the case with prescribed Local Government Councils), to decide what their local service delivery priorities are on behalf of their community. With this in place, South Australia had for the first time a consistent form of “local government service delivery” across the entire geographical area of the State.

It was observed in the 1994 Morton Report, and later referred to by Gilmore (1994), that once implemented these arrangements would need to be monitored over time to ensure appropriate policy in the administration of the Local Government (Financial Assistance) Act. In particular, as the five Aboriginal prescribed local governing authorities do not come within the ambit of the Local Government legislative framework, they have no identifiable local governing framework to provide guidance for effective governance with respect to the provision of local government type services.

A more recent review of the 1994 Morton Report, in 2000 – “*Local Councils Belong to Aboriginal People 2*”<sup>4</sup>, made further comment on these arrangements and supported the Principles of Governance Project, as follows:

*“9.2.2c Aboriginal Communities in out of Local Government*

*Council areas – Local Governance*

*It is recommended that a project on Principles of Governance be developed to assist relevant Aboriginal Community Councils with their local governance responsibilities. Some issues include:*

- *Effectiveness of corporate structures*
- *Representation of diverse opinions and structures*
- *Accountability mechanisms*
- *Strategic Management Planning”.*

As previously stated, it was agreed the best approach would be to work with one of the five prescribed local governing bodies in the first instance, - and Nepabunna Community Council have been engaged in the process to establish a Framework for Governance that fits their community.

A summary of the role and function of the agencies which have a specific interest in the project, and who are represented on the Working Group Project Team, follows in Section 3.

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<sup>4</sup> Janet Gould + Associates Pty Ltd *Local Councils Belong to Aboriginal People 2 – A New Strategy*, June 2000

### **3. RELEVANT AGENCIES – An overview**

#### **3.1 Department of State Aboriginal Affairs - DOSAA**

DOSAA is a State Government agency supporting the portfolio responsibility of the Minister for Aboriginal Affairs, the Hon Dorothy Kotz, MP.

DOSAA has a broad range of responsibilities, including the following.

- Providing strategic and policy advice relating to a broad range of Aboriginal affairs and issues across the State Government.
- Providing and maintaining essential services (water, sewerage and power) in Aboriginal communities, under the State/ATSIC Essential Services Agreement.
- Education and training, and promoting cooperation and coordination between agencies in the delivery of programs and services to Aboriginal communities.
- Assisting Aboriginal communities and people to establish economic development enterprises.
- Monitoring across agency programs to evaluate the effectiveness of services to Aboriginal and Torres Strait Islander people.

Through the administration of the Aboriginal Heritage Act, DOSAA also has a role in clarifying who and how to consult with the Aboriginal and Torres Strait Islander heritage community on relevant heritage matters.

In the case of the Nepabunna Community, the essential services (power, water and effluent disposal) are maintained by DOSAA – Essential Services Team.

- Power supply is from the ETSA grid system with medium voltage overhead reticulation to all consumers. The supply, reticulation, all maintenance and upgrading work is the responsibility of ETSA.
- The community water supply is drawn from two bores. Bore water is pumped to two off 120-kilolitre (each) ground storage tanks located on an elevated site to provide adequate static pressure. Reticulation of the potable and bore water throughout the community is via a dual underground PVC system to isolating valves at each consumer point.
- All dwellings, community buildings and public ablution blocks are connected to a septic tank that overflows into a reticulated gravity common effluent drainage system.

DOSAA also carry out the project management of essential services capital upgrade projects approved by ATSIC Nulla Wimila Kutju Regional Council and funded by ATSIC.

#### **3.2 Aboriginal Lands Trust - ALT**

The Aboriginal Lands Trust is a statutory authority located within DOSAA.

The Aboriginal Lands Trust is established within the terms of the Aboriginal Lands Trust Act, 1966. Briefly, the purpose of the Act is to ensure the titles to existing Aboriginal reserves remain with Aboriginal people; mining royalty payments are received by relevant Aboriginal communities with which more land could be purchased, and funds are received to develop lands vested in the Trust.

With the transfer of Aboriginal reserves and other areas of land to the Trust, the Trust leases the land back to the relevant Aboriginal communities, usually at nominal rates for 99 years and repeatedly renewable periods. It is noted that the Morton Report<sup>5</sup> concluded that the functions of the ALT are not those of local service provision (directly or indirectly). The Aboriginal Lands Trust Act defines the role and function of the ALT as follows:

*“...to receive, accept, hold, acquire by means of agreement or exchange, possess and to dispose of property of every kind..” (Section 5(2))*

ALT leases land to the Nepabunna Community Council Inc, through 99 year renewable lease arrangements. ALT allocate funding to Nepabunna Community Inc for land management on the Nantawarinna land, an Indigenous Protected Area of about 570 square kilometres.

### 3.3 Office of Local Government - OLG

The OLG is located in the South Australian Government's Department for Transport, Urban Planning and the Arts, and is responsible to the Minister for Local Government. The role of the Office of Local Government is to advise the Minister for Local Government on:

- the administration and operation of the Local Government Act 1999 (SA) and other legislation committed to the Minister; and
- the development and advancement of the State/Local Government Reform Program.
- OLG also supports three statutory authorities – the Outback Areas Community Development Trust, the Boundary Adjustment Facilitation Panel, and the SA Local Government Grants Commission. In carrying out its business, the Office interacts with the LGA, Local Government Councils and Regional Associations, and with a range of State and Commonwealth agencies.

The primary objective of the Office of Local Government is to provide leadership within the State Government by promoting shared strategic directions and effective working relationships between State and Local Government.

The State Government through the OLG has been progressing three phases of Local Government reform, which are closely inter-related and overlapping. Significant advances have been made in the first phase, structural reform, resulting in a reduction of the number of Local Government Councils from 118 in 1996 to 68 in 1998. The second phase, legislative reform, successfully resulted in new Local Government legislation as from 1 January 2000. The third phase, which is currently in progress, is the State/Local Government Partnerships Program. This phase aims to coordinate development of new and better ways for State and Local Government to work together for the benefit of South Australian communities.

The OLG have a role in contributing to progress of the Framework for Governance project; a project which seeks to assist relevant Aboriginal Community Councils themselves with their planning for, and the delivery of, local government type services to their communities, with accountability built in along the way. This accords with the directions of the new Local Government legislative framework which provides a consistent, coherent framework from which councils can develop, plan

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<sup>5</sup> Morton Consulting Services Pty Ltd *Local Councils Belong to Aboriginal People Too – Local Government and Aboriginal Populations Access and Equity Project, 1994*, funded by ATSIC.

and deliver their services as well as providing for a more open and accountable Local Government sector.

### **3.4 SA Local Government Grants Commission – LGGC**

The LGGC is an independent statutory authority established by the Local Government Grants Commission Act 1992 (SA), and is administratively located in the OLG.

LGGC is responsible for the distribution of Local Government Financial Assistance Grants in accordance with the *National Principles for the Allocation of General Purpose and Local Road Grants*, which are established under the Local Government Financial Assistance Act 1995 (Cwth).

Information relating to the National Principles for the allocation of grant funding, and the administration and allocation of Financial Assistance Grants, is attached at Appendix B.

Financial Assistance Grants are divided into two components – General Purpose component and Identified Road Component. The General Purpose Component aims to compensate Local Government Councils with below average capacity to raise revenue and/or above average expenditure needs.

Each State and Territory receives a General Purpose Component allocation of Financial Assistance Grants on a per capita basis from the Commonwealth Government, for distribution to Local Government Councils within their State or Territory. Across the Nation grants are untied which offers flexibility to Councils to use the funds according to local priorities and specific community needs.

All Councils established under the Local Government Act and all communities receiving grants are required to provide to the LGGC copies of their audited financial statements. In the case of Councils established under the Local Government Act this requirement is prescribed by the legislation. In the case of the five Aboriginal Community Councils, there are no specific legislative accountability criteria associated with the provision of grants other than the requirement to provide the LGGC with copies of their financial statements. To assist the authorities and to provide more rigour into reporting, the Commission has recently developed General Information Returns in consultation with the prescribed Aboriginal local governing authorities to assist with their reporting. Since 1999/2000 the Commission has required the completion of a General Information Return annually, which covers basic demographic data about the population, broad financial information, information about the types of services provided, and local road data.

Such an approach is consistent with the Commission's work which requires each Council and prescribed Local Governing Authority to provide information on the types of services that are provided and general information about the community.

The philosophy of the LGGC is to continue to enhance its methodology and look at opportunities for more equitable distribution of the South Australian grants allocation to South Australia's 68 Local Government Councils and the six prescribed Local Governing authorities.

As a funding authority providing resources to the Nepabunna Community Council for the provision of local government type services, LGGC has a particular interest in the

governance arrangements relating to the untied grants provided for “local government type services”.

### **3.5 Aboriginal and Torres Strait Islander Commission - ATSIC**

ATSIC is an independent authority established by the Commonwealth Government under the Aboriginal and Torres Strait Islander Commission Act 1989 (Cwth). ATSIC is Australia’s national policy-making and service delivery agency for Aboriginal and Torres Strait Islander people. ATSIC’s key role encompasses the following:

- advocating Aboriginal and Torres Strait Islander issues nationally and internationally
- advising the Minister for Aboriginal and Torres Strait Islander Affairs; and
- delivering programs to Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander people are brought into the process of government through ATSIC Regional Councils. Regional Councils are elected by Aboriginal and Torres Strait Islander residents of the relevant ATSIC regions, and their functions are set out in Section 94 of the Act. The functions of Regional Councils include the following:

- to formulate a regional plan and assist and advise on its implementation
- to represent the views of Aboriginal and Torres Strait Islander people within the region and act as their advocate
- to prepare a draft budget, including the impact on portfolio bodies, setting out the proposed allocation of funds; and
- to prepare an annual report on their operations and the implementation of their regional plan.

A significant proportion of ATSIC’s budget is allocated for two large programs, as follows:

- Community Housing and Infrastructure Program – linking funding priorities to regional plans and other local government and State activities.
- Community Development Employment Projects Scheme (CDEP) – the scheme has potential to provide appropriate infrastructure for the delivery of mainstream services, including local government services to discrete Indigenous communities and the broader community.

ATSIC’s “Planning, Service Agreements and Local Government Program” acknowledges the nexus between regional planning (required under the ATSIC Act) and Local Government. Through this program, funds are used to support planning by the thirty five ATSIC Regional Councils across Australia, and to promote strategic advocacy activities jointly undertaken with Local Government. There are three ATSIC Regional Councils in South Australia.

Nepabunna Community Council is represented by the ATSIC Nulla Wimila Kutju Regional Council area (Nulla Wanganga Tjuta North Ward), which covers a large geographic area of approximately 529,194 square kilometres in the northern part of South Australia.

ATSIC administration and the Nulla Wimila Kutju Regional Council have an on-going and significant role in providing funding to the Nepabunna community for infrastructure, **municipal services**, and community development programs, within the context of the regional plan. They therefore have an interest in ensuring the outcome of the Framework for Governance project reflects a culturally appropriate

approach and the specific aspirations of the Nepabunna community, and is consistent with ATSIC regional, State and national policy directions.

Nepabunna Community Council prepares annual budget submissions for the provision of local government type (municipal) services, in accordance with ATSIC Program guidelines. Funding submissions made to ATSIC are assessed in accordance with Program guideline criteria, and funding priorities determined through the Nulla Wimila Kutju Regional Council – Regional Plan 1998-2001.<sup>6</sup> Audited financial statements are prepared by Nepabunna Community Council with respect to the tied funding allocated in accordance with the Program guidelines.

It is noted that ATSIC has recently embarked on a program of exploring the concept of community participation agreements, which is further discussed at “5.3 National Policy – Welfare Reform and Mutual Obligation” in this report (page 17).

### **3.6 Local Government Association - LGA**

The LGA is recognised as the peak representative body for Local Government in this State. The LGA is federated with other State Associations through the Australian Local Government Association, which is funded by State Local Government bodies. LGA’s principle role is to promote local governance, provide leadership and represent the interests of Local Government in South Australia, in particular to State and Commonwealth Governments, in order to enhance the capacity, efficiency and effectiveness of member Councils. LGA’s functions are summarised as follows.

- Providing information and advice to member Local Government Councils on a range of human service, structural and management reform, legal and legislative, environmental, financial infrastructure and community service issues.
- Continue to improve communication and information dissemination to member Local Government Councils and authorities.
- In association with member Local Government Councils and authorities, map the future of Local Government, recognising the need for responsiveness in an environment of continuous change.
- Research policy and service issues relevant to Local Government.
- Facilitate change, innovation and excellence in Local Government services by creating opportunities for collaboration between member Local Government Councils and authorities, provide leadership, and participate in training and project development.

Since 1995 when the five Councils in out of Local Government Act areas were prescribed as Local Governing Bodies for the purpose of Financial Assistance Grants, they have been eligible for membership of the LGA. At the current time, Anangu Pitjantjatjara and Nepabunna Community Council Inc are members. The LGA therefore has an interest in supporting the Nepabunna Community Council as a member of the LGA, through the development of the Framework for Governance project. In addition, LGA have an interest in the potential wider application of the project outcomes in other “out of Local Government Act area” prescribed local governing authorities.

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<sup>6</sup> Refer Literature Review summary – Appendix A.

#### **4. WHAT ARE “LOCAL GOVERNMENT TYPE” SERVICES?**

“Local government type” services can broadly be described as services provided at a local level, as a result of local governing authority decision making processes, which seek to address and respond to local community needs. These services are usually made available within the parameters of available resources, that is, as a result of income generated by the local governing authority through rate revenue, fees and charges, and specific program and grant funding.

As with local government service delivery under the Local Government Act, “local government type” services, in general, would not include hospitals and medical services, public housing, education, the provision of water and power supplies, sewerage infrastructure, and social welfare and financial support services. The provision of these services in urban, rural, and remote communities, are largely the responsibility of State and Federal Governments.

Services provided at the local level by Local Government Councils (established under the Local Government Act) can vary greatly between Councils. The nature and type of local government services provided depends on the geographic location, the physical environment, the resources available, and the specific needs of the local community.

Local roads, management of other physical infrastructure, and waste management are the core services provided by all Local Government Councils. Most Local Government Councils also provide library services and recreational facilities, for example, they own and/or have responsibilities to maintain parks, gardens, ovals, and recreation areas for public use.

##### **4.1 How are “local government type” services resourced?**

Local Government Councils established under the Local Government legislative framework are empowered to raise revenue through land rates and certain fees and charges. Section 150 of the Local Government Act provides for “the fact that rates constitute a system of taxation for local government purposes”. Rates are not a fee for service.

Rates revenue, and fees and charges, represent about 50% of most Local Government Councils’ total resource base. In some cases Councils charge a fee for service, consistent with the “user pays” principle, for example for residents to drop off rubbish, other than household waste at collection, at waste management depots.

It is to be noted that section 171 of the Local Government Act requires Councils to produce a rating policy and explain the decision behind their rating framework. Moreover, section 166(1) (a) provides Councils with discretionary power to grant rebates in certain circumstances “where the rebate is desirable for the purpose of securing the proper development of the area (or part of the area)”. This illustrates that dialogue between the elected representatives and the community is to be fostered and encouraged.

In addition to rates revenue, there is a myriad of potential sources of grant and program funding options for social and community development projects, and for specific purposes arising from an assessment of community needs.<sup>7</sup>

It is noted however, that whilst a key objective of Local Government Councils is to be responsive to the needs of its community (Section 8 (b)), Councils have no specific statutory responsibilities in the area of social development. The type and extent of assistance provided to the local community is largely determined by Council's local policy decisions, and available resources allocated from Council's budget or through grant funding (generally on-off, or short term funding) to implement specific programs.

As with all local governing bodies in out of Local Government Act areas, the five Aboriginal communities prescribed as local governing authorities do not have a rates revenue funding base. Local government type services are generally provided as a result of funding received for municipal services from ATSIC (supplementary funding), and untied grants allocated through the LGGC framework. Some local government type services are also provided through ATSIC CDEP training program arrangements.

### **4.2 What local government services must Local Government Act Councils provide?**

The Local Government Act or other Acts requires Local Government Councils to provide the following services:

- town planning and development and/or building assessment
- some environmental health services (such as public health in the community, and food inspection)
- fire prevention (some building inspection and some bushfire prevention planning functions are a duty, others are discretionary)
- dog and cat management and control
- certain administrative requirements, like maintaining an office, employing a Chief Executive Officer and supporting the elected Council.

### **4.3 What local government services do Local Government Act Councils provide by choice?**

Many Local Government Councils provide a wide range of services and facilities to meet the needs of all sectors of their community on a daily basis. As noted above, the primary source of income to finance these activities is rate payments, although grant funding is also sought by Councils for specific purposes and responsive projects as needs arise and funding sources are available.

Increasingly also, a user pays principle is being adopted to supplement Councils' resource base and to ensure the ongoing provision of services. This approach is consistent with the - Federal Government's policy direction on welfare reform and the concept of mutual obligation.<sup>8</sup>

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<sup>7</sup> The web site at [www.grants.ord.sa.gov.au](http://www.grants.ord.sa.gov.au) is a State Government grants information source providing a single easy to search format for local governing authorities once they have first determined their community needs.

<sup>8</sup> Senator Jocelyn Newman, Minister for Family and Community Services – *The Future of Welfare in the 21<sup>st</sup> Century*, 1999

The following provides examples of the sorts of activities Local Government Councils engage in, and the “local government type” services they provide.

### Community leadership

- Planning for the future
- Representation of local community
- Joint arrangements with State and Federal Governments

### Public health services

- Control of public nuisance and health risks
- Control of pest animals and plants, and insect control
- Food inspection and controls
- Dog and cat management
- Immunisation services

### Building and development

- Approvals and regulations
- Planning and zoning
- Heritage preservation and protection

### Roads and Drainage

- Maintenance for local roads and kerbing (that is not State arterial roads or national highways)
- Stormwater drainage and flood control
- Footpaths and street trees
- Street lighting
- On street parking and traffic control

### Public Places and Spaces

- Parks and reserves
- Public toilets
- Recreation facilities and centres – ovals, playing fields, and playgrounds
- Cycle paths
- Public swimming pools
- Street cleaning
- Signs
- Cemeteries

### Rubbish collection and waste management

- Recycling services
- Litter bins

### Community Services and programs

- Library and information services
- Local history
- Community centres and halls
- Community development programs, including arts and culture
- Youth services and facilities
- Home and Community Care Programs – caring for disabled people, older people and carers.
- Community Bus services
- Crime Prevention Programs.

### Economic Development

- Employment generation and tourism
- Training Programs

### Environmental and Coastal Management

- Wetlands
- Coastcare and Dunecare programs
- Waterways
- Local Area Water Catchment Plans

The above is not an exhaustive list, but intends to capture the range and extent of services which could be described as “local government type” services.

Effective governance is central to the provision of “local government type” services. The concept of governance and the components parts contributing to good governance” are discussed in Section 5.

#### **4.4 Local government services in out of Local Government Act areas**

As previously stated, the Local Government Act does not apply to Local Governing authorities in out of Local Government Act areas of South Australia, such as the Nepabunna Community Council Inc. It is also to be noted that:

- these authorities do not have a rate base resource, as is the case of Local Government Act Councils (although it is likely there would be capacity to institute fees or charges with appropriate constitutional arrangements), and
- regulatory functions such as those related to the Development Act, Public and Environmental Health Act (and other Federal and State Government legislation), are administered by the relevant Department responsible for the administration of the respective legislation.

In the case of Nepabunna (and other discreet Aboriginal communities in rural and remote areas in out of Local Government Act areas of South Australia) municipal services are funded by ATSIC. ATSIC resource certain municipal services in accordance with specific Program Statements on a tied funding basis. The local governing authorities prepare budgets and make submissions annually with respect to the Program Statements. The range of municipal services which may be funded by ATSIC Regional Councils are attached as Appendix C.

## **5. ABOUT GOVERNANCE**

### **5.1 What is Governance?**

There is much discussion and debate in the literature<sup>9</sup> about the nature of governance and good governance.

However, simply stated, governance is about the structures and processes for decision-making. There is no single definition, but it is generally understood to encompass stewardship, leadership, democracy and accountability. Local Government has a broad responsibility for governance of its community. That is, the manner in which it governs and manages its affairs for the overall well being of all residents.

There is a clear nexus between governance and service delivery – that is, deciding what services communities require, and how they will be provided and/or delivered within the available budget and competing community demands

Governance is distinguished from management matters, in that governing is the responsibility of the elected leaders and management is the responsibility of the staff of the organisation. This highlights the distinction between Governance and Government.

In general, Governance is concerned with establishing the authority and its election and decision making processes, ensuring clarity in roles and responsibilities of elected members, representation of community views, deciding the overall direction the authority will take, developing policies to guide elected members and staff, approving long term plans, and setting yearly budgets.

Management is about making sure things get done. For example, in the case of public works, designing, constructing, maintaining, regulating and responding to emergencies. However, there is likely to be an overlap between governance and management functions, particularly in small governing bodies.

Good governance is underpinned by the core values of access and equity, fairness, honesty and integrity. Good internal and external relationships are also important. In a local governing context, good governance is about

- transparency and openness in decision making
- being accountability to the community and funding bodies in the discharge of the authority's responsibilities
- ensuring representation of all community interests
- understanding and representing community views, locally and in the broader context, demonstrating leadership and vision,
- forward planning in collaboration with local and regional agencies and networks, and taking good care of the community's assets.

### **5.2 New Approaches to Service Provision in Aboriginal Communities**

At a national level, a range of recent reviews and studies relating to the significant and serious social problems confronting residents in many Indigenous communities, has stimulated debate about the inadequacy of current structures and service delivery models to address these issues in a sustainable way.

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<sup>9</sup> Refer Literature Review notes, Appendix A

For example, the findings of the Dillon Report<sup>10</sup> on the review of Doomadgee and Palm Island communities illustrate this point. The report concludes that many of the problems besetting the Doomadgee and Palm Island communities today are a manifestation of past injustices and the impact of laws and policies, which attempt to control the lives of the people of those communities.

Dillon argues for a major reform to the service delivery approach and manner of funding adopted by governments, a developmental approach (which will require an extraordinary effort from governments and residents alike), and establishing new relationships between governments and the communities. Indigenous communities have both developmental needs and service delivery needs and that in order to stimulate and achieve sustainable development on these communities, government programs must focus on strengthening the capacity of communities to deal with their issues. A structured community development process is required to re-build the social fabric of the communities.

These findings reflect discussions about “capacity building” in Indigenous communities within an inter-national context, and the focus of emerging trends in First Nation communities in Canada. Capacity building is defined by the United Nations as:

*“The process by which individuals, organisations and institutions and societies develop abilities (individually and collectively) to perform functions, solve problems and set out and achieve objectives”.*<sup>11</sup>

The principle underpinning this approach is that it builds independence by increasing competencies. Some of the important lessons learned in relation to capacity building have been highlighted as follows:

- Local ownership and leadership is critical
- Capacity building is ultimately about politics, political leaders and their relationship with their citizens
- Effective capacity building takes time
- Long term partnerships can be critical to successful capacity building.

### **5.3 National Policy – Welfare Reform and Mutual Obligation**

On the Australian scene, the reform of the welfare system announced in the *Australians Working Together Package* provides:

- a strong focus on supporting individuals and families
- seeks to develop a system that engages all people of working age in active social and economic participation; and
- is about generating opportunities for individuals to help themselves and help each other.

ATSIC have identified that these initiatives, through Mutual Obligation Agreements, will require a greater responsiveness from Government to the needs of Indigenous Australians. Of significance, in many remote Indigenous communities, there are few opportunities for people on income support to contribute to or participate in the economic and social wellbeing of their community. These circumstances contribute to

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<sup>10</sup> Dillon C APM, *Review of the Indigenous Communities of Doomadgee and Palm Island – Final Report, April 2000*

<sup>11</sup> Institute of Governance Ottawa, Ontario, Canada – *Building Capacity for Sound Public Works in First Nation Communities – A Handbook*

entrenched welfare dependency in many communities, limited opportunities to gain life skills, and exacerbate poverty.

ATSIC have embarked on a four year program of exploring the concept of community participation agreements and capacity building initiatives in partnership with Indigenous communities. The following guiding principles underpin the development of community participation frameworks and capacity building initiatives.

- Engaging all stakeholders in a partnership between communities, ATSIC Regional Councils, State, Local and Commonwealth Government
- Recognition of Regional and Community Plans
- Effective coordination by Government
- Processes should be initiated, owned and driven by community or region
- Recognition of local and regional governance as the key to sustainability.

*“What distinguishes capacity development from a service delivery approach is its holistic nature. The sustainable development of a community involves a very complex system or interrelated elements; capacity development recognises the importance of thinking about individuals, organisations, programs, policies etc as part of a broader whole rather than as discrete, or loosely connected concerns. It requires change in the way ‘problems’ are addressed”<sup>12</sup>*

The aim of the capacity building effort is to achieve solutions from the “ground up” by enabling communities to:

- develop their own practical solutions to many of the social and economic challenges which exist:
- challenge the “status quo” in the design of program and service delivery
- ensure programs are sustainable with realistic and achievable outcomes.

The scope of the Framework for Governance project does not extend to a review or analysis of service delivery approaches or frameworks (by State and Commonwealth agencies) relevant to the Nepabunna Community. However, it is important to recognise that this project is being undertaken within the context of these trends, which are emerging at the State and National level.

### **5.4 Local Government Councils in South Australia**

As a useful starting point for considering a framework for governance for Aboriginal Community Councils prescribed as local governing bodies, attention is turned to the recent debate in the Local Government sector and the provisions enshrined in the new Local Government Act, 1999 (SA) and the Local Government Elections Act 1999 (SA).

During the legislative review leading up to the Local Government Bills, an extensive consultation process was undertaken involving Local, State, and Commonwealth governments and agencies, community organisations, and local communities. This process resulted in the following Framework for Governance being established for Local Government Councils in South Australia.

- A system and constitution of Local Government:

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<sup>12</sup> ATSIC – *Changing Perspectives in ATSIC – from service delivery to capacity development* Capacity Development Discussion Paper, 2001 page3

- A system comprising: objectives, councils roles and functions and clear statements about what part councils can be expected to play in community life and the functions they can be expected to perform – ie strategic planning at the local and regional level;
- The Constitution: A processes for making “external” boundary changes and “Internal” changes/review processes in composition and representative structure ie number of members, wards, changes to a council name)
- Powers of Councils - Conferring on councils the powers, capacity and tools to perform council functions in a framework of strategic and prudent management with clear accountabilities. For example, the establishment of Committees to advise councils, and the establishment of delegation to controlling authorities.
- The roles of elected members and Chief Executive Officers - Clarifying the roles of principal and other elected members in relation to
  - policy development, resource allocation and performance management, and professional conduct, so that these reflect best practice in the public sector,
  - the right of access of elected members to council documents
  - the development of a code of conduct covering such matters as standards of behaviour , prescribed limits to reimbursement of expenses, and registers of interest of elected members, all of which are documents open to public access.
- Arrangements for council meetings - Frequency and timing of meetings, notices of meetings, agendas, the number of elected members that constitute a quorum, circumstances where the public can be excluded from meetings, meeting and recording procedures to be observed, and confidentiality provisions.
- Council staff - the duties, powers and responsibilities of council employees. For example, the CEO role includes exercising responsibility for appointment, dismissal and determining salary and conditions of all other council employees in accordance with resource policies, budgets, organisational structures approved by council, awards and industrial agreements.
- Administrative and financial accountability requirements (which sets out a clearly defined accountability framework and management cycle for councils to facilitate both short and long term planning.
  - A system of corporate planning based on prescribed documents
  - Provision for long term (3-5 years) and short term(annual) planning and budgeting by councils in ways that are suitable to their individual circumstances, auditing, and requirement for an annual report with a minimum set of contents and accessible to community.
- Finance - Setting out how councils may raise, spend and invest money - Prudent financial management.
- Rates and Charges - Provides a clear and consistent legal framework with flexibility to enable councils to work out a rating system that encourages business and sustainable development and, at the same time, is fair for all ratepayers. Councils are required to make a range of information about rates and charges, including their rating policy and its impact on business, available to the public, and to include a summary of the information with annual rate notices. Responsibility for decisions about the distribution of the rate burden is clearly with

those who understand their local areas best, councils themselves, and to require these decisions to be clearly explained and justified locally; rate rebates).

- The care of community land – That is,
  - The concept of classifying certain land owned or under a council's care, control and management as "community land" which is to be retained and managed for the general benefit of the community, for example, parklands.
  - Consultation processes to be pursued by council; councils are custodians of the land, for current and future generations and this builds on community consensus about the future management and use of community land.
- The making of by-laws. Regulatory functions, designed to ensure that regulation made by Councils comply with the principles and features of good regulation now shared by Governments at the national, State and Local level, including the avoidance of unnecessary restriction of competition; procedures for developing policies for the making of these, and providing rights of review.
- Review of Local Government operations and decisions - Methods for the review of the conduct of elected members including provisions affecting review of actions, decisions and operations of councils, and a requirement for councils to put in place internal grievance procedures so that matters can be dealt with locally.
- Elections - Provisions for the conduct of council elections – postal voting, casting and counting votes, returning officer, candidacy for election (for example, the requirement to be a Australian citizen, and not a member of Parliament) and details of campaign donations.

The Local Government legislation as summarised above, sets out a framework designed to support effective, accountable Councils with wide powers of governance and a clear part to play in a coordinated system of government.

The Framework for Governance project seeks to develop a "culturally appropriate" framework for governance underpinned by principles to support the prescribed Aboriginal Community Council with the provision of local government type services to people located within a local governing area in out of Local Government Act areas of South Australia.

A discussion about "culturally appropriate" follows in Section 6.

## 6. CULTURALLY APPROPRIATE GOVERNANCE

The findings of a range of reports and studies relating to governance and decision making structures in Aboriginal communities draw attention to the following issues.

### 6.1 Are the right people making the decisions?

It is important to recognise that local governing incorporated bodies are not necessarily (or likely to be) the only source of decision making authority in traditional Aboriginal communities.

Gilmore<sup>13</sup> draws attention to the fact that in traditional Aboriginal law, Tjukurpa is legitimate authority. This is the law from which certain individuals derive authority to make decisions with regard to the ownership of material objects, action to be taken in the instance of conflict or transgression, and any questions related to the use, ownership, and knowledge about land.

Of significance, traditional Aboriginal and western cultures are fundamentally different, both from the perspective of cultural traditions and the significance of the system of authority over land usage. This fundamental difference has no parallel in western governance structures, which has a distinct geographic reference in a society where land can be bought and sold.

This cultural difference therefore has the potential for western style local governing authorities to lack legitimacy in the eyes of Aboriginal people, because the right people are not making the decisions. For example, Westbury and Sanders<sup>14</sup> report that Northern Territory Land Councils opposed development of community government councils in remote Aboriginal communities, believing that the authority of these local government would conflict with, and undermine the role of traditional Aboriginal land owners – that is, the right people are not making decisions.

Coles<sup>15</sup> further comments on this, and suggests Councils could become legitimate in the eyes of their Aboriginal constituents if they incorporated greater elements of Aboriginal culture along with elements of “western culture” into their structures.

*“A far preferable model for change is one which maintains a clearly defined separation of powers between the key Aboriginal structures engaged in land management and use on behalf of traditional owners, and those representing a wider regional constituency in terms of service delivery” (Coles, page 19)*

Gilmore and Coles (and other literature review references, see Appendix A) refer to the concept of “bi-cameralism” as an alternative option. That is, one house of “democratically elected representatives” empowered to make decisions on the “delivery of services” and another of “elders deliberating and making decisions on “land and cultural matters”.

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<sup>13</sup> Gilmore, Susan *Mayatja Manta Nyangaku Kutju: Local Government for Aboriginal Communities* 1994

<sup>14</sup> Westbury and Sanders *Governance and service delivery for remote Aboriginal communities in the Northern Territory: Challenges and opportunities* CAEPR Working Paper No 6/2000

<sup>15</sup> Coles David, *The Marriage of Traditional Aboriginal and Western Structures in Local Government in the Northern Territory* Department of Local Government, Northern Territory 1999

Importantly, it is suggested that options should be explored to achieve this traditional Aboriginal decision making authority within existing structures, rather than imposing new structures and requirements on Aboriginal communities.

## **6.2 Does (and/or should) the decision making structure accommodate representation of traditional groupings?**

The Dillon Review<sup>16</sup> found that existing mainstream governing structures were not conducive to traditional Indigenous decision-making processes, even though Indigenous people filled the elected positions. That is, the structure is not designed to allow for input from families, clans or tribal groupings. The problems emanate from the structure of the Queensland Local Government Act, and Council powers, roles and responsibilities, rather than just the capability of the people elected to it.

There is an expectation that local governing authorities under Local Government Acts will represent the whole of the community. However, in rural and remote Aboriginal communities, communities of interest are likely to be based upon tribal or language groupings, traditional land ownership, or similarly shared aspects of Aboriginal culture. Coles<sup>17</sup> notes this concept is seen to be in conflict with principles of democracy which, although part of the political paradigm of the western culture, are central elements of the culture of the broader Australian community.

*“Would we accept a system that held that a person has standing in a particular decision because of their responsibility for care of a particular area of land? Could we accept that a person or a small group of people have the right to make decisions that affect our lives because they have been through processes we have not, and cannot?”*

Coles refers to, however, examples which could be seen to parallel the above situations in Australia and abroad, as follows:

- the Constitution of the United States of America allows for experts as members of Cabinet, the Westminster system does not,
- the House of Lords in the United Kingdom still contains people who owe their position to land ownership, and
- Australian parliamentarians are likely to be well educated, middle-aged, male and of Anglo or European descent.

Limerick<sup>18</sup> suggests that an incorporated body's Constitution could take account of the cultural composition of the community and incorporate traditional governance and decision making models. The Constitution could provide for:

- each clan or family group to be represented,
- the important role of elders, through a Council of Elders with power to advise the Council or to veto decisions regarding traditional matters, and
- the recognition of the role of traditional owners in governing structures through guaranteed representation on Council, through a traditional owner advisory body, or a traditional owner body with a power of veto over land matters.

It is also to be noted that, unlike other States, in South Australia 85% of the geographic area of the State does not come under the Local Government Act.

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<sup>16</sup> Dillon, Colin *Review of Indigenous Communities of Doomadgee and Palm Island – Final Report April 2000*.(Queensland)

<sup>17</sup> Ibid (Referred to above)

<sup>18</sup> Limerick, Michael *Indigenous Community Governance in Queensland, 1984-2000* Indigenous Law Bulletin, January 2001

### 6.3 Cultural Values and Accountability to the Community

Another important consideration is the Aboriginal cultural dimension, which places responsibility for families, clans and tribal groupings first, and the traditional practice of sharing resources. This situation (within a western style governance context) has given rise to perceptions that decisions may be affected by bias and conflicts of interest, leading to grievances about decision making processes.

A recent review of ATSIC's processes for decision making<sup>19</sup> examined some of the issues, specifically in relation to decisions and about funding allocations and service provision, and identified the following issues.

- difficulties were identified relating to disclosure of interests that could give rise to conflict of interest in decision-making.
- "Prescribed" non-pecuniary interest as well as pecuniary interests should be disclosed.
- Proper weight should be given in decision making to relevant factors such as consistency of proposals with the regional plans, rather than what could be perceived as decision making resulting in personal gain or benefit.
- Adequate notification of the reasons for decisions and review options should be provided.
- Steps should be taken to increase the amount of information available. For example, opening up meetings, making sure minutes of meetings are available to the public, and improving notification of reasons for the decisions made.

Of significance, the review report notes that:

*"The law relating to administrative decision making is directly applicable to the expenditure of public money under statute. So to the extent that these concerns are inconsistent, the law applies" (page 5).*

### 6.4 Community Council Meeting Procedures

Western style, and Westminster system meeting procedures arising from constitutional requirements can be complicated and often daunting for those unfamiliar with formal meeting processes. However, in fulfilling the requirements of governance and decision making where expenditure of public resources is involved, certain formal processes are inevitable, although procedures should be kept as simple as possible and relevant to the specific governing authority.

Some basic principles, which ATSIC have suggested should be observed at Community Council Meetings are as follows:

- the structure should allow a group to come together for discussion and free debate in its simplest and most direct form,
- the forum should respect the rights of every participant to be heard, protect the rights of the minority, and ensure the democratic right of the majority,
- every item for discussion and every proposal should be debated fully,
- every eligible member present has an equal right to be heard, to vote as he or she pleases, and to be supplied with all the information about the item or the proposal that is available,
- only one item or proposal should be debated at a time, and participants should speak about the specific item under discussion, and

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<sup>19</sup> ATSIC – Review of ATSIC's processes for decision-making and the reconsideration of decisions – Improving Decision Making and Review. March 1996

- there is a need for order and participants should respect this by speaking one at a time.

ATSIC have prepared guidelines for community meeting procedures, to assist Aboriginal Community Councils to conduct their local governing business. These Guidelines include such matters as the above basic principles, agendas, orders of business for meetings, duties of office bearers, and keeping records.<sup>20</sup>

### 6.5 Role of Elected Councillors and Administrators

The Local Government Act sets out explicit provisions to distinguish between the role of the Council (the body of elected Councillors), and the Chief Executive Officer, which are summarised as follows:

- The Council's role is to set strategic directions and objectives, make policies, allocate resources, and monitor expenditure and service delivery outcomes. Councillors have no individual powers in decision making, but have a duty to participate in the deliberations and civic activities of the Council.
- Chief Executive Officers undertake day to day management responsibilities and ensure policies and lawful decisions endorsed by Council are carried out. Their role also includes providing advice and reports to Council; coordinating proposals for developing objectives, policies and programs for the area; providing information to enable Council to assess its performance against its strategic management plans; and managing employees of the Council.

The expectation of the role of Community Councils (Council and elected Councillors) and the Administrator (Community Advisor or Municipal Services Officer) is generally similar to that described above.

In some Aboriginal Community Councils, however, the Administrator may undertake a more significant advisory role in the decision making process and in interpretation of documents, as well as in information enhancement and skill development.

Another factor of relevance is that elected Councillors may also be employees of the Community Council incorporated body. This will mean that the Administrator also has the responsibility for managing the Councillor as an employee. In this working relationship, there is potential for the roles and responsibilities to become blurred, and it is therefore crucial that the roles and responsibilities of Councillors, Managers, and employees (whether elected Councillors or community members) are clearly articulated.

### 6.6 In summary

As Limerick<sup>21</sup> suggests, good governance in Aboriginal communities has more chance of being achieved by community governments which are culturally appropriate, properly representative, and more accountable to the members of the communities they serve.

But it is also important to recognise that in a traditional sense, what is "culturally appropriate" can change over time. As societies develop and adapt to new ways of

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<sup>20</sup> ATSIC – Community Meeting Procedures

<sup>21</sup> Limerick, Michael *Indigenous Community Governance in Queensland, 1984-2000* Indigenous Law Bulletin, January 2001

doing things, new traditions and technologies emerge which can often bring about both local and global changes in mores and traditions.

The following questions about culturally appropriate decision making structures, representation, and accountability will need to be considered in the development of a Framework for Governance.

- Is the local governing authority (the incorporated body) recognised as having legitimate decision making powers, both by the community and funding bodies?
- Does (and/or should) the decision making structure accommodate representation of cultural groupings?
- Are there structures in place to minimise cultural bias in decision making?
- Are the roles and responsibilities of elected Councillors, the Administrator, and employees clearly articulated?

In summary, successful local governance is about delivering strong community representation and leadership, delivery of services in an efficient, effective and accountable manner, and a decision making structure that is suitable, lawful and culturally relevant to each specific community. In each case, it will be the specific Aboriginal community that will guide decisions about what is culturally relevant in the development of framework of governance for their respective Aboriginal Community Council.

Section 7, which follows, proposes a generic framework for governance, to form the basis for consultation with relevant prescribed Aboriginal Community Councils.

## 7. GENERIC FRAMEWORK FOR GOVERNANCE

Following analysis of the literature review, research findings and consultation outcomes, a generic Framework for Governance was developed to provide the basis for consultation with relevant Aboriginal Community Councils, in the first instance the Nepabunna Community Council.

The Framework is based on the themes and principles identified through the research phase, and as enshrined in the South Australian Local Government legislation, referred to in “5.4 Local Government Councils in South Australia” of this Report. These principles relate to the following themes and topics:

### **A Constitution**

- Objectives and powers
- Accountability Requirements
- Who is eligible for Council
- Rules for Elections and Voting

### **Clear Roles and Responsibilities**

- Members
- Management
- Codes of Conduct

### **Providing Leadership**

- At local, regional, State and Federal levels
- Planning for the future
- Looking after community assets

### **Representing Everyone in the Community**

- Consultation

### **Open Decision Making**

- Meetings discussions and recording decisions

### **A Process for Review of Decisions**

- When people are not happy about a decision

### **Accountability**

- Keeping records of meetings and decisions
- Accounting records

An outline of the Generic Framework of Governance follows:

<b>Generic Framework for Governance</b>
<p><b>A Constitution</b> which sets out:</p> <ul style="list-style-type: none"><li>• Council objectives, roles and functions in relation to the Nepabunna Community</li><li>• The Powers of Council to perform its functions</li><li>• Accountability requirements, for example, financial management</li><li>• Eligibility for membership</li><li>• Elections and Voting rules – who can nominate, who can vote, and counting method and responsibility</li></ul>
<p><b>Role and Responsibility Statements</b> outlining:</p> <ul style="list-style-type: none"><li>• The role and responsibilities of Councillors as<ul style="list-style-type: none"><li>• Policy development</li><li>• Deciding how money will be spent</li><li>• Managing the performance of Municipal Services Officer (MSO)</li><li>• Ensuring accountability and reporting requirements are met</li></ul></li><li>• A Code of Conduct for Elected Members<ul style="list-style-type: none"><li>• Fair and honest, considering the whole community</li><li>• Declaring conflict of interest</li><li>• Guidelines for reimbursement of expenses</li></ul></li><li>• Responsibilities of the MSO to implement Council decisions</li></ul>
<p><b>Providing Leadership</b> As community leaders, representing the community's views to regional, State and Federal Government agencies.</p> <ul style="list-style-type: none"><li>• Preparing a Community Plan, involving consultation with<ul style="list-style-type: none"><li>• the community about their views and priorities</li><li>• relevant agencies, ensuring consistency with regional and State plans and directions.</li></ul></li><li>• Networking and collaboration with regional and State agencies</li></ul>
<p><b>Representing the Nepabunna Community</b> by:</p> <ul style="list-style-type: none"><li>• Consulting with people about their views and priorities</li><li>• Making decisions that will benefit the whole community.</li></ul>
<p><b>Open Decision Making</b> through:</p> <ul style="list-style-type: none"><li>• Scheduling meetings regularly</li><li>• Preparing an agenda and making it available before the meeting – displayed on Office window</li><li>• Meetings open to all members, and invited guests. Any member can vote on decisions.</li><li>• Community members asking in advance to talk to the Council about an issue.</li><li>• Keeping records and about the decisions made.</li><li>• Community members can ask to see the records at the Office.</li></ul>
<p><b>Review of Decisions</b></p> <ul style="list-style-type: none"><li>• Community members can ask Council to review a decision of they disagree with what Council has decided.</li><li>• Council might not change the decisions, but will try to work out something to resolve the problem.</li></ul>
<p><b>Accountability to Community and Funding Authorities</b> through:</p> <ul style="list-style-type: none"><li>• Keeping records of meetings and copies of letters and other correspondence.</li><li>• Maintaining proper accounting records and annual audited financial statements.</li><li>• Preparing a report at the end of each financial year about Community Plan achievements, and how funding has been spent.</li></ul>

The Generic Framework for Governance, as above, formed the basis for further consultation with the Nepabunna Community Council, as follows.

## 8. FRAMEWORK FOR GOVERNANCE for the NEPABUNNA COMMUNITY COUNCIL AREA

The Generic Framework of Governance as outlined in Section 7 of this Report formed the basis for further consultation with the Nepabunna Community Council.

Following consultation with Nepabunna Community Council Executive Members, the Generic Framework of Governance was modified where appropriate to suit the specific circumstances of the Nepabunna Community. This resulted in the development of a short form “*Governance Statement*” and a longer form “*Framework for Governance for the Nepabunna Community Council Area*”, which follows this Section of the Report.

The Framework for Governance for the Nepabunna Community Council Area generally reflects the existing constitutional arrangements and current working practices, which will enable the framework to be applied by the Nepabunna Community Council, following formal acceptance by the Council.

In presenting the Framework for Governance to the Nepabunna Community Council, suggestions were also made for Council’s consideration, which focus on enhancing the application of the Framework for Governance. Nepabunna Community Council Executive Members indicated that they are keen to plan for the future and do Nepabunna business within a more structured and integrated framework.

In this context, the Nepabunna Community Council identified areas where they seek assistance to progress the application of the framework. In particular, Nepabunna Community Council is eager to develop a **community plan** involving consultation within their community and with relevant service provision and funding agencies, to ensure integrated planning for services and to address their specific community priorities, through a community development and capacity building approach.

These matters have been drawn to the attention of the Working Group for members’ attention.

### 8.1 Acknowledgments

In conclusion, it is acknowledged that had it not been for the generosity and willingness of the Nepabunna Community Council Executive to be part of this project, the “model” or Generic Framework for Governance could not have been produced. This significant contribution has been greatly appreciated by the Project Team, in particular by the Consultant to the project, Margaret Heylen of Janet Gould + Associates, who thanks Executive members most sincerely.

Margaret Heylen also sincerely thanks all other Project Team members for their support, assistance, specific contributions, and for being available to discuss issues and comment on drafts as required, often at very short notice. This team commitment has enabled the successful project outcomes to be achieved in a timely manner.

[insert SA Government logo]

## **THE NEPABUNNA COMMUNITY**

Nepabunna Community is located in the remote north east area of South Australia, about 60 kilometres east of Leigh Creek. The area managed by the Nepabunna Community Council is situated between Lake Frome and the Northern Flinders Ranges, and covers about 8000 hectares including Nantawarinna, an Indigenous Protected Area of about 570 square kilometres.

The population of Nepabunna Community totals about 70 but this can vary at various times throughout the year. It is a discreet community township with municipal offices and community centre, municipal depot and workshop, waste depot, effluent system, health centre, women's centre, education facilities, youth recreational facilities, and landscaped and re-vegetated areas. A recent and very proud achievement of the Nepabunna Community, is their status as a recipient of one of only 14 international prestigious United Nations Environment Program Awards, for environmental achievement in their management of the Nantawarinna Indigenous Protected Area.

Nepabunna is the traditional home of Adnyamathanha people of the Flinders Ranges.

### **ADNYAMATHANHA PEOPLE OF THE FLINDERS RANGES**

*The Yura (Aboriginal people) of the Flinders Ranges are related to previously distinct but socially interactive societies. These were Wailpi, Kuyani, Jadiaura and Piladappa. Today, some fifteen to eighteen hundred people from these groups identify themselves as Adnyamathanha, meaning people of the hills/rocks.*

*The muda (history) of the people is linked to the yarta (land), which has deep significance. Whatever happens to the land happens to the people. Geology, topography, flora, fauna and climate all feature in traditional stories and legends. Traditional stories and legends also describe and reinforce the Adnyamathanha social system, based on two matrilineal moieties, Ararru and Mathari. Marriage and a lot of social interaction still happen within a traditional kinship framework.*

*Some stories and information have been lost with the passing of older Adnyamathanha people, while other secret information may soon be lost because male initiation traditions have stopped. The last full initiation ceremony was in the late 1940s. For Adnyamathanha, pride and identity in their land, their culture and language remain very strong.<sup>22</sup>*

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<sup>22</sup> An extract from the Story prepared for the Tourism SA Dreaming Trails Signage Interpretive Sites Project, by David Tarr, Innovative Tourism

DRAFT GOVERNANCE STATEMENT - NEPABUNNA COMMUNITY COUNCIL  
AREA

*Caring for our land, the environment and natural resources  
Preserving and protecting our history and culture  
Making sure our people have access to proper housing, health services and  
community infrastructure  
Educating, training and employing our young people, so they can stay in Nepabunna*

**Membership of our Council**

- Aboriginal people who have lived in Nepabunna area for 3 months, and are over 18 years of age, can be a member of our Council. A spouse of a member who is accepted by the community can also be a member.
- Members can stand for election as an Executive Officer of Council.

**Election as an Executive Officer of Council**

- Elections for Executive Officers are held by secret ballot in November every year.
- Any member over 18 years of age can nominate for election as an Executive Officer
- Votes are counted by someone who is independent of the Nepabunna Community

**Responsibility of Executive and Members**

- We will be fair and honest in carrying out Nepabunna business, and think about how everyone in the community can benefit from our decisions.
- Executive will help new members learn how to do things at meetings.

**We will provide leadership and represent the needs of the Nepabunna Community Council area**

- We will represent our people's views to regional, Local, State and Federal Government agencies, and ask other agencies to work with us to achieve our plans for the future.
- We will prepare a community plan for the future, in consultation with our community.
- We will make plans so that our land and community assets are looked after.

**We will represent everyone in the Nepabunna Community Council area**

- We will ask our people what they think are important things to do and plan for.
- We will think about everyone in the community when we make decisions so that everyone in our community can benefit from the services we provide.

**We will talk about issues and make decisions openly**

- Meetings will be held regularly to discuss Nepabunna business.
- We will let members know when meetings are to be held and what is to be discussed.
- We will discuss issues and try to make decisions that suit everyone.
- Only members can join in discussions and vote on decisions at meetings
- Any member can ask for a meeting to be called if they have important things to discuss.
- Decisions made at meetings will be written down, and records will be kept in the office.

**We will review of our decisions if necessary**

- If anyone does not agree with a decisions we have made, they can tell us and we will think about it again.
- We might not change our mind, but will try and work out something for the person (or people) who are not happy about a decision.

**We will keep records and provide information**

- We will keep records of our meetings and of our financial affairs.
- Any member can ask to look at the meeting records at the office.
- We will write a report at the end of each year, which tells the story of what we have done, what we have achieved, and how we have spent the money allocated to us.
- We will use the report to help us plan for the future, and to tell funding agencies of our work and about our success stories.

**DRAFT**  
**FRAMEWORK FOR GOVERNANCE**  
**for the**  
**NEPABUNNA COMMUNITY COUNCIL AREA**

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The Nepabunna Community Council manage the community's business and affairs in accordance with its Constitution which sets out the objects (Clause 4), and the powers (Clause 5) of Council. The Nepabunna Community Council's Constitution says that the powers of management can be delegated to the elected Executive Officers (Clause 9).

The powers to manage the community's affairs and make decisions were delegated to Executive Officers of Council at the Annual General Meeting on 23.10.98.

Management decisions about Nepabunna business are made at Council meetings, and all members can attend these meetings (see "5.2 Council Meetings"). Members can have their say and vote at Council meetings, where decisions are made by consensus or majority vote.

## **1. MEMBERSHIP OF COUNCIL AND ELECTION OF EXECUTIVE OFFICERS**

The constitution says the following things about membership of the Nepabunna Community Council, and election as an Executive Officer of Council.

### **1.1 Membership of the Nepabunna Community Council**

- Aboriginal people who have lived in the Nepabunna area continuously for 3 months, and are over 18 years of age, can be a member. Aboriginal members' spouses who are accepted as members of the community and agree with the objects of the Council can also be members.
- A Public Officer is also appointed to represent the Council. The Public Officer is a member of the Council, but is not required to meet the membership criteria, as above. The Public Officer must be a resident of South Australia, with the postal address c/- the Nepabunna Community Council for serving notices.

### **1.2 Rights of Members**

- Members have the right to attend and speak at Council meetings, and vote on decisions that are being made.
- A member has the right to call a meeting of Council and propose as a member any person who is eligible, as above in 1.1.
- At Council meetings, members have the right to put and second motions and resolutions, and have one vote on any motion and resolution at meetings of the Council.
- Members may ask in advance for a meeting to be postponed. Procedures for this are set out in the Constitution (see Clause 10 [2]).
- All members have the right to stand for election as an Executive Officer of Council.

### **1.3 Election of Executive Officers of Council**

Elections are held for Executive Officer positions of Council at the Annual General Meeting each year, as follows:

- Chairperson,
- Vice Chairperson,
- Secretary,
- Treasurer, and
- one other Executive Officer.

After 12 months since the last elections, Executive Officers' positions are declared vacant and the outgoing Chairperson calls for the election of new Executive Officers.

- All members have the right to vote at the election of Executive Officers.
- Retiring Executive Officers can stand for re-election.

### **1.4 Elections and Voting**

Elections for Executive Officers are held annually, usually in November.

- A notice of the elections, the date to be held, and invitation to nominate to stand for election as an Executive Officer, is made available to all members through the Nepabunna Community Council office.
- Every member has the right to one vote for each of the Executive Officer positions.
- Voting is conducted by a secret ballot. A person independent from the Nepabunna Community is nominated to conduct the voting procedures and count the votes.
- If an Executive Officer retires or dies before the term is up, the Chairperson or Vice Chairperson will call for the election of a new Executive Officer after 28 days. The new member will be an Executive Officer until the next annual Council election.

## **2. ROLES AND RESPONSIBILITIES**

### **2.1 Nepabunna Community Council and Executive Officers**

Nepabunna Community Council, and the Executive Officers of Council through delegated powers, are responsible for deciding how funding should be spent and for making decisions about managing the affairs of the Nepabunna Community. This includes:

- Making policy and planning decisions about what the priorities are for programs, projects and services that are required by the Nepabunna community, working out the annual budget, and monitoring progress. These things will be written down in a Community Plan, which will say how Council will work towards achieving the community's longer term plans.
- Employing people to do the work that is required, including the employment of the Municipal Services Officer.
- Ensuring that proper financial and meeting records are kept, and that the reporting requirements of the funding agencies are met.

### **2.2 Municipal Services Officer and other Employees**

The Nepabunna Community Council Inc employs a Municipal Services Officer and other employees to provide services and undertake projects in the community. The employee's roles are different to that of the Council.

The role of the Municipal Services Officer includes:

- advising Council and Executive Officers about relevant documents and matters referred to Council meetings, and making recommendations which will help Council make decisions;
- implementing the policy and planning decisions that Council makes;
- managing all of the staff employed by the Council; and
- keeping proper records to meet Council's accountability and reporting requirements.

The Council will make sure the Municipal Services Officer is implementing what Council has decided, but will not be involved in the day-to-day running of the Office or managing the staff employed by the Council.

All staff employed by Council will be engaged:

- within the terms and conditions of employment which are of equivalent to State and Commonwealth award rates and conditions applying for similar work;
- in accordance with job and person specifications and duty statements for each position; and
- managed by the Municipal Services Officer in accordance with fair and equitable human resource management and employment practices.

### **3. CODE OF CONDUCT**

#### **3.1 Executive Officers**

- Executive Officers will be fair and honest in carrying out Nepabunna business, and think about how everyone in the community can benefit from decisions.
- Executive Officers do not have individual powers to make any decisions. Decisions are made at Council meetings, where all Executive Officers and other members of Council have the right to vote on matters being decided.
- Executive Officers with experience will help new members learn how to do things, and about being an Executive Officer of Council.

#### **3.2 All Members (including Executive Officers)**

- All members at a Council meeting will help to make sure the meeting is held in good order, and not unnecessarily interrupt other members when they are speaking.
- All members will respect the right of other members to have an opinion that is different from their own, and will not interfere with others expressing their opinions.
- The constitution says that a member may be told to leave a meeting because of disorderly conduct, drunkenness or intoxication.
- Clauses 5(9), and 6(4) of the constitution says that members can be removed from office (temporarily or permanently) by majority vote at a Council meeting, for proven
  - misconduct,
  - incompetence,
  - actions inconsistent with the objects of the Council,
  - misuse of community funds, that is, using community funds for any purpose other than for community business or projects
  - if the member has not lived in the Nepabunna community for 3 months.
- In these circumstances, the member has the right to speak and be heard at the meeting about the resolution of removal as a member of the Council.

#### **3.3 Disclosure of Interest**

Members will tell the meeting if they have a personal interest, or if they could gain financially from any decision. In these cases, the member/s disclosing the interest will not vote on the motion at the meeting.

#### **3.4 Reimbursement of Expenses**

Council members will be reimbursed for reasonable out of pocket expenses, for example, for travelling and accommodation if required, in accordance with State Public Service guidelines and rates.

#### **4. PROVIDING LEADERSHIP – PLANNING FOR OUR FUTURE**

Nepabunna Community Council Executive Officers will provide leadership and represent the needs of the Nepabunna people located in its area, as follows.

- We will represent Nepabunna people's views to regional, State and Federal Government agencies.
- We will lobby and advocate for the services required, and the things we want to happen.
- We will prepare a two year Community Plan, to plan for our long term aims. We will ask funding agencies to help us with working out our Community Plan. The Community Plan will be based on:
  - what the community in our Council area thinks is important,
  - making sure that our land and community assets are looked after for generations to come, including Nantawarinna,
  - allocating funding for the projects,
  - working out who is responsible for managing the projects, and
  - setting targets so we can measure our success.
- We will ask other agencies to work with us so our Community Plan is consistent with what is happening at a regional and state level, and to help us achieve our plans for the future. These agencies will include the following:
  - Aboriginal & Torres Strait Islander Commission (ATSIC),
  - Department of State Aboriginal Affairs (DOSAA),
  - For the management of Nantawarinna - Aboriginal Lands Trust, Indigenous Protected Area funding, and PIRSA.
  - Health, education, tourism and economic development agencies – for example, Pika Wiya Health Services
  - Local Government agencies, such as the SA Local Government Grants Commission, the Office of Local Government, and the Local Government Association of SA.
- We will also work towards establishing networks with other organisations, which might be able to provide information and develop a working relationship with the Nepabunna Community Council. For example:
  - Regional Council of Goyder, and
  - Local Government Association of SA.

## **5. OPEN DECISION MAKING**

### **5.1 Representing Everyone in the Nepabunna Community**

- Before making important decisions at Council meetings, Executive Officers will talk to Nepabunna people to find out about their views on matters being discussed.
- Executive Officers will think about what is best for the whole community when making decisions.

### **5.2 Council Meetings**

- Council meetings will be held regularly to discuss Nepabunna business and to make decisions about our affairs. Any member can ask for a Council meeting to be held.
- A notice of each meeting will be placed on the Office notice board (near where the mail is collected) showing the date and time, and what is to be discussed.
- All members will be encouraged to attend Council meetings. Other people who are not members may attend if invited by Council members.
- All members are able to participate in discussions at Council meetings. It is expected that all members will comply with the Council's Code of Conduct during discussions at meetings. (See "3. Our Code of Conduct")
- The Chairperson is in charge at Council meetings. Some of the meeting procedures are written into the Constitution (See Clause 10[4]).
- Members will try to make decisions that suit everyone.
- Decisions will be made at Council meetings by consensus of the members present, or if no consensus can be reached by majority vote.
- Decisions made at Council meetings will be written down and kept in the Minute Book, kept in the Office. Members may ask to see these records at the Council office.

### **5.3 Review of Decisions**

- Any member who does not agree with a Council decision can ask for it to be discussed again.
- The decision might not be changed, but members will try and work out something for the person (or people) who is not happy about the decision.

## **6. ACCOUNTABILITY**

Nepabunna Community Council is committed to being accountable to the Nepabunna people located in its area, and for reporting in a timely manner to relevant agencies on expenditure of the funds allocated.

All records required by funding agencies and statutory authorities will be properly kept, and filed in an orderly manner.

### **6.1 Keeping Records**

- Records of decisions made at all Council meetings will be recorded at the meetings, and kept in the Minute Book in the Office.
- Any member may ask to look at the Council meeting records during office business hours.
- Proper books of account and financial records will be kept by the Council, and maintained by the Municipal Services Officer.
  - Financial records will be examined and audited once a year.
  - Audited financial statements will be tabled at a Council meeting annually.
- Any sub-committees of the Council will provide monthly reports of their activities and financial statements.
- Copies of letters, funding submissions, reports and other correspondence will be filed in an orderly way in the Office.

### **6.2 Annual Report**

At the end of each financial year, an Annual Report will be written to tell the story of:

- what we have done for that year in our two year Community Plan,
- what has been achieved, and
- how the money allocated to Nepabunna Community Council has been spent.

The Annual Report will be used to let our members, people in the Nepabunna Community Council area, and funding agencies know of our work and success stories.

The Annual Report will also form part of the General Information Return prepared every year for the SA Local Government Grants Commission.

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## **APPENDICES SCHEDULE**

- **Appendix A – Literature Review Notes**
- **Appendix B – Financial Assistance Grants – Principles**
- **Appendix C – Municipal Services funded by ATSIC**

**Literature Review Notes**

This is not an exhaustive analysis of all documents reviewed. Rather, the literature review has involved identification of the relevant aspects with respect to the Framework of Governance Project, which have been highlighted in the following notes. Please note also that the references are in no particular order or groupings. Relevant issues arising from the literature review are referred to through various sections of the Discussion Paper, and referenced accordingly.

***Governance and service delivery for remote Aboriginal communities in the Northern Territory: challenges and opportunities*** (Westbury and Sanders, CAEPR Working Paper No 6/2000)

- Basic premise: Self governance, local government and service delivery are inextricably intertwined both conceptually and in practice.
- NT Land Councils opposed development of community government councils in remote Aboriginal communities, believing that the authority of these local government would conflict with, and undermine the role of traditional Aboriginal land owners.
- Many NT Local Government Councils lack legitimacy in eyes of Aboriginal people – the right people are not making decisions (Coles 1999:6) page 4. Councils could become legitimate in the eyes of their Aboriginal constituents if they incorporated greater elements of Aboriginal culture along with elements of “western culture” into their structures, for example:
  - “bi-cameralism” – one house of “democratically elected representatives” empowered to make decisions on the “delivery of services” and another of “elders deliberating and making decisions on “land and cultural matters”.
  - Reference to use of existing multi-cameralism rather than imposing within one organisational structure a bi-cameralism.
- *“Far preferable model for change is one which maintains a clearly defined separation of powers between the key Aboriginal structures engaged in land management and use on behalf of traditional owners, and those representing a wider regional constituency in terms of service delivery” (page 19*
- Noted that different constituencies, applying different criteria and objectives, should and do make decisions regarding matters such as land, health and education in Aboriginal communities.
- Benefits of dispersed self-governance
  - Diversity of interests (age, gender, families or clans, land owners). Different interests make their voices heard, not necessarily a unity of interests
  - Challenge is how to ensure equitable representation, no systemic corruption or misapplication of funds.
- Martin and Finlayson (1966) – 2 models of response: develop greater scrutiny of administrative processes; appreciate the cultural logic of both parties – striking a balance.
- Cornell et al. (2000) re Harvard Project on American Indian Economic Development notes sustainable development assisted by non-politicised dispute resolution mechanisms.
- Links to larger service delivery structures outside local area provide opportunities for professional support and shared expertise and supervision.
- Complexities of inter-governmental fiscal arrangements noted. These muddy the waters in developing agreed objectives and identifying lines of accountability in service delivery and have been commented on at length in numerous academic and government reports (page 9). Contributed by a lack of data, and procedures for assessing effectiveness.

***Borroloola Community Government Scheme – under Local Government Act, NT***  
(April 1987)

- Defines community government area, establishes wards and Council, sets out provisions for meetings. Defines powers and functions, and election procedures.

- By-Laws in place relating to Litter and Flammable and Noxious Weeds, and Garbage and removal and destruction of Animals.

**Mayatja Manta Nyangaku Kutju: Local government for Aboriginal communities.**  
**Prepared by Anangu Pitjantjatjara by the Pitjantjatjara Council Inc.** (Gilmour, Susan. An employee of Pitjantjatjara Council Inc, consultant employed by Anangu Pitjantjatjara)

- Often Aboriginal communities have many incorporated bodies. An existing organisation should if possible be recognised and strengthened rather than further fragmenting local decision making. (Reference to Recommendation 199 made by the Royal Commission into Aboriginal Deaths in Custody). The organisation that has the effective authority over the use of land and which recognises traditional authority with regard to land ownership and usage is more likely to be the key organisation in the community.
- Organisation that wants to be recognised as a local governing body is to represent the whole community. This can change over time, depending on office bearers and perspective of staff. However, self-determination is meaningless if existing structures not recognised.
- “Hurdle of a general competence in local government is that the community has to go through the process of identifying which of their forums (*has the greatest capacity*) and should be accepted as having this role” p10.
- Tjukurpa – the law that certain individuals derive authority to make decisions with regard to the ownership of material objects, action to be taken in the instance of conflict or transgression and any questions related to the use, ownership, and knowledge about land. This is the starting point. Inc entities alone are not the only source of decision making authority. Communities are fundamentally different, not only from cultural traditions, but also system of authority over land usage which has a distinct geographic reference (no analogy in a society where land can be bought and sold.
- “Immediate recognition of a “culturally appropriate” representative incorporated organisation for the purposes of all relationships with mainstream government systems is neither advisable nor achievable. This is because within these communities two bases of decision-making – traditional and mainstream – are in the process of being synthesised and developed into modern Aboriginal community governance. The process necessarily needs time to take place.....which will allow over time lasting development of such Aboriginal local governance” (page 17)
- Anything that creates yet another layer of complexity rather than fitting the funding arrangement into the local community’s existing administration demonstrates a cynical misunderstanding of increased self determination. (page 27)

**A Vision for Local Democracy – Discussion Paper, 1996** (Councillor John Ross – President of the LGA of SA, and Chris Russell - Assistant Secretary-General, LGA of SA)

- Three emerging trends in Local Government:
  - Leadership in local and regional strategic planning, This will be assisted by high ethical standards, attention to community needs, responsiveness and better “customer service”.
  - Broader functional involvement at strategic planning and resource co-ordination level, rather than direct management.
  - Civics education and understanding, taking Local Government to people.
- Relevant Key elements of vision:
- Significant role – leadership, broader role and greater community understanding. Governance is about representation of community views, leadership, stewardship of community assets, strategic planning and education about democracy. Access and equity will be a core value.
- Accountable to the local community – autonomy and interdependence

- Community interests and involvement in decision making. Reference to open Council debates, community forums, advisory committees, ward and precinct committees, working parties.
- High ethical standards – honourable, fair and scrupulous. Codes for conduct, conflict of interest, managing complaints.
- Local Vision – ongoing strategic planning, complementary to State and Commonwealth plans. State and national planning as the sum of local plans.

***The Future of Welfare in the 21<sup>st</sup> Century*** (Senator Jocelyn Newman, Minister for Family & Community Services, Minister Assisting the Prime Minister for the Status of Women – presentation to National Press Club Canberra, 29 September 1999) – The McClure Report

- Announcing Reference Group on Welfare Reform – “Community, business and government working together”. Striking a better balance between ongoing commitment to maintain a strong safety net and its responsibility to develop policies and strategies allowing all Australians to participate fully in the workforce where they are able. The Government is concerned that there is an increasing reliance by Australians on welfare, with around 1 in 5 people of workforce age on income support payments.
- Principles guiding the reform
  - Maintaining equity, simplicity, transparency and sustainability
  - Better incentives for people receiving social security payments so that work, education and training are rewarded
  - Greater opportunities for people to increase self reliance, rather than providing a passive safety net
  - People on income support to contribute to help themselves and contribute to society – mutual obligation
  - Providing choices and support – more tailored assistance focusing on prevention and early intervention
  - Maintaining the Government’s disciplined approach to fiscal policy.

***Indigenous Community Governance in Queensland, 1984-2000*** (Michael Limerick, *Indigenous Law Bulletin*, January 2001, Volume 5, Issue 5, page 4)

- Commenting on developments in Indigenous community governance in Queensland since the passage of the Community Services (Aborigines) Act 1984 and the Community Services (Torres Strait) Act 1984.
- The legislation represented a Western Local government model of governance that was simply transplanted into Aboriginal and Torres Strait Islander, and not appropriate for Indigenous communities’ customs and traditions.
- Legislation assumes that the primary focus of community governance is the delivery of local government services. In practice, Councils are asked to take on a much wider role – “almost every aspect of the functioning of their communities”.
- Alternative Governing Structures Program (AGSP) - Preference for more incremental and case-by case approach to reforming community governing structures. Aim for each community to undertake community-based planning to devise its own model.
- Reference to Indian Reorganization Act, passed by the United States Congress in 1934. Enabling legislation, but because tribes had little access to expertise to devise their own governing structures, most tribes adopted the model constitution produced by the Government.
- AGSP research found
  - a common shortcoming was that, in absence of adequate information, resources and support for local communities in developing culturally appropriate local governing structures, Western model is adopted.
  - A major factor was the lack of interest in governing structures, as was the apparent lack of awareness of governance issues.
  - Community governance best approached in the contest of broader community planning processes that focus on a community’s key issues of concern
- Two political imperatives, sometime seen in conflict. That is, the desire of Government for greater accountability of Aboriginal and Island Councils, and the desire of Indigenous

communities for self-determination through more appropriate and effective community government. Resolution of accountability for community governments achieved by community governments which are cultural appropriate, properly representative, and more accountable to the members of the communities they serve.

- Need for flexibility in legislation for communities to develop alternative models and ways of operating.
- Constitution could take account of cultural composition of the community and incorporate traditional governance and decision making models. Constitution could provide for
  - Each clan or family group to be represented
  - The important role of elders – Council of Elders with power to advise the Council or veto decisions regarding traditional matters
  - The role of traditional owners to be recognised in governing structures – guaranteed representation on Council, through a traditional owner advisory body, or a traditional owner body with a power of veto over land matters.
- Evolution of new models of governance at the community level will be a much more long-term process, and can only be led by Aboriginal and Torres Strait Islander communities themselves.

***Public Sector Corporate Governance Disclosures: An Examination of Annual Reporting Practices in Queensland – Australian Journal of Public Administration 59(2):11-23, June 2000*** (Christine Ryan, School of Accountancy - Queensland University of Technology, and Chew Ng, School of Accounting and Finance – Griffith University)

A paper examining the existing public sector literature in order to derive a set of broad principles of corporate governance in the public sector.

- Definition from Cadbury Report (1991) (Hardman 1996:15): Corporate governance defined as
  - the system by which companies are directed and controlled
  - a function of the board of directors
  - concerned with the way the directors control the activities of the company and ensure accountability.
- Good corporate governance requires clear definitions of responsibility and understanding of relationships between the organisation's stakeholders, and those entrusted to manage its resources and deliver outcomes.
- Management is about running business – governance is about seeing that it is run properly (Tricker 1984:7)
- UK Cadbury Committee Report (1992) identified three fundamental principles of corporate governance:
  - openness - ensuring interested parties are confident in the organisation
  - integrity - straightforward dealing and completeness, financial reports should be honest and present a balance view of affairs
  - accountability – directors accountable to shareholders through the quality of information provided.
- Corporate governance frameworks draw together a number of management tools into a logical interrelated set of elements.

***Anangu Pitjantjatjara Homelands Policy*** (Prepared by the Policy Committee, 1993)

- Infrastructure has four key components: Roads, access, water and living area. Traditionally movement along tracks has defined lifestyle. Roads and airstrips are key to movement from place to place, motor vehicles, radios and phones are basic access tools.
- Resourced areas no further than 80 kms from homelands. Need access to essential services such as food and fuel, health and education. Limited personal income is a major factor hindering Anangu from living on their homelands.
- Outstation movement important to independence, going back to places they are familiar with. One way of providing additional funding to the homelands movement would be by redirecting some funding currently being provided to the major communities, but noted that centres resources are already stretched.

- Future Local Government issues to be addressed are “enormous”. There is no AP Development plan and no approvals process; the Public and Environmental Health Act; Libraries; etc, and with each issue the relationship between Aboriginal hybrid systems and “mainstream” systems will need to be considered sensitively. AP officers do not have benefit of networking which goes with such programs in mainstream Local Government.

***City of Adelaide Governance Review Issues Paper, October 1997*** (Minister for Local Government - Governance Review Advisory Group)

- Defining Governance: Generally governance is concerned with the political structures and strategic directions of organisations (Howell et al, 1995). Essential principles identified for City of Adelaide, which are relevant to the Framework of Governance projected are as follows:
  - Flexible and responsive to changing problems and shifting issues for the community
  - Consultation and feedback between governance system and its social environs
  - Accountability to enable citizens to be informed and assured of effective decision making.
  - What is more complex is an agreed process of participation beyond voting at elections. For example, commenting on proposed strategies and plans, observing Council debates on significant matters, having access to information and dialogue regarding the business and decisions of Council are integral to participatory decision making and democratic processes.

***Review of ATSIC’s processes for decision making and the reconsideration of decisions: Improving decision-making and review: Overview and Recommendations,*** ATSIC Review Team, 1996

The report focus mainly on the legal framework for decision-making by ATSIC and the Regional Councils, particularly decisions related to funding, and on the effective handling of complaints and requests for review of decisions.

- To achieving good decision making, the effective handling of complaints or applications for reconsideration of decisions is important.
- Problems identified:
  - Perception that funding decisions are often affected by bias
  - Difficulties in the application of requirements designed to ensure the disclosure of interests that could give rise to conflict of interest in decision-making
  - Failure to give proper weight to relevant factors such as consistency of proposals with the regional plans
  - Inadequate notification to clients of the reasons for decisions and review options available.

Recommendation that

- ATSIC Act be amended to require Commissioners and Regional Councillors to disclose any “prescribed” non-pecuniary interest. Currently only pecuniary interests need to be disclosed.
- Steps be taken to increase amount of information to clients, generally opening up Regional Council meetings and minutes to the public, and improving notification of reasons. Perception among clients that funding decisions are made in secrecy.

Principles for good decision making are outlined. These relate to the process of decision-making, complaint handing and review of decisions, and allegations of illegality. It is noted that the “..law relating to administrative decision making is directly applicable to the expenditure of public money under statute. So to the extent that these concerns are inconsistent, the law applies” (page 5).

### ***A Guide to being an ATSIC Part Time Regional Councillor, Edition One, January 1999*** (Prepared by the Strategic Support Branch, ATSIC)

This publication sets out the roles, responsibilities and conditions of services as a Regional Councillor. It is noted that the role as a Regional Councillor is a complex and challenging one, governed by legislation and procedural requirements.

The Guide provides an overview of the functions of a Regional Council, and sets out procedures for meetings.

A code of conduct document provides guidance for Regional Councillors on their professional behaviour, and an ATSIC Protocol document outlines the roles and relationships of the various elements and parties established under the ATSIC Act.

### ***Resourcing Indigenous Development and Self Determination – A Scoping Paper*** (prepared by the Australia Institute for ATSIC National Policy Office, Strategic Development Team, September 2000)

This paper explores the problems related to the structure of Indigenous affairs in Australia, s which has been moulded by non-Indigenous governance arrangements. The idea of self-determination is intimately linked with the right and ability to determine its own priorities and design its own instruments of governance.

- There should be some aspects within the funding arrangements that allow Indigenous governance bodies to determine their own priorities and strategies, and also recognises them as political communities of peoples with their own governance arrangements.
- Current funding arrangements provide little encouragement to Indigenous economic development. Without such a linkage development is reduced to one of “commknity development” devoid of any economic dimension.

The Paper proposes

- Current arrangements (“directed community services” model) involving discretionary tied grants be gradually replaced with more flexible and varied funding arrangements that include greater entitlements.
- An important feature of the new arrangements will be the recognition of Indigenous governance arrangements as a new order with the Australian Federation.
- Indigenous governance could be conceived as another “order of governance within Australian federalism, rather than as just part of the local government tier. Reference is made to success in this regard in Canada, which has led to the conceptualisation of Canada as a “diverse” federation within which different peoples and orders of government being in different ways.

It is also noted that:

- with increasing entitlement and independence of funding comes discretion and control. There would need to be an emphasis on representation, deliberation and accountability to constituents within the Indigenous order of governance rather than to the general Australian order of governance, or being held accountable from above.
- the governance arrangements that are developed by Indigenous people over time will be diverse.

### ***A Possible Model for a “Miwatj Regional Government” – Discussion Paper*** (source Department of Local Government, NT)

This Paper has been prepared to provide a basis for discussion only. A bicameral model proposed sets out ideas for constitutional and administrative arrangements, defines membership of each chamber, a service delivery framework; and some analysis of financial viability. The model proposed is loosely aligned to the Australian Constitution which is a federation presided over by a bicameral Parliament, as follows

- First Chamber “Elders Council” – decisions on matters relating to its functions (traditional law) and veto over decisions of the Second Chamber
- Second Chamber “Service Council” – decisions on all matters related to its functions other than those referred to in First Chamber
- Community Councils – Could cover current “communities” groups or clans – decisions within the parameters of the Second Chamber using a tied funding allocation on a transitional basis.

It is noted that any proposal for a new form of governance must involve meaningful and extensive consultation with relevant stakeholders, at a pace and direction desired and accepted by the people involved. The process will involve:

- the provision of information about the rationale underlying the reform concept, and implications and benefits of developing new arrangements
- development and refining a draft proposal arising out of the consultation process, which demonstrates a range of criteria, for consultation and endorsement by the stakeholders

### ***The Marriage of Traditional Aboriginal and Western Structures in Local Government in the Northern Territory*** (David Coles, Deputy Secretary, Department of Local Government Northern Territory, 1999)

- Noted there was a system of governance in place in the Territory considered to be legitimate by its constituents prior to the imposition of a new form of governance. Their Aboriginal constituents see many local governments as lacking legitimacy, because the “right” people are not making the decisions.
- The “right” people may not want to deal with all of the complexities involved, or may not be considered to be the best at dealing with the white fellas.
- Mechanisms in constitutions of some Local Governing bodies that provide for people to be elected on the basis of clans, families and other similar groupings.
- Government funds incorporated bodies. Is a process of “incorporation” to create a corporate entity known to traditional Aboriginal law?” Rather these have been adopted, but they do not stimulate participation and hence ownership.
- A more viable and sustainable structure would be one which takes account of the culture of significant groups, where the “right” people have power and where there is compliance with decisions without the exercise of unreasonable force or outside influence.
- Democracy, although part of the political paradigm of the “western” culture, is a central element of the culture of the country.
  - *“Would we accept a system that held that a person has standing in a particular decision because of their responsibility for care of a particular area of land?”*
  - *“Could we accept that a person or a small group of people have the right to make decisions that affect our lives because they have been through processes we have not, and cannot?”*
- Examples of accommodating difference: Constitution of USA allows for experts as members of Cabinet – Westminster system does not. The House of Lords in UK still contains people who owe their position to land ownership. Australian parliamentarians are likely to be well educated, middle-aged, male and European.
- Finding the balance is the key. Traditional structures, but with recognition that the world has changed in a way that, in turn, requires changes in traditional structures.

The paper concludes with a discussion of a bi-cameral model for local governing bodies, as previously referred to in “A Possible Model for a “Miwatj Regional Government” – Discussion Paper”.

### ***Local Government - The Next Step Reform and Development Agenda*** (Northern Territory Department of Local Government)

The NT Government is implementing a total package of Local Government reforms and have prepared a range of publications and guides relevant to the package. Some of the relevant issues noted are:

- Planning and Performance Reporting – The essence of accountability for most in the community is knowledge of where a council intends to go, how it intends to get there and whether it did or not.
- Funding Minimum Standards of Service Delivery – Essential or core services defining Council’s most basic functions are road maintenance, waste management and community management. These basic services affect the health, accessibility or leadership of the community.

- The reform program will create more relevant council structures, which will involve changes to community government schemes or constitutions.
- Criteria being established for councils are broadly those providing a credible, sustainable and culturally relevant decision making structure, effective service delivery arrangements, financial viability and as having been developed in a transparent and legitimate way.
- Successful local government: Delivering strong community representation and leadership, deliver services in an efficient, effective and accountable manner, a decision making structure that is suitable, lawful and culturally relevant.
- In remote areas, communities of interest may be based upon tribal or language groupings, traditional land ownership, or similarly shared aspects of Aboriginal culture.

### ***Review of the Indigenous Communities of Doomadgee and Palm Island – Final Report April 2000.*** Colin Dillon APM.

This review was undertaken in response to a request from the Federal Minister for Aboriginal and Torres Strait Islander Affairs, the Honourable Senator John Herron, in recognition of the serious social problems confronting the residents in those communities.

The report concludes that many of the problems besetting the Doomadgee and Palm Island communities today are a manifestation of past injustices and the impact of laws and policies, which attempt to control the lives of the people of those communities. Dillon argues for a major reform to the service delivery approach and manner of funding adopted by governments, a developmental approach (which will require an extraordinary effort from governments and residents alike), and establishing new relationships between governments and the communities.

Key findings of the reports include the following:

- Existing mainstream governing structures were not conducive to Indigenous decision-making processes, even though indigenous people filled the elected positions. The structure did not allow for Indigenous decision making processes. That is, the structure is not designed to allow for input from families, clans or tribal groupings. The problems emanate from the structure of the Council, its powers, roles and responsibilities, rather than just the capability of the people elected to it.
- Recommendation to support piloting a State Government approach to alternative governing structures on the communities.
- Service delivery:
  - Indigenous communities have both developmental needs and service delivery needs and that in order to stimulate and achieve sustainable development on these communities, government programs must focus on strengthening the capacity of communities to deal with their issues. A structured community development process is required to re-build the social fabric of the communities.
  - Tendering for infrastructure projects on Indigenous communities usually results in external contractors being engaged which is disempowering and unsustainable.
  - Apart from funding communities need support to enable them to address health and social issues, and that a community development process will provide such support.
  - To promote self reliance an Agency must (and most government agencies don't) distinguish "direct needs" (eg a glass of water) from "development needs" (eg, the capacity to obtain water by digging wells.). Most "needs" manifest as part of a "complex of needs"
  - Empowerment is a "need" that should be satisfied at the same time as more immediate "needs". Any assistance must be delivered in an empowering manner, and it is in this sense that the mode of delivery of assistance becomes a critical output in itself.
  - Community development: Focuses on the relationships and processes of people living and/or working together with the aim of improving their quality, to build a sense of "community" and to increase the capacity of community members to collectively analyse their situation, identify "needs" and strategies and to implement them.
  - How does normal service delivery differ from a community development approach? How may it either support or undermine it?

### ***Building Capacity for Sound Public Works in First Nation Communities – A Handbook*** (Institute of Governance, Ottawa, Ontario Canada) (Source: <http://www.ioq.ca./publications/pwhandbook.pdf>)

This handbook has been prepared as a guide for First Nation communities and groups to assist in achieving significant improvements in their capacity to govern and manage public works in their communities.

- Distinction is drawn between governing and management matters. Governing responsibility of political/elected leaders, management responsibility of staff but often there is considerable overlap.
- Public works referred to include works related to infrastructure, and some local government type services, and community and government assets. Complex, multi-faceted functions essential to the health and safety and overall well-being of any community.
- Governing responsibilities for public works are many and varied, and challenging to govern and manage. Council establishes the overall direction of the public works functions, policies to guide staff and members, approve long term plans, set yearly budgets, establish the organisation, ensure clarity in roles and responsibilities.
- How things are decided: Overall principles of sound governance include: transparency, accountability to community members for their actions, high standards of personal conduct, provision for redress for unfair treatment of members. Good internal and external relationships are important.
- The things get done: Responsibilities include: planning, designing, financing, constructing, maintaining, regulating, responding to emergencies.
- Capacity Building: UN definition – The process by which individuals, organisations and institutions and societies develop abilities (individually and collectively) to perform functions, solve problems and set out and achieve objectives”. It is an approach that builds independence by increasing competencies. Lessons learned:
  - Local ownership and leadership is critical
  - Capacity building is ultimately about politics, political leaders and their relationship with their citizens.
  - Effective capacity building takes time
  - Long term partnerships can be critical to successful capacity building.

The handbook identifies a seven-step process for developing a plan for capacity-building. Critical to the success of any such plan is the participation by the community leadership and by the broader community itself. The process may be as or more important than the quality of the research and analysis underpinning the plan.

### ***Community Participation Agreements and Capacity Building Initiatives – COAG Presentation*** (ATSIC)

#### ***Changing Perspectives in ATSIC – from service delivery to capacity development*** (ATSIC Capacity Development Discussion Paper)

The reform of the welfare system announced in the *Australians Working Together Package* provides:

- a strong focus on supporting individuals and families
- seeks to develop a system that engages all people of working age in active social and economic participation; and
- is about generating opportunities for individuals to help themselves and help each other.

ATSIC have identified that these initiatives, through Mutual Obligation Agreements, will require a greater responsiveness from Government to the needs of Indigenous Australians. Of significance, in many remote Indigenous communities, there are few opportunities for people on income support to contribute to or participate in the economic and social wellbeing of their community. These circumstances contribute to entrenched welfare dependency in many communities, limited opportunities to gain life skills, and exacerbate poverty.

ATSIC have embarked on a four year program of exploring the concept of community participation agreements and capacity building initiatives in partnership with Indigenous communities. The following guiding principles underpin the development of community participation frameworks and capacity building initiatives.

- Engaging all stakeholders in a partnership between communities, ATSIC Regional Councils, State, Local and Commonwealth Government
- Recognition of Regional and Community Plans
- Effective coordination by Government
- Processes should be initiated, owned and driven by community or region
- Recognition of local and regional governance as the key to sustainability.

*“What distinguishes capacity development from a service delivery approach is its holistic nature. The sustainable development of a community involves a very complex system or interrelated elements; capacity development recognises the importance of thinking about individuals, organisations, programs, policies etc as part of a broader whole rather than as discrete, or loosely connected concerns. It requires change in the way ‘problems’ are addressed”*

The aim of the capacity building effort is to achieve solutions from the “ground up” by enabling communities to:

- develop their own practical solutions to many of the social and economic challenges which exist:
- challenge the “status quo” in the design of program and service delivery
- ensure programs are sustainable with realistic and achievable outcomes.

The discussion paper also notes that development results also have been impacted on by centralised decision-making, poor governance structures, and inadequate accountability and transparency were identified as some “internal” factors leading to poor outcomes.

### ***Nulla Wimila Kutju Regional Council – Regional Plan 1998-2001*** ***(ATSIC)***

Note: as at September 2001, Plan is outdated and a new planning process is in progress.

The planning process for the development of the Regional Plan “was extensive and consultative”, based on the “Now (Current reality), Where (Vision), How (The Plan) Model for Change and Planning.

Section 4 of the Plan refers to Funding Priorities. The four areas identified within the Region are as follows:

- Port Augusta, Whyalla and Port Pirie
- Pitjantjatjara Lands
- Flinders Ranges including Hawker, Quorn, Copley and Marree
- Cooper Pedy and Oodnadatta.

Fundamental to establishing funding priorities the Regional Council believes it must

- Recognise the diversity and vast size of the regional area
- Have access to a complete and comprehensive needs analysis document that includes all communities with the regional area.

Funding priorities will be based on

- Issues identified as those of greatest need from the impending needs analysis of all communities
- From within the program funding allocation areas of Economic, Social and Cultural.

Thirteen goals and associated strategies have been agreed on and detailed in the three year Implementation Plan.

Some goals are to be commended immediately as projects, with the aim of having a positive impact for the region as a whole. They represent key policies for the Regional Council to support. These projects are:

- Develop and foster partnerships and networking arrangements with other agencies
- Create increased opportunities for meaningful education and employment
- Encourage our people to develop income ventures.

Planning policies are identified in the Plan, to guide through implementation and to assist in future funding decisions. These relate to:

- Ongoing communication and consultation with communities and other key stakeholders
- Education being a key focus
- Ensuring funding is allocated appropriately in addressing fundamental and identified needs
- Overall impact of the funding approved will be a key consideration in decision making
- A condition of recurrent funding is that existing service delivery is achieving the agreed and stated outcomes for communities
- Raising the status of women, encouraging access and equity of women
- With limited funding, creativity to achieve goals will be required
- Partnerships, networks, co-operation and collaboration throughout ATSIC, communities and other agencies will be vital to achieving goals
- "Synchronicity" – aligned planning between all players is critical for effective operations and outcomes.

### ***Nulla Wimila Kutju Regional Council – Homelands Policy and Plan – September 2001***

(Prepared by MLCS Corporate and Nangkada Tjikarna Council Inc. This version edited by Policy & Advocacy Support Unit, Northern Areas Regional Office of ATSIC)

**Note:** IgaWarta, within the Nepabunna Community boundary, is identified in ATSIC Annual Report as a Homeland.

ATSIC has a national policy on Homelands. To be able to allocate money to new or expanding Homelands, each ATSIC Regional Council must develop its Regional Homelands Policy and Plan for approval by a committee of the ATSIC National Board. The Regional Homelands Policy and Plan should be read in the context of ATSIC's Community Housing and Infrastructure Policy (CHIP).

The Homelands Policy will guide Regional Council in using limited resources effectively, and make the process clearer to applicants and observers. It is noted that different arrangements apply with respect to AP Lands, and other tenures (for example, Aboriginal Lands Trust leases) and therefore a different approach is required for other tenures than on the AP Lands.

Definition: Homeland – *"A section of traditionally or historically appropriate land resided in by a single family or kin-group of Aboriginal people, who choose to live there for cultural, social, economic and/or health reasons."* (Page 5).

The four stages a homeland might pass through, or stay at one stage for a long time or forever, are as follows:

- Temporary – occupied for no more than three months of a year (several visits, or there for one period of less than three months).
- Semi-permanent – occupied for a total period of more than 3 months but less than 9 months of a year.
- Permanent – occupied for a total period of more than 9 months a year
- Growth – occupied permanently and expanding beyond use by a few people to use by many people of the same family or kin group.

*"A new community is one growing beyond a Growth Homeland and being designed to accommodate more than one family or kin group*

- *host administrative and government services with the community*
- *provide these services to Homelands and Outstations in the surrounding area."* (page 5)

Regional Council will only consider proposals to fund a new community if residents are already at the Growth Homeland stage.

Places in the region are classified. Nepabunna is classified as a Major Community (a Resource Agency). IgaWarta is classified in the Homelands Policy and Plan as a Homeland Resource Agency (interim only) which is dedicated to providing services to Homeland residents.

The policy refers to the use of a Resource Agency as follows:

*“Funding should not be provided directly to an out-station, homeland, new or emerging community, but through a community organisation or resource agency which is able to provide sound planning, management and accounting skills and centralised service delivery arrangements.” (page 7)*

The people of a Homeland apply through their Resource Agency, which is responsible for finalising and submitting the proposal based on the wishes of the people. (Page 9)

ATSIC’s National Guidelines state that a Homeland must belong to a Resource Agency to be eligible for ATSIC CHIP funding. (page 15).

**Financial Assistance Grants - Principles**

Financial Assistance Grants are allocated by the SA Local Government Grants Commission (LGGC) in accordance with the Local Government (Financial Assistance) Act 1995 (Cwth).

**National Principles**

National Principles for the Allocation of General Purpose and Local Road Grants were established under the Act, which provides for the following.

- A per capita distribution to the States for the general financial assistance component.
- The continued separate identification of local road funding and maintenance of existing state shares for that funding.
- A national report on the operation of the Act, specifically the achievement of horizontal equalisation, the methods used by the Commissions, the performance of Councils including the provision of services to Aboriginal and Torres Strait Islander communities.
- A set of national principles governing the distribution of grants between Councils. The principles provide for a distribution based on horizontal fiscal equalisation (subject to the minimum grant entitlement).

The financial assistance grants are divided into two components – General Purpose Component and Identified Road Component

The General Purpose component is allocated to the States/Territories on an equal per capita basis. Even though South Australia's population is increasing, relative to the National population it is increasing at a slower rate than the National average. Therefore South Australia is receiving an ever-decreasing share of the nationally available funds as the State's population as a proportion of the Australian population declines. If the Grants (at a National level) were allocated on a Horizontal Fiscal Equalisation or needs basis, South Australia and the other smaller States would receive significant increases in funding.

**State Principles**

At the State/Territory level, the methodology of the General Purpose Component is intended to achieve an allocation of grants to local governing bodies/Councils in the State consistent with the National Principles. The overriding principle is one of Horizontal Fiscal Equalisation, which is constrained by a requirement that each local governing body must receive a minimum entitlement per head of population as prescribed in the Commonwealth legislation.

• **Horizontal Fiscal Equalisation**

The General Purpose Component is distributed using a horizontal equalisation or needs based approach, which aims to compensate councils with below average capacity to raise revenue through its rates base, and above average costs of service provision.

- **Effort Neutrality**

In assessing grant levels for individual councils, the LGGC takes no account of the policies and practices of those councils. Thus individual policy on rate setting, service provision and standards, and levels of debt and reserves has not impact on the grant outcomes.

- **Aboriginal and Torres Strait Islander People**

The National Principles require a distribution of grants to Councils to recognise the needs of Aboriginal and Torres Strait Islander people in their communities.

Aboriginal and Torres Strait Islander people are included in the untied grant provided to each Council. Grants are untied and Councils use the funds according to local priorities and specific community needs.

- **Prescribed Aboriginal and Torres Strait Islander Communities**

Since 1995, Financial Assistance Grants have been provided out of the total grants allocation for South Australia to the following bodies in remote and regional areas, which have been prescribed as local governing bodies for the purposes of LGGC funding allocation:

- Anangu Pitjantjatjara
- Maralinga Tjarutja Lands
- Nepabunna Community Council
- Gerard Community Council
- Yalata Community Council
- Outback Areas Community Development Trust, covering pastoral areas as well as townships in outback areas of South Australia.

As reliable data is unavailable, grants for these five communities are calculated differently to grants to Local Government Councils established under the Local Government Act 1999 (SA). Grants are based on the findings of an independent study on the expenditure needs of the communities, and their revenue raising capacities. As part of the independent study, comparisons were made with communities in other states, and a per capita grant was established.

**MUNICIPAL SERVICES FUNDED BY ATSIIC  
through Community Housing and Infrastructure Program (CHIP) FUNDING<sup>23</sup>**

The municipal services ("local government type services") which may be funded by ATSIIC Regional Councils through CHIP funding are as follows:

- Essential and routine repairs and maintenance to community infrastructure assets, eg power and water supplies, and running costs of municipal services vehicles.
- Operational costs associated with the administration and functions of organisations which provide infrastructure and municipal services.
- Repairs and minor maintenance of community non housing assets.
- Dog health programs.
- Environmental workers.
- Development of town plans.
- Refuse disposal, ie removal of waste, maintenance of equipment and tip.
- Shortfalls in operational costs of energy supply, for example, diesel fuel costs.
- Upkeep of community landscaped areas, for example, community parks and wind breaks.
- Community fire prevention and upkeep of control equipment.
- Leasing of essential services vehicles.
- Rates and taxes, where applicable, for buildings used primarily for the administration of municipal services.
- Insurance on assets used specifically to provide municipal services, for example, tractors, graders, office buildings etc.

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<sup>23</sup> **Source:** *Nulla Wimila Kutju Regional Council: Homelands Policy & Plan, Vol 1, page 8.*