



# Aboriginal and Islander Councils Investigations

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*in brief*

## Introduction

Since 1984 over 30 Aboriginal and Torres Strait Island (ATSI) Councils have been established under the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*. The office holders and officers in these Councils fall within the jurisdiction of the Criminal Justice Commission (CJC) in much the same way as do Councillors and Council officers in mainstream local authorities.

As a result of repeated complaints mainly from community members, the CJC set up a Task Force in 1992 to investigate 90 major allegations about corrupt activity in the administration of six Aboriginal and Islander Councils.

In June 1994 the CJC released its Report on an Investigation into six Aboriginal and Island Councils.

This paper presents an overview of that report for the information of members of all ATSI communities and any other people interested in the administration of ATSI Councils and associated funds.

## Why the CJC Investigated ATSI Councils

By the beginning of 1992 the CJC had received numerous complaints against six Councils. Many of the complaints concerned instances of the same kinds of corrupt behaviour.

The allegations included:

- unauthorised use of Council supplies and equipment
- use of Council-paid staff in privately-owned business activities
- abuse of position as Councillor for personal gain
- allocation of Council resources for the benefit of family and friends
- manipulation of wages to advantage Councillors, their relatives, or family businesses
- failing to state pecuniary interest in sale or purchase of Council equipment
- misappropriation of Council funds
- favouritism in hiring
- fraudulent accounting.

## What Investigations by Other Agencies Found

Under the Community Services Acts the Auditor General is required to audit the accounts of every ATSI Council each year. Both the Parliamentary Committee of Public Accounts (PAC) and the Auditor-General have reported poor record keeping by ATSI Councils.

As a result of a series of negative reports by the Auditor General, the PAC held an examination of the financial administration of ATSI Councils in 1990.

In its 1991 report the PAC listed the following areas of concern regarding financial administration by the Councils:

- not exercising proper administrative and managerial controls, including the recording of regular meetings
- not applying proper controls and procedures over banking and accounting for revenue
- not exercising adequate supervision, controls and procedures over expenditure of funds
- assets not efficiently nor effectively managed or safeguarded
- not exercising adequate control over trading enterprises.

Despite the findings of the PAC hearings, the public reports by the Auditor-General since 1991 have shown that poor financial administration and record keeping by the Councils have continued.

The report of the Auditor-General in 1994, for example, found that:

- 18 Councils did not hold regular meetings, or, if they did, they failed to keep permanent records of decisions and discussions
- shortages and irregularities occurred in a range of situations involving funds in excess of \$2 million
- debts to Councils rose significantly, with the debtors system and follow-up action being inadequate
- many Councils failed to maintain accurate asset records
- some Councils were not complying with procedures for purchases or contracts
- there was inadequate financial management of trading enterprises.

Commission investigators also found that the lack of accurate or complete financial and administrative Council records in all but one Council made it more difficult to investigate a number of the allegations made against Council officers.

## Who Carried out the CJC Investigations?

The CJC investigation was a combined Task Force of Commission investigators and Queensland Police Service officers.

The Task Force started its work in May 1992 and by September 1993 had investigated 90 allegations involving the six Councils. The officers involved made numerous visits to the communities and regions concerned to locate and interview witnesses, and make inquiries related to the allegations.

Investigation inquiries also required interstate and intrastate trips and involved interviewing 180 witnesses, some several times.

While the investigators were interviewing witnesses, CJC financial analysts examined the available documents and records for supporting evidence. These documents were obtained from the Councils by way of Notices to Produce.

A cross-section of the kinds of major allegations is given below.

## A Summary of the CJC Investigations

The Task Force investigations were able to show that in a small number of cases the allegations were not true, and that also in a small number of cases the investigation supported the allegations. However in most cases the investigations could not prove nor disprove the allegations.

In other words, just as the CJC was unable to show that the allegations were true, it was also unable to show that they were false. As a result we could only conclude that those allegations could not be substantiated.

The allegation that Council bought goods from a supplier at inflated prices was substantiated, although there was no evidence to prove any corrupt payments had been made to any council officer for the purchase of the goods.

### *Island Council A*

Nine major allegations were made against Island Council A:

- the Chairman used Council funds to pay a \$72,000 taxation bill
- the Chairman misused fuel and supplies from the Island Industry Board and Council
- the Chairman and former Clerk were involved in sly-grogging
- the Chairman used Council paid staff for private work
- the Chairman attempted to use his position to obtain Trochus shell
- the Chairman used a Council owned generator at his store
- the Chairman's son improperly obtained a Council dinghy
- the Chairman interfered with private mail
- there were irregularities in Council wages paid.

Due to the poor state of Council records, where relevant information was inadequate, missing, or non-existent, there was insufficient evidence to prove the majority of the allegations.

The allegation of Council funds being used to pay tax was found by investigation to be unsubstantiated, whereas the allegation of Council paid staff being used for private work was found to be substantiated, but a lack of clear policy guidelines made it difficult to prove any breach had occurred.

### *Island Council B*

Eight major allegations were made against this Council. They were:

- the Council Clerk was making unauthorised deductions from Council wages
- there were "ghost workers" on the Council payroll
- Council workers were being used by Council officers for private purposes
- Council bought overpriced goods from the Chairman and Deputy Chairman's company
- a former councillor had stolen funds from the canteen

- Council assisted a relative of a Councillor by purchasing equipment from him
- council failed to make records of meetings available to the public.
- Council policy directly favoured the Chairman and Deputy Chairman's business.
- the Chairman borrowed \$36,000 of Council funds for personal use, and that a resident was given a government grant as well as CDEP funding from Council
- Council machinery and CDEP workers were used on private property

Investigators found that, in general, there was not sufficient evidence to be able to substantiate the allegations made against the Council.

Those allegations which involved conflict of interest could not be taken further by the CJC as the legislation governing the Councils had no requirement for office holders to declare pecuniary interests. The same legislation also did not require that Council minutes be made public.

### *Aboriginal Council A*

Five major allegations were made against this Council:

- funds allocated to Council for a fire station were misused
- Council funds and accommodation were misused by the Council Chairman
- Council funds and equipment were used on roadworks for the Chairman's relatives
- relatives of the Chairman were appointed to Council positions
- corrupt practices involved in Council purchase of overpriced equipment.

The investigation revealed that most of the allegations were based on rumour and hearsay with little evidence to support the complaint. In relation to the claims that the Chairman misused his position, Council minutes were so poor that a conflict of interest could not be proven.

### *Aboriginal Council B*

There were five major allegations made against this Council. They were:

- the Chairman leased a Council property for private purposes and was loaned \$28,000 by Council for the business
- the Chairman double billed Council for goods bought from his business
- the Chairman misused \$3,000 of Council funds originally granted for research.

Once again the absence of accurate Council records made it difficult for investigators to establish that Council machinery and employees had been improperly used. Available records did not indicate whether machinery use had been paid for or whether anyone had profited from the use of Council employees.

It was discovered that the Council decision to loan the Chairman \$28,000 was in breach of Ministerial Directions, but there is doubt whether those Directions have the force of law.

Regarding the remaining two allegations against the Chairman, there was no evidence of double billing of the Council by his company, and it was felt that a prosecution over the misuse of the \$3,000 would not be successful due to a lack of evidence, and conflicting stories by witnesses.

### *Aboriginal Council C*

This Council had three major allegations made against it:

- the former Council Clerk had an undisclosed pecuniary interest in video equipment which he sold to Council at inflated prices
- the former Council Clerk falsified Council minutes
- the Deputy Chairman used Council funds to pay for a private charter flight.

The investigation was able to substantiate the first allegation made against the Council Clerk, but as there was no requirement for disclosing pecuniary interests, and a breach of Ministerial Directions had no penalties, no further action could be taken.

The CJC also concluded that the Clerk did falsify Council minutes. However due to unreliable witnesses and a lack of supporting documentation, we could not recommend any criminal or disciplinary action.

In relation to the final allegation, the investigators were of the opinion that the Deputy Chairman used the charter flight but conflicting witness statements, a complete lack of documentary evidence, and an absence of Council air travel booking policy meant that there was insufficient evidence to recommend prosecution.

### *Aboriginal Council D*

Six major allegations were made against this Council:

- the Council Clerk was dismissed for being a "whistleblower"
- the Chairman was loaned \$3,550 in advance on his recreation leave
- the Chairman used his Council allocated vehicle as a taxi
- a Council consultant sought and received a bribe from a contractor
- Council property was used in a building owned by the consultant's family.

CJC investigators were unable to conclude that the Council Clerk was dismissed for "whistleblowing", as the provision of the *Criminal Justice Act* concerning whistleblowing were not in force at the time of the dismissal.

Task Force investigators were unable to discover any evidence of criminal conduct or official misconduct in relation to the remaining allegations against the Chairman or the consultant.

## **To Sum Up**

The remoteness of the communities, lack of accommodation and transport, and difficulties in locating witnesses made the CJC investigation of the ATSI Councils difficult. Adding to these difficulties was the lack of records, poor record keeping, absence of internal controls, and inadequate accountability within the Councils.

The three main areas of concern regarding the operation and administration of the Councils which emerged from the CJC investigation were:

- deficient record keeping
- lack of reliable minutes of meetings/public meetings
- conflicts of interest.

These deficiencies hampered investigations to the extent that, in most cases where little doubt existed that criminal offences or official misconduct had occurred, insufficient evidence existed to enable prosecution or disciplinary action to be taken against the people concerned.

On the other hand, many of those complaints which were found to be without substance might never have been made if accurate minutes of Council meetings had been recorded and made available for inspection by members of the community.

## What the CJC Report Recommended

The CJC concluded its Task Force investigations with a report containing a number of recommendations to the Director-General of the Department of Family Services and Aboriginal and Islander Affairs.

These recommendations were made to bring the accountability of Aboriginal and Islander Councils in line with other local government authorities. The report recommended that:

1. the Community Services Acts be amended to require that Councils:
  - hold regular meetings, which will be open to the public except when Council convenes as a Committee of the Whole
  - keep minutes of Council meetings which must be signed by responsible officers named in the legislation and adopted at the next Council meeting
  - make copies of the minutes of Council meetings available for public inspection.
2. the Community Services Acts be amended to provide that:
  - Councils must keep a register of all pecuniary interest declarations by Councillors
  - Council employees must declare in writing to the Council Clerk any pecuniary interest which they have in any matter or contract before the Council
  - Councillors who are found guilty of failing to declare a pecuniary interest are excluded from office in terms similar to the provisions of the Local Government Act 1993.

The CJC has also referred some matters revealed during the investigation to the Director of Prosecutions for the possible laying of criminal charges.

## Conclusion

**A** TSI Councils have enormous influence both within and over the communities which they are designed to serve.

They have also been given extensive administrative responsibility and have become responsible for the administration of millions of dollars of public funds every year. In 1992/93, for example, the total of grants allocated to the Councils by the Federal and State governments amounted to \$115 million.

Where a Council operates in an atmosphere of questionable administrative and procedural practices and fails to inform its constituents of its decisions, that Council can create a situation where rumour and gossip abound. It can also create an environment where the misuse of funds and the misuse of power can be difficult to detect or investigate, and the corrupt few can benefit at the expense of the community that the Council is set up to serve. This is especially so where the community is a close-knit and isolated one.

It is envisaged that the adoption of the CJC recommendations will leave ATSI Councils less liable to corruption and help prevent the Councils from being the subject of such suspicion through more openness and accountability.

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