



CRIMINAL JUSTICE
COMMISSION

**REPORT ON
AN INVESTIGATION INTO
COMPLAINTS AGAINST SIX
ABORIGINAL AND
ISLAND COUNCILS**

JUNE 1994

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ISBN 0 7242 5869 8

Printed by Goprint, Brisbane



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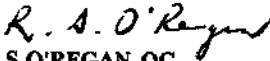
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Dear Sirs

In accordance with Section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its Report on an investigation into complaints against six Aboriginal and Island Councils.

Yours faithfully


R S O'REGAN QC
Chairperson

FOREWORD

In 1984 the Queensland Parliament passed two Acts which incorporated existing Aboriginal and Island Councils and paved the way for their assuming a range of duties, responsibilities and powers which, in some areas, exceed those of mainstream local authorities. Over the next four years 14 Aboriginal and 17 Island Councils became responsible for the administration of millions of dollars of public funds every year. In the 1992/93 financial year, \$115M dollars of the Councils' funds came from Commonwealth or State grants.

Aboriginal and Island Councils are largely responsible for administering all aspects of local government in the areas they serve. They often control where residents live, where they work, and, on some accounts, whether or not they can remain in the communities.

Despite these considerable responsibilities, the financial administration of many of the Aboriginal and Torres Strait Island Councils in this State has been in a state of disarray for much of the last decade. While the Councils exercise substantial control over the lives of the residents of their communities, many have questioned over the past decade whether the Councils are sufficiently accountable for this control.

"The fundamental concern"

The Director-General of the Department of Family Services and Aboriginal and Islander Affairs said recently, in evidence before a Parliamentary Public Accounts Committee hearing:

The issue that is of concern to us is public accountability. The fundamental concern here today is the need for public accountability by Aboriginal and Torres Strait Island councils in their financial administration. In my opinion, an integral step to achieving self-management is the achievement of public accountability by councils. What does public accountability mean in the context of Aboriginal and Torres Strait Island councils? I think that it refers to accountability by councils to the community that elects that council. It also means accountability to the Governments which provide grants to councils. It is also about accountability to the wider community.

The Auditor-General has reported for many years on the problems his office has encountered in attempting to audit the accounts of Councils where financial records and controls are deficient or simply do not exist.

The long line

The Commission joined the long line of committees and organisations which have attempted, over the years, to analyse or investigate the financial administration problems of the Councils because complaints made to the Commission required investigation. Almost all of the complaints made to the Commission were made by community residents or those who had lived in the communities for some period. In many cases, the complaints were caused by Councils operating without any significant community input into their decision-making process. Some complaints were clearly based on suspicion and anger—suspicion about how Councils were spending public money and using Council-owned property, and anger that a chosen few seemed, in some cases, to be benefiting from community funds at the expense of the wider community.

Two years ago, the Commission set up a Task Force to investigate allegations of misconduct which had been made against members of 6 Aboriginal and Island councils. The Task Force looked at 90 major allegations against the councils, many involving multiple instances of the same type of behaviour. In a handful of cases, the Commission intends as a result of its investigation to refer material to the Director of Prosecutions for consideration of criminal charges, but the percentage of the matters in which criminal or disciplinary charges could be recommended was well below the general average for Commission investigations.¹

In some cases, the Commission's investigation was substantially frustrated by lack of reliable, coherent records. In others, allegations were found to have been made based on rumour and hearsay. In the Commission's view, many of the unfounded allegations might not have been made if the Councils concerned had kept reliable minutes of their meetings and made those minutes available for inspection by community members.

The Commission's investigation revealed a number of questionable practices and procedures in the administration of the Councils, some of which could, in the Commission's view, be remedied by amendments to the legislation which governs the operation of the Councils. This report concludes with a summary of some of the problems encountered, and recommendations about amendments to the legislation governing the administration of the Councils.

¹ This report will not canvass the matters which are to be referred to the Director of Prosecutions, in order not to prejudice possible future trials in those matters.

Anonymity

The question of proper financial administration of the Councils is an important one and, for that reason, the Commission decided to release a public report on some aspects of its investigation. This report is an account of the investigation undertaken into some of the allegations made to the Commission and the results of that investigation. The Commission's intention in reporting on these allegations is to highlight some of the common problems which the Commission encountered in the investigation. The Commission does not wish to denigrate particular Councils or their members or staff, and for that reason this report will be published in anonymous terms. It is never possible to make a report anonymous to those who are aware of the facts of a particular case, but the Commission has attempted as far as possible to couch the report in terms which will be effectively anonymous to members of the general public.

Historical context

This report basically consists of a series of investigative reports on individual Councils, and it does not pretend to be a sociological or anthropological study of the Aboriginal and Island Communities examined. However, an attempt has been made prior to each investigation report to sketch a brief history of the development of each of the communities served by the Councils. In view of the unsettled and often oppressive conditions in which all of these communities evolved including, in most cases, through the forced re-settlement of community residents under the then Government's policy, it would be unfair to examine the problems which now beset the Councils without attempting to place them in some historical context.

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GLOSSARY OF TERMS

ACC:	Aboriginal Co-ordinating Council.
AFP:	Australian Federal Police.
ATSIC:	Aboriginal and Torres Strait Islander Commission.
Councils:	Aboriginal and Island Councils established under the Community Services (Aborigines) Act 1984 or Community Services (Torres Strait) Act 1984.
CDEP:	Community Development Employment Projects Scheme.
CJC or the Commission:	Criminal Justice Commission.
DAA:	Department of Aboriginal Affairs (Commonwealth).
DAIA:	Department of Aboriginal and Islander Affairs (became the Department of Community Services and Ethnic Affairs).
DCS:	Department of Community Services (became the Department of Family Services and Aboriginal and Islander Affairs).
DFSAlA:	Department of Family Services and Aboriginal and Islander Affairs.
ICC:	Island Co-ordinating Council.
IIB:	Islands Industries Board.
LC:	Licensing Commission.
Mainstream local authorities:	Local authorities constituted under the Local Government Act.
PAC:	Queensland Parliamentary Committee of Public Accounts.
QPS:	Queensland Police Service.

"Sic": All transcripts, interviews and extracts from documents and correspondence have been quoted verbatim in this report, and mistakes in spelling, grammar or otherwise will not be identified by use of the term "sic".

TI: Thursday Island.

[ui]: Unintelligible.

CHAPTER 1

Introduction

This report documents a series of investigations into complaints the Commission received about Aboriginal and Island Councils. In all but a few cases, the complaints were initiated by members of the communities that these Councils served.

These complaints form a very small proportion of the total number of complaints the Commission has received. Since April 1990, when the Commission began accepting complaints, until 31 May 1994, the Commission has received 9,255 complaints, comprising 18,474 allegations. Less than 1% of these matters concerned Aboriginal or Island Councils.

Despite the relatively low number of complaints, the Commission's investigations into these matters have been among the most complicated, resource-intensive, and time-consuming undertaken. They have led to few instances where any clear conclusion could be reached on the facts. In many cases, the difficulties the Commission encountered were directly linked to the circumstances of the communities themselves and the legislative and regulatory framework under which the Councils operate.

This chapter of the report addresses the Commission's approach to the investigations, their scope and logistics, and the rationale behind the selection of certain matters for this report. It briefly describes the history of the Councils and, in that context, their relationship with the Department of Family Services and Aboriginal and Island Affairs.

Complaints against Aboriginal and Island Councils

Jurisdiction

Under the Criminal Justice Act 1989, Aboriginal and Torres Strait Island Councils established under the Community Services (Aborigines) Act 1984 and the Community Services (Torres Strait) Act 1984 fall within the Commission's jurisdiction as units of public administration. Persons holding appointments as Chairpersons, Councillors, and Council officers in Aboriginal and Island Councils are therefore subject to the Criminal Justice Act in much the same way as Councillors and Council officers in mainstream local authorities in Queensland.

The Commission began to receive complaints regarding Aboriginal and Island Councils soon after the Complaints Section began operations in April 1990. At that time, the Commission was required under the Criminal Justice Act to investigate *each* matter that came to its attention unless it could be shown to be frivolous or vexatious.² Initial inquiries on the complaints made to the Commission about the Councils indicated that they were matters which, if proven, would have amounted to criminal conduct or official misconduct through, for example, favouritism, neglect of duty, and misappropriation or misuse of Council property. The Commission was therefore required to investigate the complaints.

First trip to the Islands

Early in 1991 Commission officers made a lengthy tour of duty in the Torres Strait and northern Queensland regions, building on earlier work by collecting information, interviewing witnesses, and acquiring such records as were available. They returned to the Torres Strait a few months later, and shortly thereafter began a series of visits to certain Aboriginal communities.

But even as this work was underway, the Commission continued to receive fresh complaints on Aboriginal and Island Councils. Some focused on Councils that had not yet been targeted. Some were apparently prompted by the visits of Commission personnel to those Councils that were already being investigated.

By January 1992 the Commission had received 11 sets of complaints against Aboriginal and Torres Strait Island Councils. These complaints comprised 54 major allegations, many dealing with multiple instances of certain kinds of behaviour, for example:

- use of Council supplies and equipment without reimbursement;

² The requirement to investigate, that is, "examine and consider" all complaints other than those that the Chief Officer of the Complaints Section dismissed as frivolous or vexatious placed a tremendous burden on the Division, and, with the concentration of staff resources devoted to meeting the demands of an increasing backlog of complaints, substantially constrained the Official Misconduct Division's ability to meet its investigative workload.

Amendments to the Act in May 1992 gave the Complaints Section greater discretion with respect to both the decision to undertake an investigation and the extent of any investigation. The passage of the amendments confirmed a restructuring of the Section, effectively allowing resources to be directed to other Division activities, especially investigations undertaken by the Division's Multi-disciplinary Teams.

- use of Council-paid staff in privately-owned business ventures;
- Councillors' use of position to obtain business advantages;
- allocation of Council resources to disproportionately favour relatives and friends;
- manipulation of wages and wage preparation to advantage Councillors, their relatives, or family-owned businesses;
- undisclosed pecuniary interests in the purchase and sale of Council equipment;
- misappropriation of Council funds;
- favouritism in hiring;
- fraudulent accounting.

Formation of the Task Force

Initial attempts to investigate these matters shared common frustrations:

- the communities involved were often in remote parts of the State and were not easily accessible by commercial transport;
- accommodation in or near the communities was sometimes unavailable;
- witnesses were difficult to locate or refused to be interviewed;
- factionalism within the communities often led to allegations being made without real foundation or to testimony being provided which changed with shifting allegiances; and
- appropriate facilities in which to conduct interviews were sometimes unavailable.

Perhaps, most importantly of all, as both the Auditor-General and the Parliamentary Committee for Public Accounts had already observed in public reports, the Councils often lacked proper financial and administrative records (for example, minutes of Council meetings, assets registers, timesheets, payment vouchers, etc.).

Visits to the communities usually resulted in several new, though similar, allegations being made. Even the most apparently straightforward matters required the kind of considered, coordinated and resource-intensive response usually reserved for larger-scale operations.

Despite the initial frustrations encountered, the Commission considered that it had a duty to extend equal protection to the residents of these communities within the limits of a rational allocation of the Commission's resources, especially since all but two of the complaints on hand had been initiated by or on behalf of the community residents. Early in 1992, the Commission resolved to consolidate the various investigations involving the Councils, and to assign them to one of its Multi-disciplinary Teams.³

In February 1992 the Chairman of the Commission requested the assistance of the Commissioner of the Police Service in setting up a joint investigative task force. The task force would focus on complaints against a selected number of Councils, representing a fair cross-section of the Councils against which complaints had been received. The complaints it focused on would be representative of the range of matters before the Commission. The Commissioner of the Police Service agreed to transfer two officers to the joint task force.

The Commission hoped that the rigorous investigation of these matters would shed some light on how similar complaints could be handled in the future. It proposed to document the investigations in a report to Parliament which would highlight both the findings of the investigations and the problems and frustrations that the investigation encountered.

Scope of the investigations

The task force began its work in May 1992. By early September 1993 it had examined more than 90 allegations involving the six Councils featured in this report.

Some of the matters it examined were resolved quickly, but many involved protracted effort and required numerous visits to the communities and other

³ The OMD's Multi-disciplinary Teams workload includes more complex complaints matters as well as organised and major crime investigations. The Multi-disciplinary Teams may conduct one-off investigations, or a series of investigations focusing on related matters or complaints with a common theme. The Division may also establish task forces to handle inquiries of a broader nature.

regional centres to locate, interview, and re-interview witnesses, and make related inquiries with businesses and other organisations. Some interviews were conducted interstate. By late 1993, Commission investigators had made more than 15 intra- and inter-state trips and interviewed more than 180 witnesses, some several times.

In the course of their inquiries investigators served 31 Notices to Produce in order to obtain documentary evidence relating to the allegations. While investigators were interviewing witnesses, Commission financial analysts examined documentary evidence and, in one case, computer records, provided by the Councils. For the greater part, the documentation obtained from the Councils was inconsistently detailed and poorly organised and could not be readily utilised for the investigation. Even with considerable remedial accountancy, the records often failed to provide the information necessary for a thorough investigation. Apart from Council records, analysts also obtained evidence relating to certain private enterprises named in the allegations, as well as information from banks, accountants and solicitors.

Results of the investigations

The Commission's investigations led to very few recommendations for criminal or disciplinary charges.

In a small number of cases, the Commission was able to show that the allegations had no factual foundation. Likewise, in a small number of cases, the investigation supported the allegations.

Some of these matters will lead to recommendations for prosecution being made to the Director of Prosecutions and, as a result, will not be included in the present report. Others cannot be the subject of further action because the legislative and regulatory framework in place at the time did not make the behaviour subject to sanctions.

The small number of cases where charges could be recommended would be of less concern to the Commission if the investigation had been able to show that the events or behaviour the subject of the allegations had not in fact taken place. But this was not the case. For the large part, the investigations could neither prove nor disprove the allegations. In other words, just as the Commission was unable to show that the allegations were true, it was also unable to show that they were false.

The main reason for the Commission's inability to prove or disprove certain allegations was a lack of documentary evidence, a particularly frustrating state of affairs when numerous witnesses were in substantial agreement about the facts of

some of the allegations, but lack of records meant that a prosecution would not succeed.

The lack of evidence, particularly documentary evidence, was not surprising. The Councils' poor financial administration and record-keeping had been highlighted in reports prepared by both the Parliamentary Committee of Public Accounts and the Queensland Auditor-General. It also features prominently among the problems encountered by the Queensland Police Service (QPS) in their investigations involving Aboriginal and Island Councils.

Financial administration and record-keeping: reviews by the Parliamentary Committee of Public Accounts and the Auditor-General

Under the Community Services Acts, under which Aboriginal and Island Councils are constituted, the Auditor-General is required to audit the accounts of every Aboriginal and Island Council each year. (The Commission has reviewed Auditor-General's reports on each of the Councils addressed in this report. They are summarised under later chapters dealing with individual Councils.)

The Parliamentary Committee of Public Accounts

Prompted by successive negative assessments provided by the Auditor-General, and in particular his report on the financial year ending June 1989, in 1990 the Parliamentary Committee of Public Accounts (PAC) commenced a lengthy examination of Aboriginal and Island Councils' financial administration.⁴ In its second report, published in February 1991, the PAC set forth a list of "areas of activity about which the Auditor-General had expressed concern in his annual reports":

⁴ The PAC received 20 submissions, visited 14 Aboriginal and 6 Island communities, and engaged in a lengthy consultation process with Councillors and Council staff, the ACC and ICC, the DFSAIA, and the Auditor-General. Two reports, the first dealing with the regulatory framework of Aboriginal and Island Councils, the second with the effectiveness of Councils, support for Councils and training, were published in October 1990 and February 1991 respectively.

1. Councils not exercising proper administrative and managerial controls, including regular meetings properly recorded, to carry out their lawful functions in an efficient and effective manner;
2. Councils not applying proper controls and procedures over the assessment, collection, custody, banking and accounting for revenue;
3. Councils not exercising adequate supervision over, and not implementing, proper controls and procedures in respect to expenditure of funds to ensure such expenditure was incurred for lawful purposes of the Council, supported by proper documentation and approval by Council;
4. Assets of the Councils not efficiently and effectively managed and safeguarded;
5. Councils not exercising adequate control over trading enterprises, e.g., substantial losses disclosed in audits; canteen records inadequate or not maintained.

The Auditor-General

Subsequent public reports by the Auditor-General have shown that the trend toward poor financial administration and record-keeping by the Councils continues. For example, commenting on audits of Aboriginal and Island Councils for the financial year ending 30 June 1992, three years after the negative reports that prompted the PAC's hearings in 1990-1991, the Auditor-General wrote that audit findings for this period revealed "a worsening situation in relation to the financial management of the Councils".⁵ He went on to note that the "functions and duties associated with the financial administration of the Council have not been adequately and satisfactorily discharged". In 24 cases he issued qualified audit opinions, including 11 disclaimers of opinion. He wrote that the failure of many Councils to keep up-to-date accounting records usually meant that audit was involved in extensive reconstruction and wholesale write-up of a full year's transactions.

In 1994, commenting on audits of Aboriginal and Island Councils for the financial year ending 30 June 1993, the Auditor-General wrote that there had been "little overall improvement when compared with the audit findings for the previous year."⁶ He had been unable to form an opinion one way or the other in relation to 13 Councils' accounts, including six where the accounts were also subject to a

⁵ Queensland Auditor-General, May 1993, p. 5.

⁶ Queensland Auditor-General, February 1994, p. 7.

disclaimer for the previous financial year. However, he acknowledged that some Councils did recognise their responsibility for the proper financial management of their affairs and were attempting to raise their standards to a satisfactory level. Among the Auditor-General's findings were the following:

- 18 Councils did not hold regular meetings, or if they did, failed to provide a permanent record of decisions taken or discussions engaged in. The Auditor-General noted that the Acts were silent on the issue of Council meetings and the taking of minutes.⁷
- shortages and irregularities occurred in a range of situations and activities involving funds in excess of \$2M, e.g., creditor payments unsupported by adequate documentation---\$1.6M; cash/stock shortages from enterprise operations---\$650K; cash shortages of collections---\$132K.
- despite the write-off of \$474K of debts, the overall amount owing to Councils rose significantly over the previous year. Both the debtors system and follow-up action to recover outstandings were inadequate.
- many Councils failed to maintain complete records regarding their assets. Nineteen Councils were found to have insufficient control of their assets.
- some Councils were not complying with prescribed procedures for purchases or contracts. Failure to adopt prescribed procedures lead to qualified audit opinions for five Councils.
- due to the inadequacy of the quality of financial management exercised by Councils over their enterprise operations, it was not possible in many cases to determine with any certainty the results of trading and the extent of security over stock and assets.

Record-keeping and evidence

The PAC's and Auditor-General's reports provided valuable contextual information for the Commission's investigations. But they had not necessarily addressed the kinds of issues---for example, evidentiary problems---that arise in the context of law enforcement investigations.

⁷

The Commission has recommended that this defect be addressed by amendment to the legislation, see page 397.

Audit may uncover irregularities in a set of financial accounts, but it does not seek to establish that those irregularities are the result of official misconduct or criminal behaviour. Furthermore, it is not concerned with establishing the facts of a matter to the standard of proof required for prosecution.

Similarly, the Public Accounts Committee, while examining the larger issues of accountability and financial administration, does not try to investigate specific incidents to determine whether criminal behaviour or official misconduct has occurred.

As this report will examine in some detail, financial administration and record-keeping by all but one of the Councils whose records the Commission examined was grossly inadequate and on the whole did not provide sufficient information for investigations. The frustration caused by lack of adequate records appears also to have been experienced by officers of the QPS during their investigations of the Councils over the years.

The QPS has conducted many investigations in and around the Aboriginal and Island communities governed by Aboriginal and Island Councils. The consensus of QPS officers who have had many years of experience in such matters was that routine investigations on Aboriginal and Island communities generally encountered very few problems. However, when focusing on allegations involving Councillors or Council agencies, inquiries were more often than not stymied by the poor quality of records and inadequate financial administration in general. QPS officers identified the following problems:

- lack of financial control;
- lack of responsibility;
- lack of records;
- close relationships within Council often prevented identification of suspects;
- inadequate controls over access to Council funds;
- lack of qualified/competent staff;
- lack of disbursement/acquittal records;
- lack of political will to address these problems.

Many of these problems are consistent with the Commission's investigative experience which is detailed in this report.

Organisation of this report

The following sections of this chapter examine generally the formation and structure of the Aboriginal and Island Councils. The Councils have been the subject of numerous recent reports, most notably those by the Parliamentary Committee of Public Accounts and the Legislation Review Committee,⁸ which have, among other matters, considered the appropriateness of the Councils' structure and the circumstances that inhibit their operations and effectiveness. The Commission does not seek to add to or comment on their work except where it directly relates to the investigation process. However, some overview of the Councils' formation and structure provides a necessary context to this report.

The Councils' relationship to the Department of Family Services and Aboriginal and Island Affairs, which administers the Community Services Acts under which the Councils' are constituted, is also examined in this following section in some depth. In December 1993, the Parliamentary Committee of Public Accounts issued another report on Aboriginal and Island Councils' financial administration, this time concentrating on the Department's accountability in respect of the Councils.⁹ Again, the Commission does not wish to add to or comment on the appropriateness or extent of the Department's relationship with the Councils, except where it is directly related to the investigations the Commission conducted. However, the Department's relationship with the Councils is an integral part of the Councils' history and the Councils' approach to financial administration and record-keeping. This chapter includes a brief resume of the assistance the Department has provided to the Councils since they were formed.

The following six chapters of this report provide detailed accounts of investigations undertaken of a representative sample of allegations against Councillors or Council employees at two Island and four Aboriginal Councils, identified as Island Councils A and B, and Aboriginal Councils A, B, C and D.

The final chapter in the report sets out a cross-section of the conclusions reached in relation to a number of the allegations, and, based on those conclusions, makes recommendations about amendments to the legislation under which the Councils operate.

⁸ Legislation Review Committee, November 1991, *Inquiry into the Legislation Relating to the Management of Aboriginal and Torres Strait Islander Communities in Queensland: Final Report*.

⁹ Parliamentary Committee of Public Accounts, December 1993, *Report on the Financial Administration of Aboriginal and Island Councils*, Report No. 27.

Formation of the ATSI Councils

There are presently 14 Aboriginal Deed of Grant in Trust (DOGIT) communities and 17 DOGIT Island communities. Compared to the vast majority of mainstream local government authorities, Aboriginal and Island Councils are very young political entities. Some have existed in their present form for as little as six years.

Although their political structures are relatively new, the same cannot be said for all the communities they serve. Many have existed in one form or another since the advent of Europeans in this country.

"Artificial creations"

The Aboriginal communities that the Councils serve were largely the result of the "protectionist and segregationist"¹⁰ policies of Queensland Governments of the time. Some had been established by the Government to receive Aboriginal people forcibly removed from throughout the State. In more isolated parts of the State, the communities had been established by missionaries. Although they may have originally gathered peoples from one or more different clans or kinship lines from the immediate locality, the communities would later receive Aboriginal people from other areas of the State through the Government "removal" process. Like the Government-created communities, the populations of these more remote communities comprised people of different territorial, language, clan, and kinship lines.¹¹

¹⁰ Queensland Parliamentary Committee of Public Accounts, Report No. 8, February 1991, *Financial Administration of Aboriginal and Island Councils---Report 2: Effectiveness of Councils, Support for councils, Training*, p. 14.

¹¹ " . . . it should be understood that these 'communities' are artificial creations which deny the reality of Aboriginal cultural forms, and in which the notion of 'community' in the Western sense is more an administrative label than one of the residents' own perception. While it is true that at certain levels, because of shared institutional and contact experiences, the residents identify themselves as having common interests and solidarity, this is mostly in relation to dealings with the outside world. Internally . . . these 'communities' are complex collections of groups . . . whose social, economic, and political obligations, commitments and alliances may go beyond any one locality, but which have been brought together by Government action into a highly artificial township situation." Queensland Parliamentary Committee of Public Accounts, February 1991.

Unlike the Aboriginal communities, the present day Island communities were largely based on local populations,¹² although it was not until the advent of missionaries in the 19th century that those populations began to form themselves into the villages that currently feature on so many Islands. All but two of these communities have been under Government administration through Thursday Island since early this century. However, unlike most of the Aboriginal communities, the Island communities have never played host to Departmental superintendents or managers.

Before the Community Services Acts

Prior to the introduction of the Community Services Acts in 1984, the then Department of Community Services administered 31 Aboriginal and Island communities (also known as Reserves). The Department had an Executive Officer on each Aboriginal community and one Executive Officer on Thursday Island (whose responsibilities included 17 Torres Strait Islands) supported by a number of administrative and technical staff, who carried out the functions of housing, essential and municipal services, vehicle maintenance and other services later transferred to the Councils established under the Community Services Acts.

Each Aboriginal community and Torres Strait Island elected a Council of two-five members, depending on the size of the community. Aboriginal Councils were formally instituted in 1965 and incorporated in 1979. Island Councils were first introduced in 1899 and, with Government sanction, their power and influence steadily increased, although the Department maintained responsibility for most financial matters. In Aboriginal communities, the Councils played little or no role in financial administration or policy development. Their responsibilities were largely limited to promoting discipline and good order in the community by administering community by-laws. Councillors also comprised the Aboriginal Courts, which had the power to, among other things, make law regarding the sale and consumption of alcohol, levy fines, impose gaol sentences, and revoke permits to reside on the community. Whereas prior to self-management in 1984, Aboriginal Councils were in effect directly supervised by on-site Government managers, the Island Councils had exerted a more direct power over their populations for many years.

¹² Three communities, including a settlement for "half-castes", were established by the Government this century.

Self-government: The Community Services Acts

The present-day Aboriginal and Island Councils are constituted under the Community Services (Aborigines) Act 1984 and the Community Services (Torres Strait) Act 1984, which were designed to establish a system of local government similar to that of "mainstream" local government authorities and thereby allow the communities a measure of "self-management". Under the Community Services Acts, the Councils provide support, administrative services and assistance for Aboriginal and Island communities and for the management of lands for use by those communities. Under the provisions of the Land and Act (Aboriginal and Islander Land Grant) Amendment Act 1982, Councils could be given a Deed of Grant in Trust (DOGIT) for the area corresponding to the Reserve. In 1985 Torres Strait Island Councils were issued with DOGITs for their islands. Aboriginal Councils received their DOGITs in 1986 and 1987.

Transition to 'self-government'

In October 1984 the Department began the first part of the "transition process", which involved transferring to the Council control of employees concerned with hygiene and sanitation, Council building repairs, ambulance services, Aboriginal police, roads, parks and gardens maintenance, libraries, and cemeteries. Initially, three communities were allocated direct funding for these employees. In April 1985 the same communities received funding for miscellaneous capital expenditures associated with the functions already transferred. This process was repeated in other communities over the following two years, almost in tandem with the issuing of the DOGITs.

The second part of the "transition process" was the "local Government handover", when, as the Department's Under Secretary wrote to one Council at the time,

the resources of my Department available for local government service delivery at your Community [are] to be transferred to your Council . . . [and] . . . the Department will look to your Council to undertake all of the duties and responsibilities attached to the local government of the area.¹³

"Local government handover" involved seconding Departmental administrative and technical staff involved in local government operations and transferring plant and equipment associated with those functions. Not all of the Department's functions on the communities were handed over: some retail shops, guest houses, and

¹³ Letter of 29 August 1988 from Under Secretary, Department of Community Services, to Acting Chairman, Aboriginal Council C.

agricultural industries remained under Departmental control and in some cases became the subject of continuing negotiations between the Department and the Councils. In 1993 the Department was still managing some municipal and associated administrative functions of Councils in the northern peninsula area.

Because the Islands did not as a rule host Departmental staff, there was no "local government handover" as such in the Torres Strait. The Department's executive officer for the region remained on Thursday Island to provide technical support to the Councils; Departmental plant and equipment that had been on the Islands remained on the Islands without a formal change of title.

In 1987 five Aboriginal communities assumed local government responsibilities, in 1988 four more, and in 1989, two. By 1989, there were 14 Aboriginal Councils and 17 Island Councils carrying out local government functions in their communities.

The range of Aboriginal and Island Councils' responsibilities far exceeds those of "mainstream" local government authorities. While responsible for roads, water, sanitation, drainage, planning, land subdivision, building controls, etc., the Councils are also charged with providing and managing residents' housing, administering Aboriginal and Island police on their communities, and engaging in enterprises such as farming, service stations and beer canteens. Like the Government administrations that preceded them, the Councils and their administrations are the primary source of resources and services for their communities, a situation reinforced by most of the communities' geographical isolation. There are very few aspects of the communities' life in which the Councils are not involved.

To some extent, the confluence of the Councils' responsibilities to its community and its influence on community life has been reflected in the breadth of the complaints made to the Commission and the vehemence with which some community residents have made those complaints. It could also go some way to explaining the lack of openness with which many Councils and Councillors seemed to approach their role. As one DFSAIA officer noted:

In my view many Aboriginal Councils saw themselves as taking over the role of the Executive Officer/Manager in relation to issuing orders to staff and controlling resources. The current situation is probably aggravated by the fact that the impact of the Executive Officer in a small community was far greater than the impact that a Local Council would have on the lives of individuals in the broader society.¹⁴

¹⁴ DFSAIA correspondence with the Commission, 26 November 1993.

Income and expenditure

The majority of the Councils' funding comes from grants made by the Commonwealth and State Governments. In 1992/93 the combined receipts for Aboriginal and Island Councils totalled more than \$150M, of which Commonwealth grants accounted for 64.6% and State grants 12.2%.

The major source of Commonwealth funding is the Community Development Employment Projects scheme (CDEP), which is designed to provide alternatives to social security (including unemployment) benefits. Now funded through the Aboriginal and Torres Strait Island Commission (ATSIC), the CDEP Scheme allows a community to channel its members' social security entitlements into "productive employment in and for their community". What constitutes "productive employment" is largely a matter for each community.

Not surprisingly, the major expenditure for most Councils is the CDEP Scheme. In 1992/93, the CDEP constituted approximately 45% of all Councils' expenditure.

Financial administration

The Council's financial administration is the responsibility of the Council itself and the Council's administrative staff, headed by the Clerk. One of the larger Aboriginal Councils employs some 20 office staff. A smaller Island Council may employ a staff of as few as two persons.

Financial administration provisions applicable to the Councils are found in the Community Services (Aborigines) Act (especially ss. 28-35), the Community Services (Torres Strait) Act (especially ss. 26-33), the Regulations to these Acts (1985), in Ministerial Directions published in 1987, and in Accounting Standards for Aboriginal and Island Councils published in 1991.

The Acts

The Acts include provisions with respect to: a Council's powers to levy rates and impose fees, charges, fares, etc.; requirements to prepare annual budgets; Councillors' liability for illegal expenditure; authorisation of budget expenditures prior to Ministerial approval of the budget; requirements to keep proper accounts; access by the Under Secretary or agents to Council's records of accounts; auditing of accounts and certification of annual statements by the Auditor-General; Council Chairman's responsibility for forwarding quarterly and annual receipts and

disbursement statements to the Minister; borrowing powers; and short-term investment powers.

The Regulations

The Regulations provide that Councils shall from time to time appoint a Clerk "wherever practicable, a . . . resident of the area governed by it" (s. 15). Part IV of the Regulations sets forth provisions for "Financial Administration" for the Councils. In essence, the Regulations provided that each Council should establish and maintain four separate and distinct "Community funds", the purposes and sources of moneys for which are also described. The Regulations also provide that moneys should not be paid out of bank accounts for these Community funds except by cheque signed by any two of the Chairman, Deputy Chairman, and Clerk.

The Ministerial Directions

The Ministerial Directions replaced an earlier 'procedure manual' prepared by the Department. The Foreword published with the Directions refers to them as both "accounting requirements" and "accounting procedures . . . [to] help councils and their clerks understand the accounting in their office". Although sometimes referred to as "in general terms . . . the Council's accounting manual", their legal status has remained unclear,¹⁵ a view echoed by several auditors to whom the Commission spoke in the course of its investigations.

Changes to the Acts and Regulations

In December 1990 a number of legislative changes were made "to assist Councils better manage their responsibilities",¹⁶ including a provision for Councils to adopt budgets without Ministerial approval and a provision that those budgets should be

¹⁵ Parliamentary Committee of Public Accounts, October 1990, *Financial Administration of Aboriginal and Island Councils, Report 1: Regulatory Framework*, p. 7.

¹⁶ DFSALA correspondence 9 September 1993.

open for inspection by the residents of the trust area.¹⁷ A Departmental officer wrote that Councils:

should have had a greater commitment to the budgetary process, and more freedom in allocating funds according to their own priorities. Unfortunately, it would seem that the fact that Councils no longer needed to supply budgets or other returns for Ministerial approval simply resulted in them not being done.¹⁸

According to the Auditor-General, 12 of the 31 Councils did not prepare a budget for the 1991/92 financial year, and five Councils prepared budgets for only one of their Funds.¹⁹

A new section was also added to both Acts addressing the required disclosure of pecuniary interests by Councillors.²⁰

In 1991 the Regulations were amended to include, inter alia, Regulation 18A, which provided that the DFSAIA Minister would by 30 June 1991 publish a set of Aboriginal and Island Council Accounting Standards and that every Aboriginal and Island Council would, after consulting with the Auditor-General or his representative, produce an administration and financial procedures manual by 31 December 1992. This manual, the Regulations stated, would set out accounting and financial procedures which would apply to the administration of the Council's finances: "The manual must not be inconsistent with the accounting standards, and the manual is to the extent of any inconsistency with the standards, invalid".

The Accounting Standards published by the Department addressed matters similar to those addressed by the Ministerial Directions, in less prescriptive detail. It also

¹⁷ This amendment was recommended by the Parliamentary Committee of Public Accounts in its review of the regulatory framework governing Councils' financial administration. The Committee considered that the requirement that Councils' annual budgets be approved by the Minister was an "inappropriate requirement which reduces the independence and autonomy of Councils . . ."

¹⁸ DFSAIA correspondence 26 November 1993, p. 12.

¹⁹ Queensland Auditor-General, May 1993, p. 6.

²⁰ The origin of this amendment also appears to have been a recommendation made by the Parliamentary Committee of Public Accounts in its October 1990 reports. Although the preamble to the Committee's recommendation appears directed to both Councillors and Council employees, however, the Recommendation per se was directed to "pecuniary interest provisions with respect to Aboriginal and Island Councils". Amendments to the Act did not address the pecuniary interest of Council employees.

included provisions addressing the pecuniary interests of Councillors and Council employees.

In his report on audits of Aboriginal and Island Councils for the year ending 30 June 1992,²¹ the Auditor-General observed that audit must have regard to the degree of observance or non-observance of these Standards. The Standards, in his view,

set down policies and principles with a minimum of procedural requirements, but nevertheless, they demand that adequate internal controls and reporting processes are maintained. Matters which the Standards deal with include the ways in which revenue, expenses, assets and liabilities should be accounted for and the procedures that should be in place to ensure that expenditure is properly authorised and only incurred for official purposes.²²

The Department's view of the Accounting Standards may have been slightly different. According to the Department

in June 1991 [the Department] published a set of accounting standards to assist Councils identify areas where financial accountability affected them.²³

The Department apparently produced a "model" set of administrative and financial procedures manuals for the Councils' reference. The Councils could elect to use the "model" set and adapt it to their own circumstances. In some cases, Departmental officers workshopped the manuals with Councils' staff "to develop a shared understanding of the content and purpose of the procedures, and also to modify the standard set to suit local circumstances".²⁴

In November 1993 a Departmental officer wrote that "manuals have been reviewed by the Queensland Audit Office and the Department is currently incorporating the Auditor-General's comments into them". However, to his knowledge no Council had adopted a manual which had the approval of the Auditor-General.²⁵

²¹ Queensland Auditor-General, 1993, *Report of the Auditor-General on Audits of the Aboriginal and Island Councils for the Financial Year Ended 30 June 1992*.

²² Ibid, p. 4.

²³ DFSAIA correspondence, 9 September 1993.

²⁴ DFSAIA correspondence, 24 February 1994.

²⁵ DFSAIA correspondence 26 November 1993, p. 12.

In February 1994, the Auditor-General wrote that

In my view the style of manuals currently being developed is not sufficiently task oriented and may not achieve the desired end of assisting staffing to properly carry out day to day duties. This view has been formed by audit through discussions last year with Departmental and Aboriginal Co-ordinating Council representatives following release of my Report for 1991-1992. It seems to me that what is being asked for is something in the nature of a desktop manual which would serve as a day to day task reference aid and also be used for training.²⁶

In February 1994, a Departmental officer wrote that to his knowledge 25 Councils had produced Administrative and Procedures Manuals.²⁷ In March 1994, the same officer wrote that 11 manuals had been cleared by the Auditor-General and forwarded to Councils for adoption, however "the Department was not in a position to advise which Councils have formally adopted a procedures manual". He considered it unlikely that many Councils would adopt their manual until personally visited by the Department "to facilitate the adoption process".²⁸

Asked if the Department had ever considered prosecuting Councils who failed to comply with the Community Services Acts by producing manuals by the required time, he said that:

To the best of my knowledge no serious consideration has ever been given to prosecuting a Council over failure to comply with the provisions of the Act. In the particular case of the procedures manuals, given the lengthy process involved in developing them, prosecution would not be appropriate at this stage.²⁹

However, he admitted that, given the Department's policy position, which sees the Councils being responsible for their own financial affairs and the Department pursuing compliance with the Act, "the possibility of prosecution for failure to comply with the Act needs to be considered", despite "the relatively small penalty associated with such failure".³⁰

²⁶ Queensland Auditor-General, February 1994, *Report of the Auditor-General on Audits of the Aboriginal Councils and Island Councils for the Financial Year Ended 30 June 1993*, p. 3.

²⁷ DFSAIA correspondence, February 1994.

²⁸ DFSAIA correspondence March 1994.

²⁹ DFSAIA correspondence 11 March 1994.

³⁰ DFSAIA correspondence 11 March 1994.

Councils' relationship with the DFSAIA

I want to pledge the continuing support and guidance of myself and my officers to your Council and to assure it of our availability and readiness to assist Council through the new experiences and learning processes involved in this significant step in the history of [. . .].

Thus the Department of Community Services's Under Secretary ended a letter to one Aboriginal Council shortly before local government handover was to take place. During the transition period, the Department provided several kinds of assistance to the Councils:

- the Department made available resident Executive Officers and other Department Staff to give Councils advice on day-to-day issues. The Executive Officer might also attend Council meetings and advise on procedural matters on the conduct of meetings and the recording of minutes. According to the Department, Executive Officers remained on several Aboriginal communities for some time in a support capacity only, while the Department strengthened its "Transition Team".³¹ The Executive Officers and other Departmental staff were primarily responsible to the Department, not the Councils. In any case, the effectiveness of this consultation may have been limited by the skills of the personnel that filled the positions.
- the Department seconded Departmental officers to work directly in Council administration. Between 1987 and 1990 seconded officers were used for 15 separate periods in eight Aboriginal Councils.³²
- the Department developed and implemented training workshops for Councillors and Council Clerks. During the period 1984-1992, the Department conducted 18 "training workshops". Six were attended by Councillors and/or Clerks from Aboriginal Councils. Fifteen were attended by Councillors and/or Clerks from Island Councils.³³ Many subjects were covered at the "training workshops": e.g., local government electoral

³¹ Letter from Director-General, DFSAIA, to CJC, 9 September 1993.

³² Public Accounts Committee, February 1991, p. 21.

³³ Writing in November 1993, a DFSAIA officer stated that Aboriginal Councils had the same access to support services, including workshops, as Island Councils did, and that a possible reason why the record shows a greater number of workshops for Island councils could be Island Councils' higher dependence on the Department.

procedures, financial management (budgeting, payroll, etc.) correspondence and communication, financial returns, roles and responsibilities of Councillors and Clerks, the Ministerial Directions, beer canteen management, DCS programs, industrial relations, superannuation awards, etc.

- the Department produced a procedure manual called the "Ministerial Directions" which would "assist Councils with administrative and financial matters", and two books to assist in the transition process.³⁴ In 1991 it published the model accounting procedures, otherwise known as the Aboriginal Accounting Standards and Island Accounting Standards.
- the Department established a "transition team" comprising a small group of officers who travelled to communities and provided assistance and training in accounting and administrative matters.³⁵

The transition team

Although some Councils, particularly Island Councils, began assuming full local government functions as early as 1985, it was not until late 1986 that the Department formally inaugurated the "transition team". During 1985-86 a "Planning Unit" monitored the changeover of functions to the Councils. In February 1985 a Departmental officer from Thursday Island began a program of visits to the 15 Island Councils on a demand basis as assistance was required. Of this period, the PAC would later write that even though there was an awareness within the Department of the difficulties ahead and the need for a comprehensive and progressive training program, there was no formal structure put in place to handle the transition process nor any co-ordinated program of training for skills acquisition by Councillors and Clerks.³⁶

In November 1986 the Department formed a "transition team" that would provide on-site support and training to the Councils. Over the next several years it would operate under several names: the "Transition Implementation Team", the "Transition Team", the "Transition and Local Government Development Unit", and the "Community Organisations Support Unit".

³⁴ DFSALA correspondence 26 November 1993.

³⁵ Queensland Parliamentary Committee of Public Accounts, February 1991, pp. 20-21.

³⁶ Ibid, p. 26.

According to the Department, the role of this team was to visit Councils on a regular basis to offer support services. Those support services appeared to have included on-site "specific skills training for Council staff" and, increasingly, pre-audit accounting functions. It supported both Aboriginal and Island Councils.

The training provided by the "transition team" usually related to specific works areas considered important by the individual being given training, e.g., wages preparation, budgets, debtor systems, and basic book-keeping functions. The Department noted that Councils would employ new staff who had little or no knowledge or experience to carry out specific functions that they could not perform: "Training was then directed at giving these staff some specific technical knowledge to allow them to perform".³⁷ The Department acknowledged that training "only ever constituted a minor part of the nature of the support that Councils requested. By far the most significant type of requests for assistance related to dealing with work backlogs".³⁸ "Specific training and support activities" were not documented until May 1991.³⁹

According to the Department, the membership of the various "transition teams" changed from time to time. Generally, it comprised staff with administrative and financial backgrounds, as well as staff who had experience working on communities.

"Services provided by the Transition Team were provided on the basis that Officers moved around the communities on a pre-programmed basis determined by the community".⁴⁰ In the Torres Strait, members of the "transition team" would visit Councils on a pre-programmed, rotational basis, with each Council being visited on average once each six weeks, depending on need. Aboriginal Councils were generally treated the same, "however some communities were not visited, or were visited on a less regular basis depending upon arrangements worked out between departmental staff and Community Councils".⁴¹ Visits to Councils might also be directed by senior Departmental officers or the Minister, as was the case in April and May 1990, when the Minister instructed staff to visit each community and

³⁷ DFSAIA correspondence, 26 November 1993.

³⁸ DFSAIA correspondence, 26 November 1993.

³⁹ DFSAIA correspondence 26 November 1993.

⁴⁰ DFSAIA correspondence, 9 September 1993.

⁴¹ DFSAIA correspondence 26 November 1993.

report every fortnight following a particularly adverse audit report on the Councils in general.

According to the PAC, from 1987 onwards, in the face of unfavourable audit reports, the Departmental support for Councils began to concentrate increasingly on an internal audit function and on direct involvement in keeping the books up to date and in the preparation of the annual statements. The "transition team" commenced pre-audit activities in early 1987 and appears to have instituted "a program of quarterly internal audits of all Councils".⁴² In April and July 1988 the Department's "rotational program of visits" to Councils was augmented by the addition of temporary staff in April and July to reconstruct and update Council records in preparation for the audit, and in December of the same year permanent staff of the "transition team" were increased to 10. This staff was temporarily increased again in July 1989 and 1990 to prepare Councils for audit. In 1989, the Department reacted further to negative audit reports by directing Departmental Executive Officers on communities undertake field audits of Council books fortnightly and that the transition team undertake a similar function every six weeks. The PAC wrote that "[b]y this time, the trend for Departmental support resources to concentrate on audit and actually doing the work had progressed to the extent that 39.6% of the Unit's contact time was devoted to doing work, 24.6% to auditing, 19.6% to consultation, and 16.3% to training."⁴³

This observation is supported in part by the Department. According to the Department, Councils became increasingly reliant on the visits of the "transition team" to undertake the work associated with the preparation of financial statements prior to audit visits: "In essence the responsibility for Council administration in some communities was, through the operations of the transition Team, being handed back to the Department".⁴⁴ However, the Department also acknowledged that while many Aboriginal Councils experienced difficulties from time to time, their level of dependency was somewhat less than Island Councils: "Aboriginal Councils generally seemed to want to sever the connection with the Department to a greater degree than Island Councils".⁴⁵ According to the Department, the 1991 withdrawal of pre-programmed visits in favour of a request-driven approach was

⁴² PAC, February 1991, p. 26.

⁴³ PAC, February 1991, p. 26.

⁴⁴ DFSALA correspondence, 9 September 1993.

⁴⁵ DFSALA correspondence, 26 November 1993.

an attempt to break the dependency relationship which had grown up between many Councils and Departmental staff.⁴⁶

Commenting generally on the training provided to Councils up to 1990, the PAC concluded in 1991 that:

... Most Aboriginal and Islander communities simply do not have the reservoir of skills and knowledge that is required to run the complex system of financial management and administration imposed by the Acts ... in spite of the apparent plethora of training programs for Aboriginal and Islander people, the training in financial management and administration presently available is fragmented, unco-ordinated and deficient in both quantity and quality ...⁴⁷

A change in approach

In May 1991, the "Transition Team" changed its method of operating to meet the requirements of the Training Guarantee Act. Basically, the Department developed a number of structured training modules, building into them the necessary requirements to give formal accreditation. At the same time, it introduced a notional user pays system and ended the rotational schedule of visits to communities in favour of an arrangement under which it visited communities only at the request of the respective Councils. According to the Department, the most common form of support requested (and subsequently provided) was for Departmental staff to assist Councils in addressing "administrative and financial work backlogs".⁴⁸ The attitude of the Aboriginal Co-ordinating Council (ACC) and the Island Co-ordinating Council (ICC) was favourable to this concept as these bodies recognised the need for their member Councils to take a greater control over their own affairs.⁴⁹ Rather than increasing the level of support/training to Councils, according to the Auditor-General, the effect of this change in policy was a lessening of departmental assistance.⁵⁰

⁴⁶ DFSAIA correspondence, 26 November 1993.

⁴⁷ Parliamentary Committee of Public Accounts, February 1991, p. 6.

⁴⁸ DFSAIA correspondence with the Commission, 26 November 1993, p. 4.

⁴⁹ DFSAIA correspondence 26 November 1993.

⁵⁰ Queensland Auditor-General, May 1993, p. 5.

The "Transition Team" ceased to exist in May 1992 when the Division of Aboriginal and Islander Affairs within DFSAIA was restructured. According to the Department, since that time it has adopted a "less intrusive policy" under which support from the Department is provided only at the request of the Councils.⁵¹ The Department acknowledged that it has met some difficulties in meeting immediately all requests for assistance from Councils due to a "protracted recruitment program for the Division of Aboriginal and Island Affairs, and for new organisational practices, such as regionalisation, to take effect".⁵²

In June 1993, the Department established a special Task Force to provide direct assistance to those Councils requesting assistance, "as it was clear that many Councils were facing difficulty in meeting accountability requirements".⁵³ According to the Department, the Task Force visited a number of Councils and assisted local staff in addressing "a wide range of accounting and administrative problems directly relating to their audit performance". The Task Force did not provide any training; its job was to provide administrative support. The Task Force was primarily comprised of five persons with considerable experience in Councils' operations, appointed on a temporary basis. By the time it was disbanded in September 1993, the Task Force had visited 15 Councils, two of which were the subject of Commission investigations.

Other forms of assistance

In other efforts, apparently initiated upon the recommendation of the PAC in 1991, the Department provided funds to the Island Co-ordinating Council to establish a computer services bureau that would assist Island Councils in the maintenance of accounting, payroll, debtors and asset records. The bureau commenced operations in May 1991. By May 1993, nine Councils had availed themselves of the bureau's services. However, the Director-General commented that "there had been no evidence in improved financial or administrative performance of Councils since the computer bureau commenced operations".⁵⁴

⁵¹ DFSAIA correspondence, 9 September 1993.

⁵² DFSAIA correspondence 26 November 1993.

⁵³ DFSAIA correspondence, 9 September 1993, p. 3.

⁵⁴ Letter from the Director-General, DFSAIA, quoted in PAC, December 1993, p. 28.

Also in response to a 1991 PAC recommendation, the Department has been involved in "lengthy negotiations" concerning an appropriate curriculum for a Council training course to be delivered through TAFE. A TAFE course for Council Clerks was to commence in January 1994.

The Department also provided funds to the Aboriginal Co-ordinating Council to help establish an internal audit service for the Councils and a position of economic development officer who would assist Councils in the management of various enterprises under their control.

In September 1993 the Director-General of DFSAIA wrote that the Department had in conjunction with other agencies⁵⁵ begun the process of developing a long-term strategic approach to overcoming the difficulties that Councils face in meeting accountability requirements. The precise nature of the process remains unclear:

The process is one which has involved discussing the issues and past approaches with the objective of developing an agreed strategy for overcoming the problems in a way that is suitable in the long-term.⁵⁶

According to one Departmental spokesman, given the lengthy history of the problems, it was not going to be easy to develop a strategy "that has widespread endorsement, and, more importantly, can be implemented". In his view the key elements of a successful strategy would include:

- an effective and well-trained administrative work force. "If this cannot be achieved for any reason then there must be some administrative support system to ensure that basic administrative tasks are undertaken".
- an internal audit system which ensures that Councils are kept abreast of system failure and are able to make the necessary corrections.
- a much better understanding amongst members of the community about the operations of the Council and its duties and responsibilities
- some means of separating business enterprises from Local Government activities.

⁵⁵ According to correspondence of 26 November 1993, those agencies include the Office of Cabinet, Department of Housing, Local Government and Planning, the Auditor-General, the Aboriginal and Torres Strait Islander Commission, the Aboriginal Co-ordinating Council, and the Aboriginal Councils Clerks Association.

⁵⁶ DFSAIA correspondence, 26 November 1993.

- an ongoing training mechanism specifically related to equipping people to meet the financial requirements of the Community Services Acts [emphasis added]
- a centralised system of accounting for the Torres Strait which recognises the fact that many Islands, and the corresponding grants from the State Government for them, are extremely small.

At hearings convened by the PAC in September 1993, the Director-General of the Department said that

the approach now is one of ensuring that there is accredited training of council staff and Councillors by qualified trainers. It is our aim to put in place a structured, specialised program tailored to the needs of Councils and their staff.⁵⁷

The ICC and the ACC

In November 1993, the Commission wrote to the Aboriginal Co-ordinating Council and the Island Co-ordinating Council, seeking their assistance and input in the development of this report. The Commission wished to obtain an Aboriginal and Islander perspective on a number of general issues relevant to the formation and development of the Aboriginal and Island Councils and, in particular, their history with DFSAIA.

Despite contact from both the ACC and the ICC indicating that a response to the Commission's request would be prepared, no response was received. In January 1994, the Commission again wrote to the ICC and the ACC seeking a contribution from them with respect to issues relevant to this report. As at the date of this report, no contribution has been received from either body.

⁵⁷ Parliamentary Committee of Public Accounts, Transcript of Proceedings from an Inquiry into Aboriginal and Island Councils' Financial Administration, 13 September 1993, p. 2.

CHAPTER 2

Torres Strait Island Councils

The Commission's investigation of Aboriginal and Island Councils focussed on two Councils in the Torres Strait. These Councils will be referred to as Island Council A and Island Council B.

The brief history of the Torres Strait that follows will help to give to an historical context to the investigation reports on these Councils.

A brief history

The history of the Torres Strait has been primarily an oral history, a situation that has remained unchanged until relatively recently. Even today there are very few authoritative written accounts of Torres Strait history, and those writers who have attempted to document the Strait's history since the advent of Europeans have had to rely on the memories of Islanders as much as, or even more than, Government or archival records.⁵⁸

Petty theocracies

Europeans came to Torres Strait as early as the 17th century, but it was not until England established its Australian colonies that the Torres Strait became a frequently used national or international seaway. By the 1860s the beginnings of the burgeoning marine industry that was to define much of the Strait's subsequent history was evident in the small number of vessels that came to exploit pearl shell and trepang (beche de mer). Possibly prompted by the early success of the marine industry, in 1872 the Queensland Government annexed Islands in the Torres Strait within 60 miles of the coast and in 1879 the rest of the Islands, almost to New Guinea.

The London Missionary Society (LMS) had begun its work of conversion among the Islanders in 1871. Beginning with a small settlement on Thursday Island, the

⁵⁸ To the Commission's knowledge, Jeremy Beckett's *Torres Strait Islanders: Custom and Colonialism*, (Cambridge University Press, 1987) is one of the few scholarly works to address both the early and recent history of the Strait. Much of the information presented in this chapter derives from his book.

LMS' "petty theocracies" spread throughout the Strait. The advent of the LMS ushered in a period of great change for the Islanders. It marked the beginning of many present day villages, which were often built around churches that were situated near good anchorages. The congregational nature of the LMS encouraged local participation. At the same time, the church's position above the *mamooses* (chiefs), rather than detracting from their power, gave these secular rulers a new kind of legitimacy, an influence that in some cases remains today. Perhaps just as importantly, the LMS's strict moral code provided a new means by which Islanders could control and judge one another's conduct. It was to remain in force well into the 1960s and can still be seen in the by-laws and unwritten social code followed by some of the present-day Island Councils.

Government, fishing, and the profits of the sea

In 1886 the Queensland Government appointed a Government Resident to oversee Island affairs. In 1899 (1898 on Murray Island), possibly to counter the influence of church courts instituted by the LMS, the Resident instituted elected councils to advise the LMS teacher-supervisors who controlled much of the Islands' affairs. This apparently remarkable innovation was without precedent anywhere in the colonial South Pacific. Although initially treated quite separately from mainland indigenous populations, with the death of the Resident in 1904 Islanders passed to the control of the Chief Protector, a position established under the first Queensland Aborigines Protection Act of 1897.

Throughout this and subsequent periods, Government administration held both local economies and social custom in close check, regulating the consumption of goods and keeping a tight paternalistic control over Islanders' money. Special stores for Islanders carried only the barest necessities and entered Islanders' purchases against whatever money was held in their government books. In addition, a percentage of each worker's earnings was transferred into an Island fund. In 1913 the percentage for single men was set at 20%. According to the Protector, in later years the fund provided uniforms for village police, medical and sanitary services and general improvements, and perhaps, more importantly, it provided the funds for the government to acquire boats for fishing.

Islanders began to acquire their own boats for fishing as early as 1897. In 1904 a retired minister established Papuan Industries on one of the Islands, and the Queensland Government soon established parallel agencies on other Islands. In 1930 the two organisations merged into Aboriginal Industries, which was later designated the Islands Industries Board (IIB).

Initially, communities seem to have responded with enthusiasm. "Company boats" gave Islanders who were too young or too old to work on the master boats an opportunity to increase their involvement in the cash economy. But they were not always a success. In particular, Islanders were irked by the control that the teacher-supervisors exercised over when they could fish, and the deductions made from their wages may not always have been understood.

But the Government expanded the fleet to take advantage of the boom that followed the First World War. Trochus, which did not require elaborate diving gear, had a sizeable market. By 1923, 587 men, or almost half the working population, were involved. The number increased during the 1930s, despite the problems of falling earnings created by the Great Depression. There is some evidence that the Government may even have forced Islanders to work, though apparently the increased availability of goods through the Island stores provided some incentive as well.

In 1936 the majority of Islanders working on government boats began a strike that lasted for approximately four months and ended with the dismissal of uncooperative councillors, the imprisonment of strike leaders and the temporary posting of police in the most affected communities. The reasons for the strike may have been many: the system of payment on the boats, the desire for more control over the fishing, the misappropriation of Islanders' money, resentment against the teacher-supervisors. The strike also led to the removal of the Protector of the Islanders, a position established in 1935-36.

The new Protector introduced a series of administrative innovations quite unprecedented in Australian colonial history: he established procedures for regular consultation with elected Islander representatives and granted Island Councils a considerable degree of local autonomy, including control over the Island police and courts. A conference of Councillors in 1937 led to the removal of unpopular by-laws. The Torres Strait Islanders Act of 1939 reflected these changes and in the process changed the name of Aboriginal Industries to the Island Industries Board. However, the government continued to oversee both the boats and Islanders' earnings.

World War II

Islanders made a small but significant contribution to Australia's effort during WWII. By the close of the war, almost 900 Islanders had served in the Torres Strait Defence Force, with many receiving training as drivers, clerks, and radio operators. The war also marked a second concerted effort to change the attitudes of Government. A brief "sit-down strike" among some companies led to a rise in

pay to two-thirds of the normal rate, but otherwise appears not to have changed Islanders' differential treatment at the hands of Defence authorities.

However, directly or indirectly the war did bring about a change in some Islanders' lives. Prior to the war, support for the aged and indigent had come from the Island funds, financed by taxing Islanders' earnings. In 1941 the Commonwealth began providing child endowment, invalid and old aged pensions and maternity allowances, though not unemployment benefits. The level of State assistance remained at its pre-war levels.

The post-war period saw the beginnings of several trends that would define Island history for some generations. Migration to the mainland became a social force. The Government could itself have controlled the movement of Islanders, but in practice it left the matter to the Councils. Communities that still ran boats forbade emigration, however those that had ceased participation in the marine industry encouraged it.

The re-organisation of the marine industry

WWII effectively ended the viability of beche de mer as a commercial product. In response, Islanders turned to gold-lip and trochus. After the war, there was a rush to buy boats for trochus fishing, but two years later, demand shifted to gold-lip, for which luggers with diving equipment were required. The industry's earnings peaked in 1950-51 at £520,000 and again in 1956-57 at £632,000. Thereafter, it began a long uneven decline. The number of commercial and government boats declined. In the post-war boom there were 40 government boats, but by 1957 there were 22; by 1961, 15; and by 1967, 6. Pearling continued on reduced scale throughout the 1960s, but the number of boats was much reduced.

The decline of large-scale gold-lip and trochus fishing was signalled by the development of plastic buttons in the 1960s. However, cray and trochus fishing have continued to prove viable, largely due to the use of freezers and the increased affluence of some Islanders. A small operator with a few thousand dollars to purchase a dinghy and outboard can make a reasonable income from trochus and crayfishing, if he can get his produce to a freezer before it spoils.

With the population growing steadily, the decline in pearling/diving industry forced changes in the Islands. The economies of some Islands changed. The marine industry was no longer the only avenue for earning a wage: the government offered positions for teachers, medical aides, assistants in retail stores. On Thursday Island, the administrative centre for the region, there were more positions in boat repair, administrative, office and hospital work. The region acquired a

nascent building industry. By 1960, as many as 400 people were working for government, although the only Islanders whose income approximated that of their European counterparts were the few who held managerial positions, for example, with the IIB.

Religion

When the London Mission Society left the Strait in 1914, its place was taken by the Anglican Church. Anglicanism evolved "full of Island custom". As more Islanders left the region for the mainland they came in contact with other religions, particularly the Pentecostal Assemblies of God.

If becoming a Pentecostalist is a matter of choice on the mainland, in the Strait it could have far-reaching social and even political implications. One Island leader who in the 1950s allowed Pentecostalists to erect a meeting house on his land and invited the assembly to send a pastor, even though he himself did not join the church, was excommunicated from the Anglican Church and expelled from the Council. Tension between the practice of Anglicanism and Pentecostalism continues today on the Islands. It has often been cited as the cause of, or as a corollary to, conflicts among Islanders or between Councils and their constituencies.^{58a}

The role of the Councils

The Councils continued to play an active role in Island life throughout the 1950s and 1960s, although they were not the same lightning rod for discontent as before the war. Biennial conferences of Councillors, presided over by senior Department officials, were held during the 1950s and 1960s. The easy relationship between the Government and the Councils may have been a reflection on the kinds of people that residents elected to Council, more often than not teachers, store managers, and boat skippers who may have been unwilling to openly defy authorities. In any case, voters seemed to prefer supporting people who could deal with the government bureaucracies and the "southerners" who usually represented them.⁵⁹

^{58a} The part which religion has played in life on the Islands is referred to only for this reason, and is not intended to reflect adversely on the nominated religions or their adherents.

⁵⁹ Reviewing political leadership in the Torres Strait in the mid-1980s, Becket wrote: "This profile suggests a political elite that has monopolised not only the expertise but also the strategic connections in a few hands. Sons have succeeded fathers in three of the five

Islanders began voting in State elections in 1964. The Aboriginal and Torres Strait Islanders' Affairs Act of 1965 renamed the DNA the Department of Aboriginal and Island Affairs, removed restrictions on the consumption of alcohol, and provided for possible exemptions from the normal controls over property. The pass book system was still in use. Government continued to exercise control over persons and property living on the reserves, though Islanders' resentment may have effectively modulated its severity. DAIA clerks continued to challenge large withdrawals of money, with the pass book systems increasingly functioning as a banking service. The Department of Community Services (DCS), formerly the DAIA, divested itself of most of the old restrictions and controls during the 1970s.

With the demise of pearling, the IIB virtually ceased to foster local industry. Although some privately owned initiatives began, for example, in the areas of turtle farming, fishing, or prawning enterprises, they employed few Islanders. In 1982 the Commonwealth Government set up a company, under the direction of Island representatives, to help Islanders find a foothold in the marine industry. Unfortunately, the earnings of the boat it equipped did not cover running costs, and in 1984 it went into receivership without having made any appreciable impact on the Island economies. In the 1990s most Islanders opt to sell through private dealers. On some Islands, the Council Chairman and his relatives still play a leading role in the sale of the catch.

Perhaps the most far-reaching political change in the Straits was the move towards self-government under the Community Services (Torres Strait) Act 1984. Under this legislation each of the former community councils became body corporates enjoying perpetual succession. Under the Act, the Councils comprised three to five members elected on a triennial basis. They administer considerable sums of money in connection with government and ATSIC programs, including the CDEP. They also control much of the Islands' employment and housing. The Councils examined in this report have enjoyed the same leadership since well before the passage of the 1984 legislation.

Island Council Chairmen comprise the Island Co-ordinating Council (ICC), which channels funds provided by the Queensland Government. Together with

instances of succession. Others, whatever their political aspirations, realise that they 'don't know that business.' The higher levels of politics have become detached from the experience of ordinary Islanders. Thus the reports of imminent autonomy, which filtered through to the communities in late 1985, left many uncertain and uneasy. But while such people are free to vote for whomever they wish, they have no realistic option other than to put their trust in those 'who know how to talk to white people'. Nor do they have the cultural means for articulating opposition, which is thus couched only in terms of personality." (p. 200).

representatives from Thursday and Horn Island they also constitute the Torres Strait Regional Council, under the Aboriginal and Torres Strait Islander Commission (ATSIC), which represents the area to the Federal Government. The Regional Council will become a Regional Authority in 1994, with a single-line budget, and is negotiating with the Federal Government for a greater deal of autonomy.

Island Council A

The allegations that the Commission investigated in relation to Island Council A were made against a background of considerable political turmoil.

The Chairman and the consultant

In August 1989 a retired consultant affiliated with a political identity in the Torres Strait sent a fax to the Chairman of Island Council A:

I want you to understand with all of the concentration you can apply to your limited but devious and scheming brain, that if you or your corrupt (repeat CORRUPT) council clerk [. . .] attempt to interfere in any way with the democratic access and movements of [. . .] when he arrives at Darnley Island today . . . and access of [. . .] to any Island in the Torres Strait, I will immediately commence legal proceedings which will result in criminal charges involving a range of serious and abject abuses of Australian and Queensland law, against you and [the clerk] and others.

The fax message went on to say that the author had previously withheld his knowledge of certain activities involving the Chairman and the Clerk and others because he thought it was more appropriate that the Chairman be exposed by his own people and because of concerns for the Chairman's health. But now the author of the message regarded the "future freedom of Torres Strait Islanders from corruption and democratic abuse" as more important than the Chairman's personal health. The author concluded his message by noting that he was "revulsed" to learn that the Chairman was "once again manipulating his people and listening to outrageous schemers and liars" (he named businessmen, politicians and a political party) who seem determined to "perpetuate the autocracy and exploitation of Island people" developed under the Queensland Department of Aboriginal and Islander Affairs.

Whether the associate he named in his message actually made the visit to the Island, or what, if anything, occurred during that visit is unknown. However, it seems clear that this message may not have been the first of its kind delivered to the Island, nor was the Island the only destination for such messages. Other letters

and statutory declarations made by the same person and bearing a similar tone and critical content seem to have been sent to Ministers and senior public servants in both the Commonwealth and State Governments. In October 1989 the DCS officer on Thursday Island wrote that he understood that the Chairman was himself circulating copies of the messages amongst his colleagues and other prominent figures in order to discredit their author. Whether the government departments treated such communications with the same disdain it is difficult to say. In any case, allegations made by this person were in part responsible for the Commission's investigation into certain actions by the Council Chairman and, by default, the affairs of the Island Council he headed.

Both the author of the statutory declarations and the Chairman were known throughout the Torres Strait and, if not personally in the case of the consultant, by reputation in other parts of Australia. The consultant had spent some considerable time in far north Queensland and the Torres Strait area. He had been associated with certain political movements and, according to the Chairman, may even have held interests in business enterprises in the area.

The Council Chairman had been associated with government and retailing in the Torres Strait for several decades. By 1989, when many of the events that directly or indirectly precipitated the CJC investigation occurred, he had been living on Island A for approximately 15 years. For most of that period he had operated his own general store, in competition with the IIB store, and served as Chairman of Island Council A. Some people told the Commission that he had never been opposed in an election, but there are no official records to either support or disprove that claim.

The familiar tone that the consultant used in his fax to the Council Chairman was not a ruse. The two men had known each other for some years, though the tenor of the relationship may not always have been so acrimonious. In a statutory declaration signed by the consultant in 1989 he stated that he lived on the Island for more than 12 months during 1986 and 1987 and had acted as the Chairman's consultant, secretary, and press officer.

This is in part supported by documentation from both the Council and the Chairman. Unsigned minutes for a Council meeting on 14 April 1986 identify the consultant as an advisor in some capacity to a bi-centennial project. His name is also included on a list of residents attached to unsigned minutes of a Council meeting on 11 October 1986. Unsigned minutes of a Special Council Meeting dated 18 September 1987 include a resolution appointing the consultant as "advisor, consultant and Media officer" to the Council effective that day.

A debtor's book kept by the Council Chairman identifies the consultant as one of 87 persons owing money to the Chairman's business in 1989.

When interviewed by CJC investigators, the Chairman himself raised the spectre of the consultant's involvement in initiating our investigation:

... you see every question you're asking me is all point to [the consultant], and, ah, [the consultant] I'm, I'm going to say my, afterwards, after, you know how I feel about the whole thing and I, I mean I ask you gentlemen to respect my feeling that cause I have to get it off my bloody chest here...

And again, later in the interview:

Well, I think you're here, you know, your party come out here, at the behest of [the consultant] and [the consultant] because everything [the consultant] timed just fit in with your visit and everything is predicted was all [the consultant's] way.

However, the Chairman's view of his past association with the consultant was somewhat different to consultant's:

- Q: Now, I don't know the whole story. Was [the consultant] employed by you as an adviser at one stage?
- A: He as an, he was a secretary or he was, well, not really an adviser. He was an old consultant, he liked to call himself that and, ah, it may cry for independence borne out of frustration he offered his services, but he offered his services for a, on a different aim than what I was calling him to come in for.
- Q: And how was he paid?
- A: Well, it wasn't from me. All I had to offer him was . . . bush tucker. That's all I have that's all I've got.
- Q: Well, how did he, how did he support himself when he lived here?
- A: Well, I can't understand because he has got boatloads of stuff, boat loads, stuff by the boat loads, much more stuff than I got in my shop for himself
- ...

Both the cause and the timing of the decline in goodwill between the consultant and the Council Chairman are unclear. However, it is clear that once the consultant left the Island he kept in contact with certain residents. He provided those residents with copies of documents pertaining to the Chairman's activities and in turn received from the residents copies of Council documents, for example, audit reports. He supported those residents' attempts to initiate an investigation into the Chairman's affairs and their attempts to bring down the Chairman. And his statements to the CJC constituted one of the set of complaints that prompted this investigation. The second set of complaints came indirectly from the Island residents themselves.

The strike

Although the people interviewed by the Commission did not necessarily agree on the detail of events that ultimately led to this investigation, there was general agreement that the matters eventually brought to the Commission's attention were connected to long-standing issues of discontent with Council administration that languished or flourished with each newly perceived breach of faith by the Council.

One such breach of faith occurred in the latter part of 1989, when the Chairman allegedly refused a request to reduce the number of days' work required of CDEP⁶⁰ participants, while at the same time offering residents an arrangement whereby those residents could take time off to fish for trochus while retaining their full CDEP entitlement, as long as they sold their catch to him. This allegation was one of the matters investigated by the CJC (see Allegation 5). Regardless of the truth of the allegation, it seems to have prompted a succession of events that ultimately led to a second group of complaints being placed before the Commission.

According to statements made to the Commission, one of the men to whom the Chairman allegedly made the offer linking retention of CDEP payments to the sale of trochus held the position of third Councillor on the Island Council. When the Chairman refused their request for reduced CDEP workdays, this Councillor joined with other residents to organise a strike of CDEP workers against the Council, and resigned from the Council. It is unclear how many persons were involved in the CDEP strike, however a Commonwealth government source writing around the period of the strike notes that 35 of the 57 residents eligible for the CDEP program were on strike.

The people's representative

In mid-September, shortly after the strike began, the consultant signed two statutory declarations. The first concerned alleged deception by the Council Chairman in setting up a company involving the Council and the Chairman's alleged retention of monies that should have been turned over to the Island Council. The statutory declaration concluded by stating that a former Deputy

⁶⁰ The CDEP (Community Development Employment Projects) Scheme is a Commonwealth Government scheme designed to provide positive alternatives to social security (including unemployment) benefits. The Scheme allows a community to channel its members' social security entitlements into "productive employment" in and for their community. What constitutes "productive employment" is largely a matter for each community. The Scheme is now managed by ATSIC.

Chairman had asked the consultant to "implore all authorities to appoint an Administrator to allow all aspects of community business, State and Federal Funding, fishing and family faith in the running of [the Island], prior to the next elections".

The second statutory declaration notes that the author has over the past seven days been "given the permission of, and have been requested urgently, to record telephone calls from a number of people on [the] Island", outlining why the "entire work force and Islander CDEP recipients" had gone on strike "against working for the Chairman". Among the several reasons he gave were the following: the Chairman had allegedly threatened residents to the effect that unless they worked for him gathering trochus shell and selling the trochus to his "private partnership fishery", he would stop them from receiving CDEP payments; the Chairman had allegedly formed an illegal company through fraud and deceit; and the Chairman had allegedly misappropriated Council monies.

It is unclear to whom, if anyone, these two declarations were forwarded or shown. However, similar kinds of allegations were included in a two-page statutory declaration the consultant signed the following day. The copy sighted by the Commission bears a printed notation in the top left-hand corner which appears to indicate that it was sent to a Minister of the Commonwealth Government. In addition to repeating, with different emphases, the allegations contained on the previous two statutory declarations, this declaration contained new allegations: that the Council Clerk was allegedly selling sly grog; and that the DAA was turning a "Nelson's Blind Eye" to abuses of the CDEP Scheme by the Chairman. The declaration stated that the Islanders were requesting immediate restoration of unemployment cheques directly from the Department of Social Security in place of the CDEP Scheme, the dismissal of the Council Chairman and Clerk, and the appointment of an administrator pending another election.

The statutory declaration concluded with a bitter though at times incoherent attack on certain bureaucrats and politicians who had supposedly supported corrupt Torres Strait politicians for the benefits of political expediency.

An approach to the Australian Federal Police

In late September 1989 a delegation of Torres Strait Islanders approached the Australian Federal Police (AFP) and during an interview made allegations concerning the management of the CDEP Scheme on the Island. The delegation also tendered some documents relating to general grievances in connection with several other Island Councils. One of the members of the delegation was a well-

known Torres Strait political identity. The delegation was attended by the retired consultant.

That same afternoon the consultant wrote a one-page letter to the Department of Aboriginal Affairs, the Prime Minister, etc., on behalf of the people of Torres Strait and the Island community, threatening a "writ of Mandamus" against the Minister and the Department, and alleging that they were protecting certain Island chairmen who were allegedly "ripping off and misusing vast amounts of Commonwealth funding by continuing to reject the Islanders' demands for a Commonwealth Police investigation."

Some days later, the AFP interviewed the consultant and a resident of Island A, who produced further documentation, including a residents' petition containing over 50 signatures relating to alleged irregularities by Island Council A. The petitioners claimed that the Council was improperly supervising the CDEP and that

... we have been encouraged to collect our full CDEP payments by [the Chairman] and our [...] Island Council Clerk [...] on condition that we collected trochus shell exclusively for [the Chairman] and his partners, who guaranteed and did in fact pay us many hundreds of dollars for this shell, with the inducement that we could also keep our full CDEP payments, but only if we agreed to sell out shell exclusively to [the Chairman] and his partners.

The petitioners sought the dismissal of the Chairman and the Clerk and the appointment of an administrator to take over the affairs of the Council, with new elections for all positions following a full Federal and State inquiry. They claimed to have lost faith in the "ability and ethical intention" of the Chairman and the Council Clerk to "properly and fairly and honestly" administer the affairs of the Council. They questioned the integrity of the "Council fishery". They alleged that previous complaints to the DAA had been ignored and requested that CDEP payments be made by cheque to individual Islanders without the involvement of the DAA. The petition proper concluded:

We emphatically demand that the Department of Social Security should stop the fiction that [...] Island people should only receive their dole allowances because of the false boasts of [the Chairman] and our Council that Islanders "work for the dole". We believe that all Islanders should receive Social Security and dole payments similar to white society, without contrived excuse that "Islanders must work for the dole" ...

At this point, the allegations which appeared to fall within the AFP's jurisdiction were:

- the payment of CDEP monies to Papua New Guinea nationals by the Chairman of the Council;

- requirements for different total working hours for persons receiving CDEP payments; and
- destruction of mail.

The AFP approached the Office of the Director of Public Prosecutions for advice on its jurisdiction with respect to the Councils and their management of the CDEP. It advised Australia Post of the allegation regarding destruction of mail.

Taking matters into their own hands

Towards the end of October, perhaps dissatisfied with the lack of an immediate response from the AFP, Island residents tried to sack the elected Council. On 15 November they held elections for a replacement Council. DCS documentation indicates that nominations were posted on 14 November and elections held the following day by show of hand. Approximately 60 persons were believed to have voted and 75 percent of the population were believed to have been at the meeting at which the results of the election were announced.

On 17 November an Island resident faxed a message to various Commonwealth and State ministers announcing that residents of the Island had "democratically dissolved the former community councillors" and a newly elected Council had been democratically installed. "All future discussion and negotiations should be made with this body," it said. An accompanying letter stated that residents had drawn a petition to correlate with the legal procedures stipulated in the Community Services (Torres Strait) Act.⁶¹ The letter was signed by the secretary to the newly elected Council.

⁶¹ That petition, dated 14 November, read:

We the Humble petitioners, do hereby petition you our Most respected Minister for the Crown, in the State of Queensland. We wish you our Minister to follow the wishes of the Humble Petitioners in Majority being the Electors of [. . .] Island in the Torres Strait. Who have disposed of our Previous Councillors and have Elected New Councillors in the Stead. Such decisions has been a result of total dissatisfaction with Maladministration and Dictatorial practices by the Former Councillors....We remain your faithful constituents.

The Department's response

These events over September, October and November precipitated a good deal of correspondence between members of the Island community, the Council, the then-Department of Community Services, and the Department of Aboriginal Affairs. A number of meetings were held on the Island, and representations were made to both State and Commonwealth Ministers.

One of the issues that concerned the Department of Community Services was the legitimacy of the new Council. The Department was aware that the newly elected Council had not been elected in accordance with the Community Services (Torres Strait) Act as the former Council had not been dissolved upon petition made to the Governor-in-Council by a prescribed number of residents.

A memorandum to the Minister of 17 November notes that the Chairman of the original Council was "not unduly perturbed by these developments and has advised of his Council's intention to stand firm and to conduct business as usual." A copy of this memorandum given to the Commission bears a handwritten note in the margin, dated 27 November, that says in part that the Chairman suggested that "the matter remain in his hands and that he felt things were under control".

A deputation to the Minister

Towards the middle of January, a group of Island residents involved in "sacking" the previous Council met with the Minister for Family Services and Aboriginal and Islander Affairs to express certain concerns about the local government administration on the Island. Reporting on that meeting to the Acting Director-General, the Acting Divisional Head wrote that the group alleged that 1) persons wishing to nominate for the 1988 Council elections were prevented from doing so and 2) that following the resignation of a Councillor in September 1989, no by-election had been held---instead a new Councillor had been "appointed" to fill the vacancy. The group reiterated earlier allegations concerning the Council's requirement of CDEP employees to work a five-day week, except those who were prepared to fish for trochus for the Chairman. The Acting Director-General was also advised that according to the DFSAIA representative on Thursday Island no by-election had been held because only one person nominated for the position.

According to information received by the Commission, the Minister advised the deputation that the only Council members who could be recognised in terms of the Community Services (Torres Strait) Act were those elected by the process of that legislation and the Local Government Act. She pointed out that the action they had taken, as advised in their petition of 17 November, was illegal and that the

Council lead by the erstwhile Chairman was the duly elected Council. She expressed the hope that many of the problems could be resolved by the community itself provided that the solutions they developed were within the law. Department representatives advised the delegation on the proper procedures necessary for dissolution of Council.

Religion and politics

Council minutes over the succeeding months make no direct reference to the events of late 1989. However, the minutes of a Council meeting in March (signed by Chairman and Deputy Chairman) refer to "community disharmony caused by the dispute over the church building", and the minutes for a Council meeting in April (also signed by the Chairman and Deputy Chairman) note that a "general discussion took place once again about the employment situation and the church dispute". During that meeting the Council resolved to "close the Church Building . . . to both concerned parties until the dispute is resolved. This was to take place from 2 p.m. on Friday 6 April 1990".⁶²

⁶² How closely the church dispute aligns with other issues of contention remains unclear to the Commission. In his statement to the Commission, the Chairman suggested that disagreement over the ownership of the land on which a new non-Anglican church had been built was the root cause of the Island's disharmony. A report on a visit by a DFSAIA transition officer to the Island in August 1990 states in part:

. . . Adding to these problems is the division of the community over the ownership of the Church on [. . .] and this has caused a petition to be forwarded to the Honourable the Minister for the dissolution of the Council. From discussion held with Community residents, it would appear that should the petition be successful and a new Council appointed, then the other group would then lodge a petition of their own for the dissolution of the new Council.

The general consensus is that the Council should run its term of office and that the decision as to the new Council should be made at the forthcoming triennial elections.

The handwritten comments on the DFSAIA's copy of the Island resident's fax of 17 November echo this view:

"How do you get rid of these b-s."

"It is principally a religious problem involving a growing Pentecostal group (the Torres United Pentecostalist who are aligned politically to the [. . .] Party and [the consultant])."

"(inciting emotions [ui] [ui] baptisms in the sea Anglicans weaker"

An advice to the AFP

In April 1990 the Director of Public Prosecutions wrote to the AFP advising that PNG nationals were entitled to be participants in the CDEP Scheme, providing their status accorded with Government requirements, and that a complete audit of the financial records of the Council, conducted by the Queensland Auditor-General, had indicated that the financial accounting for the CDEP Scheme was in order. Because no Commonwealth or State offence was indicated, the two complaints involving the CDEP did not appear to reveal any activity which required further investigation.

However, the Director of Public Prosecutions drew the AFP's attention to a petition, signed by CDEP participants on 1 October 1989. The petitioners alleged that they were induced to sell all catches of trochus shell exclusively to the Council Chairman and Council Clerk by a guarantee that they would retain their full entitlement to CDEP payments in addition to being paid for their trochus shell. The petition stated that the Chairman and Clerk "[d]id in fact pay us many hundreds of dollars for this shell, but with the inducement that we could also keep our full CDEP payments, but only if we agreed to sell our shell exclusively to [the Chairman] and his partners." The Director of Public Prosecutions noted that discussions with the Queensland Boating and Fisheries Patrol revealed that the Chairman of the Island Council held a permit to take trochus shell intended to cover all community fishing for trochus and that, furthermore, the Chairman was known to have an interest in a business whose principal activity was the sale of trochus shell.

The AFP referred these matters to the CJC in May 1990.

More allegations

In August 1990, the consultant telephoned the CJC. He was inquiring about his complaint to the AFP, which he understood had been forwarded on to the CJC. He made a host of fresh allegations concerning both this and another Council. He said that he had a couple of current affairs programs interested in the stories, but would hold off for a while so as not to prejudice investigations.

A CJC officer visited DFSAIA in August 1990 and viewed certain files relating to the Department's dealings with the Council. In September 1990, investigators travelled to northern Queensland and interviewed both the leader of the political party who had attended the AFP with the delegation of Islanders and the consultant.

Those interviews resulted in several more allegations concerning Island Councils, including: roting of CDEP funds, taxation frauds, theft of money, illegal sale of Council assets, sly-grogging, nepotism in the hiring of Council employees, taking of bribes and payoffs, misappropriation of Council property, and the removal of political opponents from the Islands. The majority of the new allegations focused on Island Council A. Both interviewees also spoke at length about the political situation in the Islands, alleged interference by Councillors in the electoral process, and the assistance given to the allegedly corrupt Councillors by bureaucrats in Brisbane and Canberra.

A petition

Meanwhile, back on the Island, the residents who met with the Minister in January 1990 had sought legal advice and subsequently drafted a new petition seeking dissolution of the Council under s. 20 of the Community Services (Torres Strait) Act. Following legal advice from the Crown Solicitor, the Department arranged for its representative on Thursday Island to conduct an investigation to establish the genuineness of the petition and ensure that the Governor-in-Council would be fully briefed on the matter.

The Department investigates

After spending several days on the Island, the Department's Executive Officer submitted his report in late October:

[The report] finds that signatures are in fact authentic although most petitioners do not understand the full content of the Petition, nor do they appreciate the correct process of election. Despite this, most have grievances against Council and have willingly signed the Petition in an endeavour to facilitate Council's dismissal. Some allegations of impropriety are baseless however there is sufficient evidence in other areas that would require further investigation before any accurate conclusion could be drawn.

. . . Both [the Chairman] and [the Council Clerk] raised doubts about the authenticity of the Petition, feeling that in fact that an alternative document had been circulated and signed. A check with . . . Central Office revealed that the original appeared not to have been tampered with . . .

Most petitioners could not reasonably explain the content of Section A [of the petition] . . .

- (1) "the current Chairman, [. . .] and the Council Clerk, [. . .], caused nominations of [. . .], [. . .], and [. . .] to be locked out of the Council office so that their nominations could not be lodged."

- (2) "the subsequent election was boycotted by approximately ninety percent (90%) of the Island being electors enrolled on the voters' roll for [the] Island."

They did realise that the Petition was critical of Council. A council that they opposed. They willingly signed in the hope that this would bring about Council's demise . . . Most petitioners had only a vague understanding of the correct process of election and it was evident that they focused on their perception of what seemed fair and correct rather than the true process. Most petitioners claimed that Council were ineffective, corrupt and unjust. A good deal of the petitioners live in appalling housing conditions and are annoyed that Council have allocated new dwellings to persons who have only recently arrived at [the] Island. Petitioners believe that they have a greater need for housing than ones that have received allocation. Complaints were noted re [the Chairman's] alleged use of Council resources for himself, his family and business. These include:

Use of Council staff to work at his store and house. Duties include sales staff, laundry and cleaning, cargo unloading and yard keeping.

Attempt to buy trochus shell from Council at reduced price.

Use of Council fuel to power his house and store.

Use of Council generator at his store.

Use of Council vehicle for private use.

Purchase and disposal of Council dinghy.

Tampering with mail for the purposes of withholding Social Security Cheques until accounts were settled at this Store. Also interfering with his opponents' mail.

Allowing [the Chairman's son] to be paid on workforce while absent from the Island.

Allowing [the Chairman's son] to be paid a higher rate of Policeman than rate of duties he was actually undertaking.

Exclusive use of Council walkie-talkie set by [the Chairman's] family.

Moving tenants from Council house to accommodate his own relations.

The DFSAIA officer's notes to that investigation, later provided to the Commission, indicate that he spoke to the Chairman, Deputy Chairman, and many Island residents, including those involved in drafting and circulating the petition. Those notes indicate that the Chairman told the officer that the petition leader had just returned from TI and was having meetings with followers

to get all their stories right prior to being interviewed . . . The Chairman said that the whole thing was [the retired consultant's] work and that [the consultant] was doing this for his own benefit. He was just using these people that don't know. [The Chairman] stated that [the consultant] was really only interested in himself and wanted to use his perceived prominence in the Torres Strait to gain credibility and introduction to power business people in order to access funds for himself . . . [The Chairman] also indicated that the main reason that the group opposed him was that they were jealous of his achievement in particular of his capacity to earn an individual income. Petitioners resented others like him for the same reason. Anyone that got up and made a buck were affected.

The DFSAIA officer interviewed the Council Clerk, who also served as the Returning Officer, concerning the allegations contained in the petition, particularly those allegations concerning the elections. He concluded that he had examined and sighted all relevant documents in relation to nominations for the 1988 elections. The records were intact and indicated that correct procedures were undertaken.

In the ensuing period, the Department sought further advice from the Crown Solicitor regarding the petition in light of content of its officer's investigation. Early in the new year the Minister wrote to the petitioner's legal representative stating that "certain difficulties" had arisen in respect of the petition in that Section A appeared to be factually inaccurate, "a point which petition leaders acknowledged to a Departmental officer". She noted that the Department had sought advice from the Crown Solicitor and would inform him of the Department's proposed action as soon as that advice was received.

The Department notifies the CJC

In the meantime, acting in accordance with the Criminal Justice Act, relevant sections of which took effect in April 1990, in December 1990 the Acting Director-General forwarded a Notice of Complaint to the Commission concerning the Chairman's use of his position to benefit himself and members of his family. The Notice of Complaint was supported by a copy of the report on the investigation its officer had conducted into the petition.

New elections

By early 1991, residents on the Island were preparing for the Council elections which take place every three years, at the same time as other Queensland local government elections. Nominations were to close on 18 February, with the election to take place on 23 March.

In early February the petitioners' legal representative wrote to the Minister stating that he had now received further complaints regarding the activities of the Council "which should be investigated to avoid a repeat of the 1988 election fiasco". He said that the Council Clerk had accepted nominations from three persons associated with the petition, and that on 5 February, the Council Chairman had called a meeting and stripped the Council Clerk of her authority as Returning Officer. He was unsure if steps had been taken to appoint an alternate Returning Officer or the current status of the nomination process. He thought it would be prudent to have a Departmental Officer oversee the acceptance of the nominations.

Not long after this communication, the retired consultant called the Commission again to say that three weeks ago the Council Clerk he had previously named in his allegations had sold up every possession and left the Island. The Clerk had allegedly made the comment that the Chairman "was involved in too many rorts and he [the Clerk] did not want to become involved".

On 17 February, certain Island residents prepared another communication to the Australian Electoral Commission, the Premier, the Minister, the Human Rights Commission, and the Criminal Justice Commission. This communication reads in part:

We, the [. . .] Island Free and Democratic voting council who have been petitioning the Governor in Council and Queensland Government for more than 14 months to dismiss our current chairman, [. . .] and his existing Council on [. . .] Island for corrupt and improper practices, must urgently complain to you that [the Chairman] has conspired with his Council Clerk, who is also the [. . .] Island Electoral Officer, so that [the Chairman] and the Clerk, [. . .] are attempting to corrupt and prostitute democratic electoral process for the approaching [. . .] Island Council Elections, so that all opposition candidates to [the Chairman] are improperly rejected from contesting these elections.

The letter went into some detail concerning the circumstances in which several persons whose nominations for Council positions had allegedly been refused or, once accepted, rejected. Among other things, it cited the inactivity on the earlier petition, calling for dismissal of the Council as proof that "bureaucrats" were determined to "protect" the Chairman.

An unsigned cover memo from the Department's records directed to the DFSAIA Director-General asked that a brief be prepared on this subject in light of the previous petition already submitted.

The DFSAIA officer on Thursday Island wrote to the Department on 21 February stating the names of the nominees for the Council positions. He said that the

Returning Officer had accepted and rejected nominations as she considered appropriate and she had frequently consulted and taken advice from the Department's help line and Regional Office as part of her deliberations before making a determination. "It is considered that the Returning Officer has acted diligently, responsibly and impartially." Nonetheless, he cited a number of outstanding grievances. He added that "numerous Returning Officers, candidates and electors have sought advice from this Department by way of the help line, Regional Office and Departmental Officers at Thursday Island".

CJC investigators visit the Island

In early March, after some preparation, Commission officers visited this and other Islands as part of a 15-day tour of duty in the Torres Strait area. Originally planning to spend several days on each community, investigators were able to spend only two days on the Island due to a sudden change of itinerary by the captain of their transport vessel. Investigators interviewed the Chairman, the Council Clerk, and 29 other residents, and took possession of documentation and records from both the Chairman and the Council. Investigators later conducted several more related interviews on Thursday Island and in Cairns.

Fallout from the elections

The Chairman and members of the Council were re-elected in the Council elections, which went ahead as planned on 23 March. The Chairman was elected with a four-vote majority.

On 26 March, the Commission received a fax from the unsuccessful candidate for Chairman listing alleged "irregularities" in the areas of postal vote applications; the delivery of postal voting papers and candidates' how to vote cards; and the application of Rule 29 concerning the eligibility of persons not registered on the roll at the time of the Ballot. The letter demanded that the Returning Officer carry out a recount in the presence of both candidates and their scrutineers.

The Commission forwarded copies of this letter to DFSAIA and the Australian Electoral Commission and wrote to the Council Clerk, reminding her of her duty under law to preserve ballot papers and other records associated with the elections. On 26 March, the Minister's Acting Executive Secretary wrote to the Commission advising that the complaints regarding the Island elections were being investigated by DFSAIA officers.

A Supreme Court action

A short time later, a solicitor submitted an originating summons to the Supreme Court on behalf of four Island residents who claimed that the Chairman had been unfairly declared the winner of the election. Some days later, a Master of the Court made a ruling that the Chairman should show cause why he should not be ousted from office.

In early July 1991 a group of Island residents again submitted a petition to the Governor-in-Council to dissolve the Council. Around the same time, the Commission received a complaint from the unsuccessful candidate for Chairman alleging that certain residents who were witnesses in a Supreme Court action concerning the March elections were being threatened and/or intimidated.

A second visit to the Island

This latest allegation was not the only new information that had been directed to the CJC.

In April, the consultant called the Commission to say that he had received telephone calls from Islanders to the effect that prior to the polls being declared the Council Clerk's husband, a nephew of the Council Chairman, had on numerous occasions been seen assaulting the Clerk, "thumping her head into the walls and floors of the residence". He was told that when Island residents went to see if she needed assistance, the husband forced the Clerk to say that she did not require any. He said that the Islanders were implying that the Clerk was being forced to make decisions in relation to postal votes made during the recent Council elections.

Four weeks later, two Island residents involved in the drive to replace the Council called the Commission to pass on further allegations regarding the Council Chairman.

Commission officers visited the Island again in July 1991. Among other things, investigators sought to interview persons alleged to have been intimidated with respect to the Supreme Court action. Several residents, including the Council Clerk, who resigned from her position and left the Island shortly after the visit, refused to talk to the investigators.⁶³ Investigators were unable to re-interview the Chairman: the morning after they arrived, the Chairman left the Island by plane, en route to a conference in Geneva.

⁶³ The new Clerk was the Chairman's brother.

In August 1991 the Commission received further allegations regarding the Chairman from another Island resident. Investigators re-interviewed certain Island residents in October 1991.

A ruling in the Supreme Court

In October 1991 the Supreme Court ruled that the Chairman's election had not been in accordance with the provisions of the relevant legislation and made absolute the earlier order of the Master.

According to information received by the Commission, in December 1991 Island residents again petitioned the Minister requesting that the Governor-in-Council dissolve the Council and appoint an Administrator. The petition was signed by 55 people. A filenote to the Press Secretary, Office of the Minister, recommended that a person perceived by the Island community to be independent of all political alliances on the Island visit the Island to verify that the signatures on the petition were genuine and assess whether the community had confidence in the Council, given that the Court had held that the last election was conducted improperly. The filenote recommended that the assessment take place before 21 February 1991, when a fresh election for Chairman would have to have been held.

In the new election ordered by the Court, the long-serving Chairman was again re-elected.

A third visit to the Island

In late 1992 Commission investigators again travelled to the Island, this time under an arrangement with the Police Air Wing. The airstrip was located some distance from the main village and the only transportation available was the Chairman's 4WD utility, which was used to transport goods and passengers between the airstrip and the villages. After arriving at the main village, QPS officers used this vehicle. There was no other transportation available to Commission investigators. Nor were facilities available for them to remain any sufficient length of time to locate residents and conduct further investigations. In the circumstances, they were able to interview only the new Acting Chairman.

Island Council A: Auditor-General/transition officers' reports

As part of its investigation in relation to Island Council A, the Commission examined reports from the Auditor-General, as well as reports from officers of the DCSC (later, the DFSAIA) who attended the Island as training or transition officers. Those reports show that many of the problems which the Commission encountered in its investigation had been present for many years.

September 1986---The Auditor-General wrote to the Chairman regarding the Council's audit report covering the period from the inception of the Council to March 1986. He noted that the audit had disclosed several unsatisfactory matters which require "urgent attention", among them:

- Cash received: non-issuance of receipts; and non-recovery of cash loans to the Chairman's relatives.
- Salaries and wages: lack of employment and leave history cards for SGFA employees and payment of additional wages to workers already receiving wages for 80 hours labour under the CDEP; lack of timesheets for employees paid under the Council's SGFA fund; failure to make deductions from employees during their holiday period; failure to enter the wages earned by five employees (including two of the Chairman's sons) on their pay history cards.
- Vouchers: majority of vouchers prepared for payment of goods and services lacked supporting documentation such as invoices, orders and delivery dockets
- Conflicts of interest: Council's purchase of goods from the Chairman's store that might have been purchased from the IIB for considerably less.
- Purchases of assets: failure to call for tenders; associated overpayment for certain items.
- Register of assets: none in use. The auditors established one.
- Council minutes: although auditors sighted a minute book, they considered its contents inadequate.
- Auditors considered that the Clerk and two assistants were "fairly capable and have reasonable knowledge of accounting principles". However, "the staff, particularly the Council Clerk, [did] not appear to be very industrious and as such, the revenue collection functions [were] not as well advanced as could be expected. This [was] highlighted by the amount of cash on hand at audit date".

July 1987---A training report prepared by DCS officers stated: "In general, the [. . .] Council seems to be running quite well. The clerk, [. . .] is good in all facets of the job, however, he lacks motivation. With a little more effort [he] and his two CDEP assistants could make [the Council] run very efficiently".

August 1987---The Auditor-General wrote to the Minister regarding the Council's audit report for the period March 1986 - April 1987. Among the problems highlighted were:

- Salaries and wages: no employee and leave history cards for SGFA fund employees; taxation deduction not remitted to ATO since May 1986; pay history cards and leave records kept only for office workers employed on the CDEP; failure to make tax deductions; unavailability of specifications for rates of pay and other wage specifications; overuse of wage advances; deduction of payments for credit beer sales without authority.
- Vouchers: majority of vouchers for the General Fund, Trust Fund, and Enterprise Fund lacked supporting documentation.
- Rent: there had been no action to recoup rent from the vast majority of residents, including the Chairman and Council Clerk, who were many months in arrears.
- Beer canteen: No documentation for sales, purchases, and stock on hand from the commencement of its operations in April 86 to March 87; possibility of thefts, indiscriminate credit.

September 1987---A DCS officer, who made a pre-audit visit to the Island, noted that some tasks had been completed prior to visit. The greater part of his visit was spent with the assistant clerk updating the rent ledger, which had an outstanding balance in arrears of \$30,144.50. The Clerk assured the officer that action would be taken to recover the arrears. A Financial/Administrative Indicators sheet prepared by the Transition Team included the following:

- Beer canteen showed a loss.
- Rent balance was static but at an unsatisfactory level.
- Reconciliations were completed when the Clerk gets around to them.
- Vouchers: documents were there "but you have to go looking for them".
- Salaries and wages: some employees were "docked" when their attendance is "extremely bad".
- Purchasing policy: Council paid the "asking price" of the nearest supplier.

February 1988---The Auditor-General wrote to the Council Chairman regarding accounts for the period April - October 1987. Among the issues raised were:

- Salaries and wages: some fisherman were receiving CDEP or SFGA fund wages in addition to payment for catches. This contravened guidelines on CDEP payments.
- Bankings: cheques and money orders dated pre-December 1985 made out to Council but in possession of Chairman had not been receipted by Council, nor deposited.
- Vouchers: majority of vouchers on all Funds lacked supporting documentation.
- Beer canteen: problems with credit sales and records of sales, earnings etc; ceased operation in June 1987; DCS Administration Officer established stock records in March 1987, but these records could not be produced for audit.

June 1988---Transition officers visited the Island to clear the backlog of work and ensure all matters raised in the 1987 audit report were attended to. Among the matters they reported on were:

- Established ledgers for water rates, residential tax, dog licences, and motor vehicle registration.
- Disbursements (all funds): problem of lack of supporting documentation for payments is still very evident.
- Salaries and wages: problems with remittances, wage rates.
- Beer canteen: ceased operation after a recent shooting incident and the Clerk advised there was no stock on hand. The selling price control revealed a shortage of some \$1,227.50 for the period December 87 - April 1988.
- Assets register could not be updated due to lack of supporting documentation on the vouchers.
- Council meetings: appears to have been no meetings since the last election.

The Transition Officers wrote:

The Council Clerk, . . . , was unfortunately sick on our arrival and during the four day visit, he was in the office for less than a day. [He] apparently recovered when he realised we were not 'auditors' and it is amazing the restorative effect when he found we were actually doing some of his work. [He] appears quite competent but lacks motivation and is quite happy to work in a relaxed atmosphere . . . The office needs a good clean up and some structuring of the jobs. The office girls appear quite motivated but lack direction from the clerk.

August 1988---Two Transition Officers visiting the Council reported that they:

- completed a number of tasks, among them commencing five sundry debtors ledgers (vehicle registration, water rates, residential tax, dog license, gun license).
- balanced the rent ledger.
- checked disbursements: whilst only a few vouchers were missing, improvement is still required in the supporting documentation. The importance of voucher preparation was impressed on the Council Clerk.
- prepared profit and loss statement for beer canteen.
- balanced wages and tax to cash book.
- completed bank reconciliations and financial statements for all funds.
- issued group certificates and statements of earnings.
- completed ledgers for all funds.
- prepared sample forms for budgets.

March 1989---The Acting Auditor-General wrote to the Chairman regarding the Council's accounts for the period to October 1988, including financial statements for the period July 1987 - June 1988. A 16-page attachment listing matters raised and referred for corrective action includes:

- Disbursements: the financial statements February - June 1987 were qualified on the basis that documentary evidence was unavailable to substantiate expenditure. A "general improvement" in supporting documentation for expenditure in the 1987-88 year is attributed mainly to the efforts of the DCS team. However, the situation once again deteriorated noticeably after June 1988. There were numerous instances where accounts were unpaid for many months resulting in numerous final notices and threats of legal action.
- Council telephone: after hours people can call anywhere in Australia.
- Purchases: no quotes, tenders, or DAA approvals available for purchases such as tractor (\$12,000), D4 dozer (\$31,000), attachment to backhoe (\$16,950), photocopier (\$2,800); generator (\$5,000).
- Beer canteen: more thefts; stock write-offs of \$1,102.50 during 87/88 financial year did not have Council approval. Council appears not to have ensured that stock was acquired at competitive prices.
- Salaries and wages: problems paying employees by direct deposit, making deductions, and overpayments. Overpayments to Chairman's son. Timesheets not certified and or not fully prepared.
- Receipting: Council Clerk could offer no explanation as to the whereabouts of receipt books.

- No insurance on assets, no public liability insurance. No wages declaration lodged with Workers Compensation Board.
- No budget could be produced.
- Council meetings: only one Council meeting was held during the audit period. No minutes could be produced for this meeting. Both the Clerk and Chairman were unavailable for comment.
- Rent: arrears increased to over \$46,000.

The Auditor-General wrote that the audit again revealed an unacceptable position in the financial administration of the Council, mainly in the payroll area, which is essentially attributable to a failure to comply with the Ministerial Directions.

Regarding Council staff, he wrote that it was clear that Council clerical officers required considerable professional development in order to satisfactorily maintain the Council's books and accounts. If it were not for the work of officers of the Department, he said, the Council's accounting records for the audit period would have been unauditable. He considered that assistance and training additional to the levels provided to date was required. In addition, the Council should consider employing suitably qualified personnel to maintain the Council's accounting records.

June 89---A Transition Team consultant who visited the Island noted that although there had been some improvement since the last visit an improved effort was required to avoid another adverse audit report. He noted that "office discipline, particularly consistency, must be addressed as a priority". Noting the qualifications of the new assistant clerk, he said that there should be no valid reason why, with consistent effort, administration could not be raised to an acceptable audit standard. The visit allowed insufficient time to attend to wages, assets register, canteen, ledgers, tax reconciliation, beer canteen, cash by post, and council minutes.

August 89---A Transition Team consultant who visited the Island noted that with the exception of certain anomalies (regarding, for example, beer canteen surpluses, stock control, Council resolutions, rent arrears of \$62,298, lack of supporting documentation for vouchers) all spheres of administration were of a reasonable audit standard. He considered that general office and management procedures still required refining, and clearly defined duty statements remained to be developed.

October 1989---A Transition Team consultant, who visited the Island to assist the Council and administration staff in presenting the books of account to the

Auditor-General's representative, noted that the following areas required amendment/update: fund ledgers, sundry debtor ledger, general fund reconstruction, monthly returns, trading statements for taxi operations and guest house, duty statements.

He wrote that the Council should be commended for "embracing the team approach" in reversing the unacceptable trends of previous audits.

February 1990----The Auditor-General wrote to the Council Chairman regarding the audit report for the period to August 1989. The letter states in part that although the audit has revealed an overall improvement in the financial administration of the Council, a number of areas of concern, which were mainly attributable to a failure to comply with Ministerial Directions, remained. He considered that satisfactory financial administration would be achieved when Council fully complies with the Ministerial Directions.

Among the matters raised for corrective action were:

- Plant and equipment purchases: As raised in the previous year's audit report, no quotes, tenders or DAA approvals, as required by Grant Guidelines, could be produced with respect to plant and equipment purchases from Commonwealth grants. Audit once again disclosed that quotes, tenders or approvals were still not being obtained. The Council Clerk advised that he is now aware of the Department's requirements with respect to plant and equipment purchases and will ensure that these are adhered to in future.
- Tenders and quotations: Procedures adopted by the Council for calling for tenders or quotations when purchasing plant and equipment were inadequate. No quotes or tenders were being called by Council. The Chairman and Council Clerk have agreed to abide by Minister's Directions in future.
- Payment for goods prior to delivery.
- Salaries and wages: audit could not confirm that all deductions from wages for deposit to bank loan accounts had been properly credited to accounts concerned. Two employees, both closely related to the Chairman, received holiday pay to which they were not entitled. At audit date, many group certificates for the 1988/89 financial year had not been distributed to employees by the Council Clerk. Employee leave records cards were not being maintained for full-time employees. Auditor could not determine the basis of wage rates paid to SGFA Fund employees.

- Rent: rental arrears have continued to deteriorate since last audit with total outstanding increasing to \$65,133.50 at 31 August 1989. Some residents were not being charged rent; some were not being charged water rates.
- Assets register: the register was incomplete and improperly maintained.
- Council meetings and Council minutes: Council meetings were being held irregularly.
- Minister's Directions and grant conditions: the Council did not have an up-to-date copy of Minister's Directions. It had no copies of Commonwealth Grant Conditions.

February 1990---A Transition Officer, who visited the Island in January, noted, in part, that the standard of administration continues to remain acceptable although it could be improved by better office discipline and consistency.

May 1990---A Transition Officer visited the Island to assist Council staff with administrative matters and prepare the response to the audit. Among the matters noted in his report were:

- Bankings: bank reconciliations had not been balanced for the previous three months.
- Salaries and wages: individuals still being paid by Council even though the CDEP had finished.
- Taxation: no tax remittances had been made since August 1989. Cheques had been written for September and November 1989, but had not been sent. These were found in the safe.
- Vouchers: Full check of all vouchers from all funds revealed problems with 87 vouchers; 49 were without supporting documentation; in 23 cases the voucher was missing; two folders contained outstanding invoices and statements to the value of \$60,917.
- Response to audit: the Council had prepared no response to the Auditor-General's report and no action had been taken on the majority of the points raised. As neither the Chairman nor the Councillors were on the Island during the visit, discussion of the audit report could not take place.

The transition consultant wrote that the Council's present financial situation had been brought about purely by "poor financial management" and "total disregard for the budgetary process". The consultant considered that the recent appointment of a new Assistant Clerk could be beneficial. The only problem he could see was that the internal politics of the Island and the Council would destroy the new Assistant Clerk's motivation.

He wrote that between them the Council Clerk and the new Assistant Clerk possess the necessary skills to conduct the administrative functions of the Council in an efficient and effective manner. "However, this will depend solely on whether the Chairman and Council allow them control over the financial administration of the Council".

June 1990---The same Transition Officer made a follow-up visit in June. Among the matters noted in his report were:

- Vouchers: the situation with the vouchers had not improved since his last visit. He spent time with the Council Clerk advising him of the necessity of compiling vouchers with supporting documentation.
- Council meetings: Council meetings had been held during the early part of the financial year, but there had been none since November 1989.

September 1990---A Transition Officer who visited the Island to assist with the completion of the financial statements and budgets wrote that the Council was functioning well with only limited assistance needed in day-to-day operations.

May 1993---Among the qualifications noted by the Auditor-General in the his 1991/92 audit were:

- an incomplete asset register.
- failure to maintain adequate debtor records and follow up outstanding debts.
- lack of timesheets and associated records to support payroll payments.
- failure to maintain adequate controls and accounting records for canteen operations.
- failure to maintain minutes of Council meetings.
- deficiencies in the control over receipting and banking operations.
- payments in excess of \$80,000 lacking supporting documentation.

February 1994---The Auditor-General issued a qualified report for 1992/93. Among the causes of the qualification were:

- Council meetings: minutes not kept for all meetings.
- Debts: Council failed to follow up outstanding monies owed to the Council.

- Disbursements: payments in excess of \$150,000 were not supported by proper documentation;
- Wages and salaries: records for employee pay histories, lease records and pay rates were not maintained.
- Canteen: inadequate control leading to shortage.

Allegation 1 That the Chairman used Council funds to pay a \$72,000 taxation bill

Background

When interviewed by Commission investigators in September 1990, the retired consultant⁶⁴ spoke at length on a number of issues concerning the Chairman and the Council. The consultant did not always make specific allegations of wrongdoing. Sometimes he related his knowledge of the circumstances of the Chairman's life and business activities, implying that these indicated dishonest or illegal behaviour.

The consultant raised the issue of the Chairman's taxation bill several times in this context. He implied that the Chairman had formed "a private partnership fishery" to help finance his taxation bill and that the Chairman may have used Council monies to pay the bill. In a statutory declaration sighted by the Commission, the consultant said that the Chairman had banked cheques of \$10,000 intended for the Council's trust account into his own private bank account.

A long-standing liability

Records available to the Commission showed that in the course of conducting their retail business the Chairman and his wife were liable for income and provisional tax. However, neither the Chairman nor his wife appeared to have lodged tax returns for the years 1979-1985. In early 1987 they became liable for tax assessments on the 1986 calendar year as well.

The Chairman's accountants undertook an investigation to establish the Chairman's liability over the previous seven years. The Australian Taxation Office (ATO) field audit office attempted to reconstruct records for the partnership and complete tax returns for the Chairman and his wife for 1979 - 1985, but documentation for many of the expenditures that they claimed were unavailable. Files held by the Chairman's accountants showed that the ATO assessed the Chairman and his wife's combined liability for those years at almost \$72,000. With the addition of more than \$9,000 for calendar year 1986, they jointly owed more than \$81,000.

How the consultant learned about the Chairman's predicament is unclear. The Chairman may have spoken to the consultant about the matter when the consultant

⁶⁴ See page 34.

was employed by the Council. However, according to information the Commission received during interviews conducted on the Island, the Chairman may also have shared letters from his accountant on his tax situation with at least one Island resident, one of the group of people who led the CDEP strike⁶⁵ and subsequent petition movements and was in close contact with the consultant.

"Cleaned my bank account"

When interviewed by Commission investigators, the Chairman admitted that he had been faced with a taxation bill several years previously. In a rambling explanation of the source of the bill, he suggested that he had been overwhelmed by his numerous governmental and business commitments and the related travel. He seemed to be suggesting that he had been unable to sort out the per diem and travel expenses that accrued to him from those various responsibilities. He complained that government accountants were doing other Island Chairmen's taxes but not his own. However, the Chairman's statement was not always clear:

... Well, they said, you know, who's looking after, you know, so what can I do, and ah, well, so things drag on for a while and I thought that I were, I didn't quite understand that, ah, tax business, I thought, you know, what I'm, what I was getting out of, ah, you know, get---out of my tax. When they do my tax, you know, in Canberra, that was it, and, ah, but I found out later from a friend that I, I need to get, you know, the whole thing done, you know, with my shop and the lot and, ah, so it's ah, I can't get them, they wouldn't do it, for me. But they do it for all other business and I have to get an accountant and I, well, I was looking for an accountant to get one, you know, to do my stuff.

... I found it very difficult, like, you know, and, ah, so it drag on and on and in the end, but there was no, ah, intention behind of trying to you know, run away from tax ...

He said that the taxation bill had "cleaned my bank account and I had to pay, what I, little money I did have, it all went and, ah, we come into some, an arrangement in all when you pay off instalment, I think ...". Unable to remember the amount of the bill, he referred investigators to his accountants.

Banking records and other evidence

Examination of records provided by the Chairman's accountants showed that over the period November 1987 through June 1988 the Chairman and his wife did

⁶⁵ See page 37.

indeed pay ATO approximately \$82,000 in instalments. On the surface at least, all payments came from accounts held by the Chairman. Commission analysts traced some payments to the general account operated by the Chairman's store. That account showed regular deposit and chequing activity that might be expected of a general store, although analysts were unable to check all vouchers for all payments. Other payments made to the ATO came from term deposits opened prior to 1985. Efforts to identify the origins of the monies in these accounts was frustrated by the inability of the bank to locate and produce the deposit vouchers which would show such information.

On the second issue that the consultant raised, the "cheques of \$10,000", analysts could find only one deposit of \$10,000, paid into an account the Chairman apparently kept to handle the proceeds of his own trochus shell activities. This banking appeared to be a transfer of monies from one of the partners involved in the trochus business the Council jointly operated with southern businessmen. That deposit was followed by a transfer of \$10,000 from the Chairman's account to the account held in the name of the jointly-operated trochus company.

The period in which these transactions occurred coincided with the consultant's association with the Chairman and the Council. Investigations into other matters showed that the consultant may very well have seen the Chairman accept a \$10,000 cheque from the businessman.

Conclusion

Although the consultant's account of the Chairman's tax situation could be verified, investigators could find no evidence that the Chairman and his wife had paid the bill with monies from the Council. The consultant may also have been correct in his statement that the Chairman deposited monies intended for the Council's trochus business into his own account. Although there is some evidence to indicate that such a transaction took place, the Commission's investigation found no evidence of corruption or dishonesty connected with this payment, as the funds in question were then transferred from the Chairman's account to the trochus business account.

Allegation 2 That the Council Chairman used unlawfully obtained fuel and other supplies from the Island Industry Board store and the Island Council without paying for same

Background

The first person to raise this issue was the consultant⁶⁶, who touched on the matter during an interview with Commission officers in September 1990. After a rambling account of the Council Chairman's association with the IIB, a "chronyistic company" that supplied "millions of dollars worth of stuff" to stores on each Island, including "dozens and dozens of drums of distillate and outboard fuel", he spoke about the Chairman's own recent retail ventures and his need for "vast amounts of refrigeration" and "large amounts of distillate". He claimed that the Chairman's son, who was leading the push to have the Council dismissed, would verify that the Chairman took for his own use "all of these stores, time and time again".

In fact, several residents had raised a similar allegation with the DFSAIA officer who in October 1990 visited the Island to establish the authenticity of the Islanders' petition to dismiss the Council.⁶⁷ Notes to that officer's investigation show that six residents had made complaints regarding the Chairman's use of Council fuel. The son named by the consultant is reported to have said that in about August 1989 he had delivered 8 x 200 litre drums of distillate marked with the Council's name to the Council Chairman's residence and that when he challenged the Chairman about this the Chairman had replied irately that he was "caretaking the fuel which was reserve emergency fuel on behalf of the Council". The Department informed the Commission of this and other complaints in December 1990.

Fuel and generators

Like their counterparts on the other Islands in the Strait, Island residents must equip their homes with generators if they are to have electric light and run electrical appliances. The Council must do similarly. Some generators run on

⁶⁶ See page 34.

⁶⁷ See page 44.

petrol, the majority on diesel. Fuel, along with other supplies and equipment, is transported to the Island by barge. Other than generators, which account for the bulk of the fuel used on the Island, fuel is used to power vehicles, machinery, and outboard motors.

Both residents and the Council purchased fuel from the IIB (Island Industries Board). Residents purchased their supplies directly from the IIB store on the Island. The source of the Council's supplies was less clear. Some residents said that fuel was delivered to the Island expressly for Council use. However, other residents said that the Council would take its own supplies from the IIB store on the Island.

The Council was possibly the largest single user of fuel on the Island. One generator provided power to the Council office; a second to the Island radio transmitter; and a third serviced the Council workshop area. Another generator may have served the Council's guest house. The Council also operated 4WD vehicles, earthmoving/roadbuilding machinery, and water pumps.

Although not as extensive as the Council's, the Chairman's need for power exceeded that of the average Island resident by virtue of the freezers used in his store. He also operated two vehicles. The Chairman had been associated with the IIB for many years as an employee and later a director. He was related to the manager of the IIB store through his niece, the manager's wife.

An "automatic thing"?

Though many Island residents on their own initiative raised with the investigators the issue of the Chairman's use of Council fuel, none, like the consultant, alleged that he was stealing or misappropriating goods from the IIB store. Some gave general support to the allegation, citing a pattern of continual abuse. They claimed that Council fuel was stored at the Chairman's residence as a matter of course and that Council employees wishing to refuel Council equipment would take what they needed from the drums stored there.

For example, one of the Council's former mechanics said that the Chairman's use of Council fuel to supply his own generator was "just an automatic thing". He said that fuel arriving by barge for the Council would "automatically go to his shop when it has come from the barge". He maintained that the Chairman would have paid for only half of the fuel that he used. On the other hand, the Chairman's nephew, who volunteered in the Council office helping his wife, the Council Clerk, said that the Council purchased fuel from the IIB store on a day-to-day basis and

that fuel coming to the Island would be brought directly to IIB store from the barge.

Other residents said that the Chairman had half of the Council's fuel delivered to his place---he called it "Council reserve fuel". They could not understand why it was not stored in the space available in the Council workshop.

Their statements indicate that the Chairman may have regularly kept supplies of fuel in his yard; the requirements of his business would argue that this was a sound practice. Whether the fuel at his residence was Council fuel, as in the statements just examined, is another matter. Although in general agreement on that issue, the residents did not agree on how the fuel came to the Chairman's place---direct from the barge or via the IIB store---and their references to the amount of fuel were vague.

Council reserve fuel

Some residents, including a leader of the move to dismiss the Council, spoke about a specific incident involving the transport of Council fuel to the Chairman's store. He said that in August 1989, not long before the 1989 strike, the Chairman had phoned him from Thursday Island and asked him to take some "Council reserve fuel" drums from the barge landing to his yard. The strike leader had already seen the drums---"[. . .] Island Council" was written on the side---and because he didn't want to go and pick up the drums "if there's something wrong", he asked another Council employee to do the job. He said he later saw "the Papuans"⁶⁸. . . pumping diesel every day, filling the generator that was bought by Council money too".

Questioned some months later about the same incident, he gave a slightly different account of what was written on the drums and named a different Council employee. He had earlier told a DFSAIA officer that he himself had delivered the drums.

Despite the obvious discrepancies in the two accounts, the major points were supported by a statement made to CJC investigators by the second employee he named. However, this resident thought the incident occurred in 1988. Other residents who spoke about the incident could not identify when it occurred.

⁶⁸ See page 39.

A similar incident was raised by another Council mechanic. He did not raise the matter during the Commission's first visit to the Island. However, some months later, by which time he had been sacked by the Council, he said that after he arrived on the Island 6-8 drums dropped off from the barge had been brought to the Chairman's store. The mechanic said he had asked the Chairman if he could use the fuel because he had no diesel for machinery running out of the Council workshop. But the Chairman told him that it could not be touched because it was "Council reserve fuel stock". The mechanic said that he and the Chairman argued for about an hour before the Chairman gave him one drum and told him that he would have to see the Council Clerk about getting more fuel from the IIB store. He said he ended up using one of the 6-8 drums that were there. The rest had gradually disappeared, he said. The mechanic had earlier told Commission investigators that the workshop was usually struggling to get one 200-litre drum of diesel a month from the Council. He said that "they always made excuses that they never had any money to buy diesel. I could barely keep the tractor going to do garbage disposal".

Asked who would normally take delivery of the diesel when it was placed on the Island, the mechanic said that it went direct to the IIB store. After the Council Clerk issued an order, Council employees could go and collect it from the store. This ran counter to other residents' claims that fuel went to the Chairman's store as a matter of course.

This mechanic had served under two Council Clerks. The most recent had assumed her position in December 1990. She told Commission investigators she had no knowledge of the Chairman using Council fuel to power generators for his house and store. She said that "any fuel the Council buys is ordered through me though our order book which goes to the store. We get a docket from them for audit purposes, etc".

"They've got fuel and we haven't got"

The Chairman's responses to the Commission's questions on this matter were not always entirely clear. When asked if he had ever used Council fuel to run his generator, he said:

Well, all our fuel, I mean, our fuel, and we, we borrowed some from Council sometimes, we replace, you know, the borrowing, and that's understandable, like, you know, we, they've got fuel and we haven't got because you can buy it from the local shop.

Q: Yeah, and did you, when you borrowed this fuel, did the, ah, was it recorded at the Council or at the workshop?

- A: Well, it's, I, I don't know, mate, whether it's been recorded or what, but, ah, it's just of, you know, switching over, I mean, as soon as, you know, fuel come, we buy ours and give it back to them sort of thing, you know.
- Q: Have you ever used Council fuel in any of your vehicles?
- A: Not that I can remember, sir, I mean, ah, we've always want to use our things.

He also raised an incident similar to that involving the Council reserve fuel:

- Q: And when you borrowed some fuel off the Council, how many drums was it or what quantity of fuel was it?
- A: Oh, it would be only a couple of, couple of drums at a time, I think, there was one time, one time when, um, this air, after they built the airstrip, they've got, ah, a number of fuel that they hand over to the Council and most of them were leaking drums and, ah, you know, and, ah, I think that it was ten drums in all, I think, it was or something of that number there, and, ah, because people were stealing fuel left right and centre everywhere like—well, they could siphon it, I mean, I sleep, I don't know, so I told, ah, I asked the, ah, workshop man to, you know, to store it under the tree in front of my place so we can keep watch over it, you know . . .

He said that 7-10 drums could have been there.

By his own admission, the Chairman was in the habit of borrowing (and replacing) fuel from the Council and Council fuel may have been stored for safekeeping, either regularly or irregularly, in his yard. If the Chairman also stored his own fuel there, his and the Council's fuel could easily have been confused.

Financial analysis

CJC financial analysts attempted to examine both the Chairman's and the Council's fuel purchases. The Chairman's business apparently held an account with the IIB on Thursday Island, but no account with the store on the Island. Examination of the cheque butts on the Chairman's private and business accounts show that he purchased petrol and gas from the IIB throughout the period 1 July 1987 to 30 June 1989, but his only purchases of diesel were made in May-June 1988. Records for the year ending 30 June 1990 were less helpful, because account payments made to the IIB did not specify the type of merchandise.

Council records were also lacking. From what records the financial analysts were able to examine, it seems that the Council purchased fuel regularly throughout the period 1 July 1988 to 30 June 1990. Where available to support those payments, the invoices were indeed made out to the Council. However, 26 fuel payments were not supported by invoices.

The Council's cash received records for the same period do not show any reimbursements made by the Chairman for fuel taken or used. In fact, the Council's cash received records were consistently incomplete. Many vouchers lacked any supporting documentation. The Chairman's cheque butts did not identify any payment to the Council as being for fuel.

Given the lapses in both the Council's and in the Chairman's records, analysts sought to match up payments with the records available through the IIBS. Their efforts were hindered by poor co-operation on the part of the IIB on Thursday Island, the principal supplier of fuel (diesel) to both the Council and the Chairman. The IIB initially responded very slowly. When the correct records were eventually received, analysts were able to show that whereas the Council purchased fuel every month regularly throughout the 2-year period, 1 July 88 to 30 June 1990, the Chairman purchased diesel from the IIB only during the periods May-August 1989 and April and June 1990. (In fact, during the year ending 30 June 88, he had purchased diesel only during May and June.)

Conclusion

Reaching a positive conclusion with respect to this allegation was hindered by a number of factors:

- the consultant's claims were not corroborated by residents.
- the residents' statements were vague and inconsistent or lacked detail; the Chairman's son made conflicting statements about the same incident.
- the Chairman's statement was unclear and sometimes incoherent.
- residents' references to incidents involving the transport of fuel drums to the Chairman's back yard lacked specific reference to when it occurred--- they may have been speaking about one or several incidents.
- investigators could not establish with certainty the Council's "usual" procedures for storing fuel.
- the Council's cash-received and debit records lacked detail.
- the Chairman's business records were similarly lacking.
- investigators were unable to establish the fuel requirements of either the Council or the Chairman.

Despite these uncertainties, the Commission was satisfied that many local residents had a clear perception that Council fuel was freely used by the Chairman for his private purposes, even to the extent of being regularly stored at his premises, and furthermore, that the Chairman at times "borrowed" Council fuel. However, deficiencies in both the Council's and the Chairman's records made it impossible to determine the circumstances of this "borrowing" and whether or not the Council

was ever reimbursed for fuel used in this way. Given this unsatisfactory situation, there was insufficient evidence to support any charges against the Chairman.

Allegation 3 That the Chairman and former Council Clerk were involved in sly-grogging (and other illegal activities)

Background

Both the consultant⁶⁹ and the political leader⁷⁰ raised numerous matters of alleged misconduct, corruption, or mismanagement when interviewed by investigators in September 1990. Both raised matters concerning the sale of alcohol on the Island.

The political leader did not specifically mention the Council Clerk in this regard. However, he implicated the Council Chairman in the theft of \$16,000 that he claimed the Auditor-General's report of 1987/88 had reported missing from canteen funds. He went on to say that money had disappeared "over a long period time, I think, there's been a little bit here and there".

The political leader also alleged that since the canteen stopped operating in '86 or '87, a sly-grog trade had been run out of the State school. But he did not implicate either the Chairman or the former Council Clerk. He said that the sly grog trade had been going on

definitely for the past 12 months. I visited [the Island] in May of this, May 1990 and, ah, I stayed there for two days and, um, there's no canteen there, but people were walk—walking around intoxicated. So, so there is, um, ah, sly grog activities going on.

Unlike the political leader, the consultant did not directly refer to problems with the canteen. However, he did refer to sly-grogging, the first time linking it to the former Council Clerk, whom he described as an "absolutely outrageously crooked" individual who "served [the Chairman's] great purpose". He later said that one of the Chairman's sons had told him that he had been delivering sly grog for his father "throughout the Torres Strait" since he was 9 years old.

The issue of sly-grogging was not included in the summary report prepared by the DFSAIA officer who visited the Island in October 1990 to investigate the

⁶⁹ See page 34.

⁷⁰ See page 34.

genuineness of the Islanders' petition to dismiss the Council.⁷¹ However, the officer's preparatory notes record that four residents, apparently interviewed together, "alleged that [the Chairman] was involved in the sly grog trade and that [a resident] was an accomplice".

The canteen

Investigators made a careful review of reports prepared by the Auditor-General and by Department transition officers. References to the canteen are conspicuous in both. The audit report for the period March 86 through April 87 stated that no documentation could be produced for sales, purchases and stock on hand for the beer canteen from the commencement of its operations in April 1986 up to and including March 1987. The report noted a lack of management control, thefts, large amounts of outstanding credit, and, most notably, a income shortage of approximately \$17,500.⁷²

The canteen ceased operations in June 1987.

In February 1988 the Auditor-General wrote to the Chairman concerning accounts for the period April - October 87. Among many matters raised at the time, the Auditor-General noted problems with credit and records of sales and earnings in the canteen. An administration officer of the Department had apparently helped to establish stock records during March 1987, but these records could not be produced for the audit.

The canteen apparently re-opened towards the end of 1987. But in May 1988 a DCS transition officer visiting the Island noted that the canteen was not in operation after a recent shooting incident and that the Council Clerk had advised that there was no stock on hand. The selling price control revealed a shortage of some \$1,227.50 for the period December 1987 - April 1988.

⁷¹ See page 44.

⁷² The Auditor-General's report states, in part:

... It is doubtful that any real control existed over the Beer Canteen's operations during this time. The Council Clerk advised that various residents were operating the Beer Canteen and that documentation is missing. The only records of transactions available were the Cash Receipts Sheets and the Cash Payments Sheets.

...

Two transition officers visiting the Council in July/August 1988 prepared a profit and loss statement for the beer canteen for the year ended 30 June 1988. They noted a selling price control shortage of \$19.50.

The Acting Auditor-General wrote to the Council Chairman in March 1989 concerning accounts for the period ending 31 October 1988. Among the matters referred to the Council for corrective action was the theft of stock totalling \$742.50. The Island police, although apparently advised of the thefts, had been unable to comment on how investigations were proceeding. The Auditor-General asked that in future all thefts or suspected thefts of Council cash or property and any unaccountable shortage in Council funds be reported to the Office-in Charge, Thursday Island Police.

With respect to the completed audit for 1987/1988, the Auditor-General noted that canteen stock write-offs totalled \$1,102.50, including \$360.00 in stolen cans. The Auditor-General advised that in future the Council's approval should be obtained for these write-offs. He also noted that the Council was purchasing beer from a supplier in Cairns, paying almost 50 percent, including transport, over the price available direct from the breweries. Total canteen sales for 1987/88 were \$29,675. There was no reference to a loss of \$16,000 from canteen funds in the Auditor-General's report on 1987/1988 accounts. The report on 1988/89 made only cursory references to the canteen.

One of the few references to the canteen in the Council minutes occurs in handwritten minutes, signed by Chairman and Deputy Chairman, for a "Special Council Meeting" held on 6 September 1989. Resolution 1 states:

That Council acknowledges that there is a gap of record lacking for period from 29-12-89 until the canteen closed but, we declare our satisfaction with the record as they stand even though some ministerial direction has been contravene. We have now put in place measures which will prevent a recurrence of this in the future and will ensure a close watch will be kept on the operation of the canteen.

Subsequent resolutions approve the donation of beer for a "break-up party" and write off the theft of 153 cans of beer "as reported to the police".

Information available to the Commission indicates that the canteen again ceased operations during the first part of 1990 and recommenced shortly before Christmas. Not surprisingly, when Commission investigators visited the Island in March 1991, many people had something to say about the operation of the canteen. Practically all residents interviewed by investigators could name the canteen's hours of operation (5-7 p.m. Monday through Saturday) and the price of a carton of beer (\$60.00).

Foremost among the concerns raised by residents, including the new Council Clerk, was the problem of break-and-enters on the canteen. For example, one Council employee said that when the canteen re-opened recently

I think they lost 13 cartons the first weekend when it opened, that was all stolen. The second load of beer came in on a boat and then young blokes broke into it and stole I don't know how many cartons then. They got drunk all weekend on the proceeds of it.

Another resident spoke of break-ins on the canteen, the store, the school, and the church, the latter by youths looking for petrol.

Some residents attributed the canteen's losses variously to mismanagement, credit, write-offs, and giveaways. Still others were prepared to name more sinister causes. One Council employee implicated the former Council Clerk, who he said had sold up his numerous possessions and left the Island not long before the Commission's first visit. He admitted that the former Clerk had been the subject of numerous rumours. A former Council employee said that the Clerk was "another no good person" who "of course" had been stealing from the Council. Asked if he could give an example, the former employee said that:

I would say, you ask his—when they have a tiff, you know, but—him and his wife, she used to always, err—scream at anybody how much he stole from the public, you know, from the Council. Of course, a couple of days after they'd make up again and then it was all bullshit and things like that. But he was the only person who had really gear there, what never could have been bought from—on their wages. Like two-speed boats, a dinghy, three billiard tables, two cars, them kind of things.

Like the consultant, he claimed that the former Council Clerk had a criminal record and had served time in jail. However, checks of police records showed no such convictions.

One of the leaders of the dissident group claimed that beer written off in the Auditor's report as damaged was actually being sold and the profits pocketed. He said: ". . . and they reckon, that's not the case, beer can't get damaged up here, them boys would never damage their beer".

He said that he himself had looked after the canteen for two weeks prior to the CDEP strike.⁷³ But his account of the personnel involved in running the canteen

⁷³ See page 37.

and the procedures used to handle stock and earnings was contradicted by other residents.

The new Council Clerk told investigators that since she assumed charge there had been a policy of "no cash, no beer". The new canteen manager described the procedures she followed to account for stock and cash-received. At best they seemed rudimentary. According to the Chairman's nephew, there was no way to operate a cash register in the canteen, because the Council generator was switched off each day at 5 pm. He said that there was a calculator to help the canteen manager. No receipts were given. The canteen manager kept a book which recorded who bought beer and how much they paid. This book was kept in the Council office.

Problems with the beer canteen were apparently not peculiar to this Island Council. In May 1987 the Department's senior consultant to the Transition and Local Government Development Unit prepared a memorandum detailing Situation Reports on the Islands and actions taken on unsatisfactory matters raised in 1987/88 audit reports. Beer canteens are included among the areas in which most Councils were said to be having difficulties. The memorandum notes that "there is an overall slackness in most beer canteens with regular shortages, no controls or stocktakes and credit being given".

Contrary to the original complainants, none of the residents suggested that the Chairman had been involved in stealing from canteen funds. The former Council Clerk could not be located. If the Auditor-General or transition officers had uncovered evidence to suggest misappropriation, as opposed to mismanagement, of funds, they would have been required to report the matter to the police. It appears that this did not occur.

Sly-grogging

Just as most residents interviewed by our investigators could name the hours and prices of the canteen, most were able to name the Island's sly-groggers and their prices.

One of the Chairman's sons, who the consultant claimed had delivered sly grog for his father "throughout the Torres Strait", named the same sly-groggers as other residents. He did not directly implicate his father and the information he gave concerning his childhood and youth did not support the consultant's allegation.

The Chairman himself said that he had never been involved in sly grogging and had never been involved in black marketing. His nephew, the new Clerk's

husband, said that he had no knowledge of any sly grogging on the Island. However, the Deputy Chairman said that while the canteen was not operating "... we allowed people around, you know, to, you know, if they wanted, to have their own beer, you know, they ordered their own". Perhaps this explained the "intoxicated" people the political leader saw on his visit to the Island in 1990.

During their three visits to the Island, investigators were unable to locate either of the two residents named as running the sly-grog business. However, investigators did learn that one was married to the Chairman's wife's sister. The other was a "cousin-brother" to the Chairman of another Island Council.

None of the residents interviewed by the Commission tied either the Council Chairman or the former Council Clerk to sly-grogging on the Island. Their apparent conclusion that the sly-groggers operated with the approval if not the active participation of the Council Chairman was reinforced by their awareness of the family ties between the so-called main operator and the Chairman's family and the fact that he lived in the same village as the Council Chairman and the Chairman's son, the community policeman.

Although many residents gave information concerning sly-grogging, none admitted to ever having actually purchased beer, wine, or liquor from the sly-groggers, which would be a key component of any successful prosecution. In fact, a significant number of those interviewed prefaced their comments by stating that they were non-drinkers.

Conclusion

Investigators were able to confirm that the canteen suffered large losses during the first year of its operation. The poor management practices in place at that time may have been only partly rectified: subsequent audits revealed a pattern of losses, thefts, etc., ---"little bit here and there"---though certainly not on the scale of the first year. Indeed, in the Commission's view, the new management procedures initiated by the most recent Council Clerk also left much to be desired.

Investigators were unable to delve more deeply into either the original large loss or any of the subsequent thefts and losses. As with other aspects of Council operations, financial records to support a proper investigation were either inadequate, missing, or non-existent. Key witnesses such as the former Council Clerk and former canteen managers could not be located.

More thorough investigations into sly-grogging posed further operational and tactical problems. Obtaining evidence in the local environment is well-nigh

impossible without either admissions by the local people or their active participation, a situation readily acknowledged by State police on Thursday Island. The police have limited resources for the investigation of such matters, and, in common with the Commission, their travel to the area is widely advertised on the local gossip line. At best one can say that if sly-grogging were taking place, it is unlikely that the Chairman and his son, the community policeman, would not have been aware of it.

The allegations concerning liquor sales again place some doubt on the credibility of the complainants. Although the political leader's information concerning canteen losses was confirmed by the Auditor-General's reports, he was apparently confused about both the amount of the large loss and the year it was reported. His statement that the canteen had not been operating since 86/87 was plainly incorrect. The man he identified as the "main cog" in the sly grog trade was not the person named by the Island's residents. The consultant incorrectly alleged that the former Council Clerk had a criminal record and his claim that one of the Chairman's sons had helped sell sly-grog was not corroborated by any other information. In the circumstances, the Commission's investigation could find no evidence of either Chairman's or the former Council Clerk's direct involvement in sly grogging, or of their alleged involvement in theft from the canteen.

Allegation 4 That the Council Chairman used Council-paid staff to work at his own house and store

Background

This allegation came to the Commission's notice through a complaint forwarded by the DFSAIA in December 1990. It was one of several that focused on the Council Chairman's alleged use of Council resources for himself, his family and his business. During a DFSAIA officer's visit to the Island in October 1990 to establish the authenticity of a residents' petition to dismiss the Council, eight residents had complained that "Papuan" paid under the CDEP Scheme⁷⁴ were working in the Chairman's house or store, with duties including sales, laundry and cleaning, unloading cargo, and yard keeping. Two further residents made the same allegation without naming the Papuans.

This was not the first time that issues relating to the CDEP had figured prominently in Island affairs. The Council's management of the CDEP had been conspicuous among the matters Islanders brought to the attention of the AFP in 1989. While not commenting generally on the management of the CDEP, the Commonwealth Director of Public Prosecutions, Townsville, informed the AFP on that occasion that the Department of Aboriginal Affairs was of the view that CDEP payments could be made to PNG nationals and there was nothing to suggest that the Council had made any payment contrary to the Rules.

The strike by CDEP workers⁷⁵ had eventually led to the cessation of the CDEP on the Island and its replacement by social security payments. Nonetheless, when CJC investigators visited the Island in March 1991, feelings about the Council's operation of the program still ran high.

What the residents knew

Many residents spoke disparagingly about the CDEP Scheme, its fairness, and the use the Council made of the scheme. However, in general, the issues they raised

⁷⁴ See page 39.

⁷⁵ See page 37.

did not amount to specific allegations. One of the few that did concerned the "Papuan" who, they alleged, had been working for the Chairman.

All told, perhaps 15 residents, including a shop assistant the Chairman had employed, were questioned about the matter. The one thing they did agree on was that people receiving CDEP wages were working in the Chairman's yard or store. The men, they said (all carpenters apparently), were variously employed feeding pigs, raking the yard, cleaning up the yard, performing odd jobs and repairs, or "just walking around the yard". The women worked in the store. The residents claimed to have seen them working, as well as collecting their CDEP pay every fortnight.

But they gave varying accounts of the number and identities of the people involved and the hours they worked. Investigators were able to locate and interview three, one in Cairns. Two confirmed residents' statements that they had received CDEP wages while performing work for the Chairman.

One said she had worked for the Chairman for eight months, with her sister-in-law. She said she had no duties other than working in the shop. She said that she did not sign on when she came to work, but that she signed for her wages, which the Council Clerk paid in cash at the Council office.

The second said that he had worked full time for the Chairman around his shop for about two years, unloading cargo, raking up the yard, cutting grass and doing maintenance jobs. He said that each fortnight he would go down and get his pay from the CDEP. He said that he signed on every morning and finished work at 5 pm.

The third, a man who claimed the Chairman as his uncle, said he was a carpenter employed in building new houses on the Island and had worked for the CDEP since it started. He admitted to working for the Chairman but for only half an hour or a couple of hours a day. The Chairman, he said, paid him separately to work after 4 o'clock. But he did not say if those payments were made by cheque or in cash.

"Island custom, people come, we help each other, we share . . ."

The Council Clerk during the period the CDEP was operating was no longer on the Island and could not be located. However, investigators questioned both the Chairman and the Deputy Chairman about the matter.

The Deputy Chairman said he had been employed as a CDEP project officer until the program ceased operating. Asked if the Chairman had been using Council staff to work at his shop, he admitted that "he did get, you know, a couple of workers in there, you know, to do training". He first named one of the women other residents claimed to have worked in the Chairman's store, changed his mind, and then named three of same men identified by the residents.

Asked if anybody was employed to work in his house or yard, the Chairman himself raised the issue of CDEP workers being used for such purposes:

Q: Have you ever had anybody employed in your house or your house yard to work here?

A: Ah, well, I've got, ah, not myself, during my, during my trips away from the Island I know, it came up at, ah, a talk here, you know, saying that I, you know, getting CDEP people working in my yard and all that. Well, I was in, in control of the CDEP people, but we've got, we've got a thing in place that to anybody, anybody helpless on the Island that are struggling and that, because it's a dole, I mean you work—for your bloody dollar—see, we'd get people, only we've got more workers than we can give work to do, so we get girls to go down and do household work for an old bloke like old uncle [. . .] or, you know, sweeping the yards, you know, helping, sweeping the yard because that's what girls normally do, and, ah, you know, things like this, and, ah, during my absence, but the Deputy Chairman, [. . .], he was in charge of the, was a project officer and he was in charge of the works and, well, he told me, he said, I, you know, I've got some girls down there or some old blokes down there, you know, helping your missus because you got a big yard, I mean, because you're away from the place and you're doing it for the people for the Island. So I get them down there, it's, you know, I said, [. . .], you have to be more careful with it, like, you know, because, ah, I'd rather not. I mean, you can see what kind of house I live in, politically, I can't get a new house, which is no good for the eyes of the people, it's okay for them, I can only do it for them, but cannot do it for myself. You look at the bloody house

...

Q: Have you ever had them working at your shop while they've been on the CDEP?

A: Umm, no, but there was an occasion of a girl, a sick girl, I was told this by the Deputy Chairman, and I just take no notice because it's a case of sick woman, she is an epileptic, I think, and she has a got a heart problem and the father went and saw the Council about, you know, if she can stop in the shade and get some other girl to with her, so they found a relative and, ah, her choice of place was with [the Chairman's employee] in the shop. So what they did there, but there was not an employee, it's only on the CDEP days and she's a Papua New Guinean, and because, ah close—we have a [. . .] family here, we become sort of Papua New Guinean ourselves, they become, you know, friendly to us, and my old grandmother has got relatives there, you know, because that old lady, my mother, my father's real mother have got blood from Papua New Guinea,

- and so we can associate, every time they come here they come to my place, you know, they won't go---
- Q: Who was the girl that worked in the shop?
- A: Ah, that woman?
- Q: What's her name?
- A: At the time, [. . .].
- Q: No, no, no, the girl who was on, the sickly girl, had to work in the shade?
- A: [. . .]. She's a mute deaf and dumb.
- ...
- Q: And have you had anybody else working in the shop, or---
- A: No, I mean Island custom, people come, we help each other, we share, I mean, if they come they got nothing to do, they help, like, you know, but for nothing, you know.

In light of the apparent agreement between the residents' statements, the Chairman's and Deputy Chairman's statements were quite curious. The Deputy Chairman, who said he had been a CDEP project officer, at first answered the question about the Chairman's shop with information concerning the Council workshop. He then admitted that the Chairman had "a couple of workers in there . . . to do training".

The Chairman, who said he was "in control of CDEP people", said nothing about training. Rather, he seemed to be implying that people had been sent to his house and/or yard as part of the Island's general policy of providing assistance to needy residents, in this case, his wife. The Chairman's claim that there were "more workers than we can give work to" seems spurious given the vehemence of residents' complaints about housing and repairs on the Island (even the DFSAIA officer had remarked on the "appalling conditions" in which several of his interviewees lived).⁷⁶ The Deputy Chairman he referred to had, like the current Deputy Chairman, been a CDEP project officer, but he had been ill for some time and had died the year before investigators conducted the interview.

The Chairman denied that anyone---apart from the "sick girl", who was an epileptic, had a heart condition, and was a "mute deaf and dumb"---had worked at his store while receiving CDEP wages. Her name was one of those given by residents. However, he did refer to his PNG relatives who "every time they come here they come to my place, you know, they won't go---". Perhaps these were the people the Chairman described, people who, if they had nothing to do, came to help, to share, in exchange for nothing.

⁷⁶ An overwhelming number of residents complained about the conditions of their housing and the unavailability or apparent unwillingness of the Council to make the requisite repairs. A large number of people had refused to pay rent, though this does not seem to be the only reason for rental arrears totalling in excess of \$82,000 at the time of the investigation.

CDEP guidelines

Commission investigators have not been able to identify with certainty what guidelines were in place for the CDEP at the time these events took place. However, an undated *Community Development Employment Projects: Operational Manual*,⁷⁷ which appears to have been prepared for Aboriginal communities and been current during 1990-1991, gives some general information which might be pertinent to the deployment of CDEP workers in the Chairman's yard and store.

The manual states that communities are "encouraged" to prepare a "broad annual work program" (s. 2.3.10) that complemented the community's development plan. The manual also states the DEET had the responsibility "to develop, in consultation with . . . each CDEP community, a training needs schedule and a training program to meet those needs" (2.3.12) (emphasis added). Given the flexibility that CDEP terms and conditions allowed each community, these documents might have indicated whether or not the deployment of CDEP workers in the Chairman's yard or store was an acceptable practice on the Island. However, no such documents were sighted.

Could working at the Chairman's store and yard be a valid form of training? If it indeed were training that the women allegedly working at the Chairman's store were receiving, such training may have been of some benefit if they could use it elsewhere. There were two retail stores on the Island. One operated by the IIB employed a manager, the husband of the Chairman's niece, and an assistant, the Chairman's sister-in-law. The Chairman's business employed only one person through his store. Perhaps, given the availability of "trainees", he had no reason to employ more. Unlike the women, the men allegedly working in the Chairman's back yard appeared to be already skilled carpenters not in need of training.

The manual does suggest that persons who were unable to work could be employed on the scheme if "suitable" work were available. This could justify the employment of the "sick girl" named by the Chairman. Certainly, the work may have been suitable to the "sick girl" but whether it was suitable and in the interests of the community is debatable.

Financial analysis

CJC financial analysts attempted to examine payroll records for the Chairman's business and the Council to establish the employment of the persons named by

⁷⁷ *Community Development Employment Projects: Operational Manual*, pp. 13-17.

residents as having worked in the Chairman's yard or store while collecting CDEP pay.

Payroll records for the Chairman's business, and records held by his accountants for the financial years ending June 1988 and June 1989, the most recent years available, show only one employee. She was not one of the people named by the residents. If other persons were paid by the Chairman's business, the payments were not shown as wages.

Of the people named by the residents, Council payroll records for the three years from July 87 - June 1990 showed that:

- the man who claimed to work for the Chairman only in the afternoons was paid for an average work week of 40 hours over the three years.
- a second man was paid for 16 hours per week, but not for full years and only through to November 1989.
- a third man was paid for a full 40-hour week up to September 1989, when he apparently left the Island.
- one of the women began to be paid in July 1989. Her pay varied, depending on whether she worked 16, 20 or 40 hours/week.
- the second woman was paid for an average of 16 hours/week (4 days of 4 hours) up to February 1990, when the CDEP finished..
- a third woman, who assumed the position at the store in 1989, when the Chairman's long-standing store assistant left the Island, was paid only from July 1989, for varying hours, 16, 20, or 40 hours/week.

Conclusion

Many residents claimed that people were working either at the Chairman's store or in and around his yard while collecting CDEP pay. They gave varying accounts of the number of people involved, their identities and the hours they worked. Two of the persons named by the residents confirmed their statements.

Financial records available from the Council indicates that at least six people identified by residents as working in the Chairman's store or yard, including the two who confirmed the residents' statements, were receiving wages through the CDEP. But not all were receiving wages for 40 hours a week.

The Deputy Chairman's statement that the Chairman may have had a couple of workers in his shop "to do training" confirmed the presence of CDEP workers in the store. The Commission's understanding of CDEP guidelines would suggest that such "training" may have been permissible under guidelines then in place for

the CDEP. However, in the Commission's view, its immediate benefit to either the individuals or the community was debatable. Certainly none of the male workers identified as working in the Chairman's yard seemed to be in need of that kind of training.

The Chairman claimed that he had a "sick girl" working in his store. This may also have been permissible under the CDEP guidelines.

Otherwise, the Chairman's statement on this issue, like others, appeared obtuse and vague. If true, his claim that the former Deputy Chairman had sent workers to help his wife during his own absence from the Island indicated a potentially unfair application of Council resources. His belief that there were "more workers than we can give work to" seemed spurious given the state of housing on the Island. These statements were difficult to verify, as was his statement concerning Island custom.

In the Commission's view, CDEP workers did assist the Chairman and his wife in his shop and residence. However, because of the flexibility of CDEP arrangements, the vagueness of the information provided by witnesses, and the lack of records of hours worked privately for the Chairman, it is impossible to conclude that the use of workers as alleged amounted to a breach of the CDEP conditions.

Allegation 5 That the Council Chairman attempted to use his position on the Council to obtain trochus shell for his own advantage

Background

According to information provided by the AFP, a delegation of Islanders who met with the AFP in September 1989 presented a petition alleging that they had been induced to sell catches of trochus shell exclusively to the Council Chairman and the Council Clerk by a guarantee that they would retain their full entitlement to CDEP payments in addition to being paid for their trochus shell.⁷⁸

The same issue appeared in the statutory declarations the consultant⁷⁹ signed in the latter part of September 1989 concerning the Chairman's "private partnership fishery". It was raised again in a slightly different form in 1990 when a DFSAIA officer visited the Island to establish the genuineness of an residents' petition to dismiss the Council.⁸⁰ The DFSAIA officer noted many complaints concerning the Council Chairman's alleged use of Council resources for himself, his family and friends. His report noted that these allegations included "Attempt to buy trochus shell from Council at reduced price".

Notes that the officer kept toward producing his report showed that several residents had variously complained about corrupt dealings concerning trochus or expressed concerns about trochus gathering in relation to the CDEP. The strike leaders complained about the Council wanting CDEP workers to work more days than required on other Islands. Several others raised unspecified grievances concerning CDEP policy. However, the DFSAIA officer's notes do not record any interviewee raising an allegation linking the receipt of CDEP payments to the sale of trochus to the Chairman or the Chairman's company.

⁷⁸ See page 39.

⁷⁹ See page 34.

⁸⁰ See page 44.

The marine gang

When interviewed by investigators in 1991, several residents had some comment to offer about the circumstances which led to the CDEP strike. All suggested that the strike began because the Council would not let workers have two days off to fish for trochus. Two of those men, the "leaders" of the strike, spoke at greater length.

One claimed that just before the CDEP strike began, the Chairman told him that he had bought a big dinghy for a new work gang, a "marine gang", that would clean up the beach and dump rubbish in the sea. He said that the Chairman told him to "take the dinghy, clean the beach, but if you got time, take the dinghy and (ui), bring the (ui) here, I'll buy it off you and [another resident]." He said that the Chairman proposed paying himself and the other resident \$5,000/tonne and the others in the gang only \$3,000/tonne. He said, ". . . the Chairman say to me I'm only telling you, (ui) about this five thousand dollar and three thousand business gets out, that the deal is off".

Some days later, he said, he went to the Chairman to ask him about cutting the workdays back from five to three so that they would have time to earn some extra money. The meeting closed down without resolution and the following week Islanders organised themselves and went on strike.

His account of the events leading up to the strike was largely supported by the statement made by the second of the two men allegedly included in the Chairman's offer. He confirmed the first resident's assertion that the Chairman was happy for the Islanders to fish for trochus while working their full CDEP hours.

The second man had no apparent objection to working trochus on CDEP time. Similarly, the first man did not refer to working trochus on CDEP time as a problem, if indeed that was what the Chairman was suggesting. Rather, both objected to the differential prices for trochus to be paid to members of the gang. And both complained strongly that the Chairman required that they work for the Council five days, not three days as they had requested.

Neither suggested that the Chairman had told them that they could remain on CDEP while fishing trochus only if they sold their trochus to him.

Not "cheating the government"

When questioned about this allegation, the Chairman said that he had never had "the boys" go out trochus hunting while on CDEP. However, he did say that they had "a very good deal" because he had told the people at a meeting that if it was

fine day they could go out trochus fishing and then work for the CDEP on the bad day, as long as they reported to the office book-keeper and let him know. He did not want them to be "cheating the government".

Asked about the origins of the CDEP strike, the Chairman made lengthy personal attacks on the strike leaders and covered a range of topics including the felling of coconut trees on traditional property; the completion of a shrine; the resignation of the Council's mechanic; belief in spirits and ghosts; blessings given by the pastor in the church; and the resignation of his shop assistant. Without addressing the cause of the strike, he moved into an account of events after the strike began. His lengthy, sometimes obtuse, and possibly irrelevant discourse on this issue, characteristic of many of the Chairman's responses to other questions, highlights the difficulties investigators had throughout the interview with the Chairman.

Throughout this discourse on the CDEP strike, the Chairman made no reference to the specific demands of the CDEP workers and no direct mention of residents' request that CDEP work requirements be dropped from five to three days. Nor did he refer to the alleged offer to the strike leaders concerning differential payment scheme for trochus.

On the other hand, his statement more or less confirmed the two residents' claim that the marine gang fished for trochus on CDEP time, although the circumstances under which the Chairman said the practice occurred were slightly different from those raised by the two residents. Yet the Chairman's claim that this arrangement would not be "cheating the Government" seems disingenuous. It is unlikely that men required to work a 40-hour week would have been able to pay back the time. If the Council really monitored work hours, the residents' request for a three-day week would not have been surprising. However, the Commission's examination of Council payroll indicates that if CDEP workers were indeed fishing on good days and paying back their time to the Council, no formal records were kept of such arrangements. Indeed, residents gave varying accounts regarding the requirements for signing on and off each day and the circumstances under which their CDEP pay would be docked.

CDEP requirements

Commission investigators have not been able to identify with certainty what guidelines were in place for the CDEP at the time these events took place. However, an undated Community Development Employment Projects: Operational

Manual, which appears to have been current at the time, gives some general information.⁸¹

According to these guidelines, trochus fishing may have been considered a "traditional cultural activity" (2.3.8). However, insofar as the catch was being sold for profit, it would be an acceptable focus of CDEP activity only if the profits were to be "distributed for the overall benefit of the community; for example, to top up the wages of the activities of CDEP employees or as payments to increase incentive" (2.3.13(a)). This did not appear to describe the practice in this community where profits from trochus fishing would have been used "for the sole benefit of the individuals".

Unless their wages were supplemented by Council funds so that each person received the same wage, CDEP employees would have been required to work various hours, according to their marital status and number of children (2.3.22). There is no evidence that the Council "topped up" CDEP wages so that each person employed under the scheme received an equivalent amount. We do not know who were members of the marine gang other than the two residents referred to earlier. Both were married with children. Other members may have been single, or even young men who qualified for a lower rate of pay, and may not have been required to work a 40-hour week for their CDEP wages. They may very well have had time to spend trochus fishing without contravening CDEP guidelines.

The request by two residents that CDEP working hours be reduced may have been based on a lack of understanding of the CDEP. During his interview with Commission investigators, the first resident was asked:

- Q: And how did, ah, did the CDEP Scheme work alright or not?
A: It work alright first, then don't do any work for three days.
Q: Mmn.
A: I remember ...
Q: Mmn.
A: They work couple of days then, ah, you go do what you like.
Q: Mmn.
A: Ah, then after it was changed to married man must work five days a week.
Q: Mmn.
A: Ah, single men work, ah, either two full days, Monday and Tuesday, or half day Monday, half day Tuesday, Wednesday and Thursday ...

⁸¹ See page 81.

He may have thought that the hours required of CDEP workers were purely a matter of the Council's discretion, in which case the Chairman's denial of the CDEP workers' request would have appeared all the more unreasonable.

However, there may be another explanation. According to information provided to the AFP, individuals employed under the CDEP Scheme were guaranteed a minimum payment equivalent to the amount otherwise payable to that person as unemployment benefits. Individuals could be paid more than this amount through casual, temporary or part-time work, with the participants' payments affected if more than \$60/fortnight was earned. However, only permanent part-time income was taken into account; casual earnings were excluded for the purposes of benefit calculation.

The petition that Islanders gave to the AFP makes no mention of the requirement that program participants work five days in order to retain full CDEP payments. Rather, it states that they were induced to sell all catches of trochus shell exclusively to the Chairman by a guarantee that they could retain full entitlement to their CDEP payments while being paid for trochus. The petition stated that the Chairman "did in fact pay us many hundreds of dollars for this shell, but with the inducement that we could also keep our full CDEP payments, but only if we agreed to sell our shell exclusively to [the Chairman]". The assumption seems to have been that earnings from trochus shell somehow jeopardised participants' payments.

The Council's position on this issue may have been influenced by an Auditor-General's report in February 1988, which, among other things, drew the Council's attention to the fact that some fishermen were receiving CDEP or SGFA wages in addition to payments for their catches. According to the Auditor-General, this practice contravened CDEP guidelines.⁸²

A very minimal amount: the Chairman's role as the buyer of trochus

The "private partnership fishery" that the consultant referred to in his statutory declarations was a company formed by the Council in partnership with a Sydney-based company for the "collection and marketing of trochus, shell and associated by-products". The company was to buy shell from the Islanders and resell it to

⁸² However, according to advice given to the AFP in 1989, the sale of trochus shell could not be classed as "permanent part-time work" for the purposes of the rules associated with the payment of CDEP monies and would not affect their CDEP income.

southern buyers, presumably at a profit. The Chairman was one of its directors. But records available through the Chairman's solicitors and accountants show that the company's trading activity was minimal in 1988 and negligible in 1989. If the Chairman was involved in buying trochus from Islanders, the sales were certainly not carried out under its auspices.

The other director of the "private partnership fishery", a man who had spent considerable time in the Strait in pursuit of trochus and who claimed the Chairman as trusted friend, admitted that the Chairman had purchased shell for him "a couple of times, yes". But whereas he had sent "hundreds of thousands of dollars" to the chairmen of other Islands acting on his behalf, the Chairman of Island Council A "never really bought much".

CJC investigators spoke to several trochus dealers, but those men identified other Islanders, in addition to the Chairman, as shell vendors. And those Islanders who did say that the Chairman had purchased shell from them named the period of the transaction as many months before the CDEP strike. No resident, when interviewed by CJC investigators, claimed that the Chairman was forcing residents to sell trochus catches exclusively to him. Indeed, if the Chairman did in fact attempt to do so, he seems to have been singularly unsuccessful judging by the number of buyers that residents said came round to the Island and bought shell.

The Council's cash payments and receipt sheets for each of the four Council bank accounts for the 3 years 1 July 1987 - 30 June 1990 show no transactions obviously related to the purchase or sale of trochus shell involving anyone, including the Chairman. In retrospect it seems unlikely that there would be many, if any, records of trochus shell sales. The three shell buyers that investigators spoke to suggested that most, if not all, shell was purchased with cash.

Conclusion

Inquiries relating to this allegation, like several others, began with varied accounts of wrongdoing which were further confused by inconsistent if not contradictory statements made by Islanders to the CJC. Investigators were able to uncover no evidence that Islanders were being induced to sell catches of trochus exclusively to the Chairman in order to retain CDEP benefits. None of the Islanders made any reference to that allegation. The Chairman appears to be one of several people who bought shell from residents, and there was no firm evidence of the amounts he did buy over an extended period. This does not rule out the possibility that the Chairman paid for and was paid for trochus in cash. However, the likelihood of

obtaining information to substantiate or refute this possibility was extremely small.

Statements made to the Commission did confirm the possibility that CDEP workers were fishing for trochus while retaining CDEP benefits. There was conflicting evidence with respect to the role of the Council Chairman. Two residents said that the Chairman offered financial incentives to them to lead a gang of men fishing for trochus on CDEP time. They said that the Chairman's denial of their request that CDEP hours be reduced to allow them to fish for trochus prompted the CDEP strike.

The Chairman spoke at great length about the origins of the CDEP strike but at no point referred to a request to reduce CDEP work hours. He suggested that in good weather CDEP workers could fish for trochus during their work hours as long as they made up the time.

No person interviewed, however, supported the allegation that the Chairman had attempted to force residents to sell their trochus to him in return for continued access to CDEP payments, and it was therefore impossible to reach any positive conclusion in this matter.

Allegation 6 That the Council Chairman used a Council-owned generator at his store

Background

This allegation was one of several forwarded to the Commission by the DFSAIA. In October 1990 a DFSAIA officer had visited the Island to establish the genuineness of a petition seeking dissolution of the Council.⁸³ During the course of his investigations, the DFSAIA officer noted many complaints concerning the Council Chairman's alleged use of Council resources for himself, his family and friends. One of the allegations his report noted was: "Use of Council generator at his store". Notes that the DFSAIA officer kept toward producing his report show that seven residents claimed that the Chairman had been using a Council generator. Five said it had broken down and been sent to the Council workshop for repair.

Power and electricity

There is no general power source on Island A. Like their counterparts on the other Islands in the Strait, residents and businesses must use generators if they are to have electric light and run electrical appliances. Some generators run on petrol, the majority on diesel. They vary in size and capacity. A cottage or house might require a relatively small capacity generator (5 kva or less). A business using freezers and refrigerators would require one considerably larger.

The Council's various operations would have required several generators. Although not as extensive as the Council's, the Chairman's need for power exceeded that of the average Island resident by virtue of the freezers and refrigerators used in his store. His supply would need to be uninterrupted.

Interviews with Island residents

A large number of residents interviewed by CJC investigators commented on the use of Council equipment by the Chairman, his family, and friends. Many spoke specifically of his use of a Council generator to provide power to his residence and store. Although not necessarily contradictory, some residents' statements were far from consistent: for example, three said that the Chairman was currently using a

⁸³ See page 44.

Council generator; three suggested that he had used a Council generator in the past; one said that the generator he was using was his own; and one claimed he did not know to whom the generator the Chairman was using belonged.

Other residents spoke about a particular generator and were able to provide some detail and context. Their narratives described a "big" generator, 15 kva, that had arrived on the Island to some fanfare. The Chairman, they claimed, said that it would be used for community purposes, in the workshop or to power a block of residents' houses,⁸⁴ but it had ended up in the engine room near the Chairman's store, where it stayed for some time. Although these residents appeared to be describing the same generator and the same set of events, their references to the circumstances in which the generator was removed from the Chairman's residence and the period in which the events occurred varied greatly.

Key among these residents was the then Council mechanic, who identified five Council generators, including one that used to be at the Chairman's store and was now at the workshop. He said not long after he had arrived on the Island in July 1989 he found he needed a larger capacity generator to run a welding machine at the workshop. After making inquiries, he learned that the Council did own a big generator, but the Chairman was using it until he could get his own fixed. The mechanic said that after getting new parts, he repaired the Chairman's own generator. The mechanic said that he checked through Council records and found out that the Council's generator had come with a big switchboard, but when it was returned to the workshop the switchboard was missing.

The mechanic said that no one could tell him how long the Chairman had been using the Council generator except that it was "quite some time". The Chairman's own generator had "been sitting there and . . . nothing had been done about it". It apparently could take quite some time to get spare parts to the Island.

The repair of the Chairman's generator and its removal to his engine room could explain why some residents believed that he was currently using a Council generator.

⁸⁴ Three residents suggested that the Council had at one stage been prepared to use this generator to provide electricity to residents. This would have represented a change of policy on the part of the Council and, if implemented, no doubt would have raised concerns for equal treatment by residents who were not similarly favoured.

"Not really . . . never"?

Investigators also spoke to the Council Clerk, the Deputy Chairman, and the Chairman about the use of generators. The Council Clerk, who had been Assistant Council Clerk during April - September 1990 and was appointed Council Clerk in December 1990, could provide little information other than admitting that the Council's asset register was not up to date. The Deputy Chairman claimed that the generator the Chairman was using was the Chairman's, not the Council's.

The Chairman's response to questioning on this issue was characteristically obscure and confusing:

- Q: Righteo. Now, . . . have you ever had any generators here at the house---that belonged to the Council to run your power?
- A: No. That would have been always my things, ah I, I mean if we've had a, if we've had a, ever had a generator belonged to the Council to do something here, it could have been on one of the people that servicing the thing like you know, while they were doing, you help to do our generators like, you know, and run it o---but I can't recall of an occasion no.
- Q: We've been told that you had a generator that, a new generator that arrived on the Island was up here for many many months running your power. And this generator is now down at the Council workshops.
- A: No, because we've, ah, the Council had the generator sent, now we've had, ah, we've also had a generator that was identical, like, you know, it's a Yamaha, Yamaha petrol---we've got one of our own ourselves and, ah, that's why I said if we've had a Council thing here for, you know, during the servicing of our thing at all, you know, it could have been up in during my absence, well, it could have been mistaken for, because we've had and ours been for the one, ah, we've given it to, ah, [. . .], sorry, [. . .] [. . .], that's one, that's our own, it the same kind of generator and, ah, because [. . .] damaged his, it wasn't working and he asked for ours, he took ours off, you know, to help out there and, ah, it's now . . .
- Q: But---what I was asking you, have you ever used a Council generator?
- A: ---no, no, no, not really, no.
- Q: Never?
- A: Not never.

This exchange may indicate that he could have been using a Council generator while his own was being repaired; that a Council generator had been set up in his store during his absence from the Island (under the same circumstances that he said CDEP workers were directed to help his wife in his absence)⁸⁵; that he had a generator identical to the Council's and people may have confused them; that the generator in question may have been lent to another Islander. But his tentative denial of ever using a Council generator was unconvincing.

⁸⁵ See page 80.

How many generators were there?

Further investigation into this matter was frustrated by the poor state of the Council's files, ledgers and accounts. The poorly maintained assets register contained references to 18 generators. At face value, many could have been double entries.⁸⁶ However, there did not appear to be any inventories of assets with which to check the accuracy of the register.

Using information contained in other Council records and other information supplied by the Council mechanic, investigators contacted a Cairns firm and learned that on 14 October 1988 the Council purchased a used 15 kva generator set for \$5,000. The Council mechanic's information matched the manufacturer's name, engine no. and plant no. in the vendor's records. He identified this machine as the one that had been removed from the Chairman's premises to the Council workshop. His data was identical to one of the machines listed in the most recent handwritten set of entries in the assets register.

The date of purchase coincided with the time period named by the Council mechanic and at least one of the residents who spoke about the "big" generator.

Confusing generators

After examining the Chairman's business records, analysts found that the Chairman had purchased a similar generator around the same time as the Council purchased its machine. Records show that on 11 November 1988 the Chairman's business paid \$3,563 for a generator from another Cairns vendor. The supplier's invoice did not give any identifying information.

Inquiries with the manufacturers revealed that although the Council's and the Chairman's generators were different models and were considerably different technically—the Chairman's produced approximately 10.5 kva—their similar appearance could mislead a layman. Could the residents have confused the two? Perhaps only the Council mechanic, of all the persons interviewed, had sufficient technical background not to do so.

⁸⁶ Six sets of pages in the assets register contained entries describing generators. For example, "Motor Vehicles and Boats" included tractors, backhoes, batteries, bicycles, boats, outboard motors and generators; "Equipments and Miscellaneous" included a helipad, welder, tea urn, concrete mixer, photocopier, tarpaulin, chain saw, fridge, lathes, knives, drills, paint, motor vehicles, plastic bags, mattocks, toilet brushes, garbage bins, generators and water pumps; "Equipment" included a stove, video camera, bench grinder, hammer drill, disc grinder, chairs, tubes and tyres, and generators.

But neither of these generators were Yamahas, as the Chairman had earlier claimed. According to his business's 1988/89 tax depreciation schedule, the Chairman had owned a Yamaha generator, but it had been disposed of or written off on 11 November 1988. The same tax depreciation schedule showed that the Chairman's business paid \$3853 for a generator on 21 December 1988.⁸⁷ No information was available on either the Chairman's or his wife's personal possessions, but it seems unlikely that either would have personally owned a generator that was being used to power their store.

While this information supports the Chairman's assertion that his own generator may have been confused with a Council-owned machine of the same make, it seems curious that the Chairman named a Yamaha generator and failed to name the generator he had purchased a little more than a year before he was interviewed. At least one resident could name the brand of the generator sitting in the Chairman's engine shed.

On the other hand, the fact that he appeared to own only one generator in working order reinforced the notion that he could have been forced to borrow a Council generator in the event that his own broke down.

Council resources and equipment

If the Chairman had indeed "borrowed" a Council generator, that loan did not appear to be documented in the Council records examined by the Commission. In fact, CJC analysts were able to find no equipment hire records to show whether the Chairman, or anyone else for that matter, borrowed equipment from the Council.⁸⁸ The Council's cash-received books contained entries identifying money received for the hiring of equipment but did not specify which pieces had been hired, by whom, or for how long. Analysts could find no corresponding receipts to match entries in the cash-received books.

The loan of Council equipment to residents was and is an established practice in other communities. However, many residents in this community complained that certain equipment was available only to Councillors and their families. Other

⁸⁷ Analysts could find no explanation for the discrepancy in the amount or the date.

⁸⁸ The Chairman's nephew, who helped the Council Clerk, his wife, in the Council office, said that there was a book kept for the hiring of equipment, but investigators could not locate any such book or ledger.

residents who were able to rent equipment said that they paid a fee but received no receipt.

The Council mechanic gave the Commission a long list of Council property that allegedly had been used in the private residences of Council members. Some of the equipment on the list was already the subject of other allegations. He said that the Council often hired the equipment out but people had not been paying the hire fees and the Council did not seem to bother chasing them up.

But Councillors may not have been the only persons borrowing Council equipment. Resolution 4 in the unsigned minutes for a Council meeting held 7 December 1990 gives some indication of the extent of the problem: "Council resolved that all council equipments be returned to council office as the matter will be dealt by the State police if these equipments are not returned".

Equipment loans and rentals may not have been the only area of Council operations poorly or unfairly managed. If the Council mechanic and other residents can be believed, the Chairman's own generator was repaired in the Council workshop. As with loans of equipment, Council records were silent on payment for services rendered to individuals by Council employees.

Conclusion

Although sometimes vague and offering inconsistent details, statements made by Island residents indicated that the Chairman had used a Council generator to provide power to his house and store, perhaps when his own had broken down. The Chairman would have been more vulnerable than most residents to a generator failure by virtue of the risk of spoiling frozen and refrigerated goods at his store. On one mechanic's evidence, it took some time to get parts to the Island, and as the Chairman did not have a spare generator to power his store, he could have been forced to borrow one belonging to the Council, when his own was being repaired.

The Chairman seemed at first willing to admit that he may have borrowed a Council generator, but when pressed on the issue, said that he had never used a Council generator.

We do not know for certain how many generators the Council owned. Evidence of the Council's purchase of a 15 kva generator in October 1988 was largely consistent with the accounts that at least two residents gave for the arrival of a "big" Council generator that allegedly went for the Chairman's use rather than the Council's. However, investigators learned that the Chairman had purchased a

generator around the same time, one which the manufacturers said could easily have been mistaken for the Council's model.

One of the few people who might not have confused the two generators was the Council mechanic, who claimed to have repaired the Chairman's own generator. He showed investigators the Council-owned machine that had been allegedly taken from the Chairman's engine room.

Although there was no conclusive evidence to support the allegation, the investigation did highlight the poor state of Council record-keeping. The Council's assets register was poorly designed and maintained and the Council did not appear to keep records pertaining to residents' borrowing Council equipment or to the Council's provision of services such as welding or mechanical repair to individuals. The Council had a right, and most likely an overwhelming need, to provide such services. But in the absence of proper record-keeping it is easy to imagine why residents could feel that those services were not being made equally available to all the population. If the Council minutes are accurate, the whole practice of equipment and machinery loan was getting out of hand, hence the potentially drastic solution of calling in the police.

In the absence of proper records, including a properly detailed assets register, the Commission found it impossible to reach a positive conclusion concerning this allegation.

Allegation 7 That the Chairman's son improperly obtained a Council dinghy

Background

This allegation was one of several forwarded to the Commission by the DFSAIA. In October 1990 a DFSAIA officer had visited the Island to establish the genuineness of a petition seeking dissolution of the Council.⁸⁹ During the course of his investigation, the DFSAIA officer noted many complaints concerning the Council Chairman's alleged use of Council resources for himself, his family and friends. One of the allegations his report noted was: "Purchase and disposal of Council dinghy".

Notes that the DFSAIA officer kept toward producing his report showed that eight people claimed that either the Chairman or his son had improperly obtained a Council-owned dinghy. Residents claimed that the dinghy and outboard were to have been used by a "marine gang" that would collect garbage from the beaches and dump it in the sea, along the way fishing for trochus.

According to records held by the Council, the Council may have owned more than one dinghy and outboard, though the number in working order remains unclear. However, the Council's assets register seemed to indicate that in February 1990 the Council purchased a new 16-foot aluminium dinghy for \$3,500 and an outboard motor for \$2,220.00.⁹⁰

"What's going on"? interviews with Island residents

CJC investigators questioned residents about this allegation during their visit to the Island in March 1991. One resident, who held a position of some authority in the community, said that he knew nothing about the Council selling any property:

⁸⁹ See page 44.

⁹⁰ A handwritten notation adjoining those entries reads "Sold \$4,000". A transition officer's report from June 1989 noted that Council cheques paid to the vendors for the sums of \$3,500 and \$2,220 had no backup documentation or the requisite three quotes. A transition officer's report dated August 1989 notes that Council resolutions were required to validate, among other things, the purchase of a 16-foot dinghy and outboard motor. Minutes for a Council meeting held on 6 September 1989 include a resolution approving the purchase of, amongst other things, a "16ft Aluminium dinghy with 40 hp o/board motor".

"Like, most of us the people here don't know what's going on". The many and varied accounts and explanations the investigators received about the sale of the dinghy would support his view.

One resident remembered seeing a notice on the noticeboard that various "surplus" Council equipment---including a dinghy, a motor and a fax machine---were to be tendered by the Council. Some thought that the dinghy and outboard motor had been sold separately to different people. Some claimed that the Chairman's son had bought both. Some talked about two dinghies. However, most seemed to believe that there had been "something funny" about the tendering process, implying that an Island woman had won the tender but for some reason had been denied the opportunity to make good the purchase.

"He got it"

Investigators interviewed Councillors and Council office staff about this allegation. The Council Clerk at the time said that she was not on the Island when the Council dinghy was sold.

Asked how many boats he owned, the Chairman named one dinghy sitting near him as he talked and said that anything else around the place belonged to one of his sons. He then said that he also had a "small, little dinghy for my wife to fish too". This dinghy had apparently been buried in the sand, in which state the Council had offered it by tender, a tender his wife won for \$100.00.

Later during the interview he was asked about the tender of the Council dinghy that he said had originally been bought to dump rubbish in the sea:

So, it was placed on tender, I think, in the office there, they've got, ah, I don't know how many tenders, I know a tender come up but, ah, my son, ah, [. . .] was one of them and, ah, well, the tender was---in the office and, ah, to look at the tender documents. I wasn't there, but there was the Deputy Chairman, I think it was, Councillor [. . .] was Councillor at the time, oh yeah, I think it was Council and a couple of people from the outside I think that were the tender when the tender was open----to the Clerk, that's three, four, five of them, I think, and, ah, so, ah---

Q: Who won it, do you know who won it?

A: Well---

Q: Originally?

A: Well, it's been some days that, ah, after the thing was closed, and, ah, you know, when it was, ah, supposed to be made known to, ah, but, ah, I think it was, ah the girl [. . .] that got the highest tender or something, you know. It's, it's on record . . . and, ah well, well, I don't know why I still

can't and, ah, maybe the Deputy Chairman could, ah, I don't know why the, ah---

Q: She didn't get it?

A: No. Why she was told by the Clerk or whoever that she won the tender because that, well, the position, you know, you know, that it was cash, the tender was cash, cash I think, within the terms of it was cash within some period of time.

Q: A couple of weeks.

A: I could be, I can't remember the exact thing so, he, ah, and why the lady was told that she won it or got the highest tender I don't know what exactly transpired out between her and the clerk there, but ah, she was told that she got the thing, and when she come to collect it, I think, they, they ask, the Clerk asked her for the money, she didn't have the money, she didn't have the money, she said, "Oh, could we, could we pay give you a hundred dollar now, and pay you a hundred dollar a month", and, ah, I think that, I, it was really, I just can't recall now what, how the Clerk explained to the Council why, why he didn't hand it over to the girl, and then it was some days after the thing I think, ah, if I remember it rightly, [his son] went down and inquire about that, inquire about his tender, you know, and ah, you know what's happened here and, ah, so what---

Q: He was the next highest tender?

A: I think he was the next highest one, I think . . . He was the next highest one, I think and he got it, he just told me like, and he got it.

The Chairman later told investigators that his son had since sold the dinghy, but not the outboard, to another man.

The Deputy Chairman could offer no information other than his recollection that the Council put a dinghy and motor up for tender and that one of the Chairman's sons had won the tender and paid well over \$4,000 for them. The third Councillor, who the Chairman said was at the opening of tenders, was unavailable for interviews. The Council Clerk at the time had left the Island and could not be located.

Tenders, anyone?

When CJC investigators visited the Island in 1991, the Council Clerk advised them that she could find no copies of tender documents prior to January 1991. She told investigators that when the former Clerk left the Island

the office was just left to me in a mess. It was a disaster . . . he only did what he had to do. Everything else was left . . . Nothing was updated and paperwork was everywhere. I had to look for things to be able to update books and . . . no filing system. That, that table next to the window was everything out of the cupboards . . . all mixed up, it was unreal.

She said that she did not know if the tender documents had been removed prior to the CJC officers' attendance. She said she would advise the Commission when and if she found them.

The Commission received a folder marked "TENDER APPLICATIONS" later in the year. It contained documents relating to two tenders; one relating to a 16-foot aluminium dinghy and 40 hp outboard motor, and one relating to an 18-foot aluminium boat painted blue.

In relation to the first tender, the file includes what appears to be a handwritten tender notice on a single sheet of paper. Its corners are either torn or taped, as if it had been affixed to a notice board. Dated 1 March, 1 pm, it announced the sale of the above-mentioned items by tender, with applications to close on 1 pm Wednesday 7 March. "Successful applicant will be notified at 1 p.m. on 7/03/90 and have 'till Friday p.m. 9/03/90 to make payment". It is signed by the Council Clerk.

The file bears copies of four tenders. One of the Chairman's sons had made an offer of \$3,500 on 2 March 1990. Another resident had made an offer of \$1,300 dated 2 March 1990. The woman identified by the residents and the Chairman had made the highest offer, \$4,500. Dated 6 March 1990, her letter of offer notes that the money to purchase the items "will be acquired from Trochus Shell, Fishing, and extra fishing venture". A second son of the Council Chairman made an offer of \$4,000. His offer, dated 7 March 1990, states that he was tendering on behalf of the family's company and that he "can make a cash payment of \$3,600-00 almost immediately and hope[d] to be able to raise the balance on Friday".

Resolution 2 in the minutes of a Council meeting dated 6 March 1990 (signed by the Chairman and Deputy Chairman) records that three tenders had been received. It failed to include the lower tender made by one of the Chairman's sons. It states that the tender had been won by the Chairman's son "at a price of \$4,000.00 which is to be paid before he takes possession of the dinghy". This seemed an extraordinary outcome, given that the son's offer was dated 7 March 1990, the day *after* the meeting awarding him the tender.

Council financial records show that on 9 March 1990 the Chairman's son used a cheque from the family's business to buy the dinghy and outboard.

Minutes of a meeting held on 7 August 1990 (signed by the Chairman and Deputy Chairman) include a resolution that "The Council resolved that following advise from the council Clerk that it should be noted that the tender documents for the council's dinghy and out-board motor have been miss-placed".

This documentation lends support to the notion that a woman may have won the tender but been denied the dinghy and outboard because she could not make a cash payment by the required date. But the documents also raise serious doubts about either the tender process or Council record-keeping.

If the timing of the Council resolution naming the winning tender is curious, so is the inclusion in the Council minutes of a resolution noting the missing tender documents. The Council Clerk found the documents in 1991.

The second tender notice in the tender file advertises an "18' aluminium boat painted blue in colour lying on beach at . . . nearest to workshop, in as is where is condition." Dated and signed by the Council Clerk on 4 January 1991, it notes that the tender closed on Thursday 10 January. Unsigned minutes of a Council meeting held on 3 January 1991 record a Council resolution using much the same language.

The only other item in the tender file examined by the Commission was a manilla envelope, apparently unopened. "Dinghy Tender" is typed on the front. CJC financial analysts opened the envelope and found an offer of \$100 for the purchase of the "Council dinghy in AS IS WHERE IS condition . . . as advertised on Public noticeboard last week". The tender letter is dated 10.1.91 and signed by the Chairman's wife.

Handwritten, unsigned minutes for a Council meeting that began on 8 January 1991, adjourned and resumed on 11 January 1991 include resolution 2 to the effect that the Council accepted the Chairman's wife's tender of \$100.00 for the 18' aluminium dinghy.

Other documentation examined by the Commission in the course of investigating this allegation also highlighted problems in the administration of the Council tendering process. The assets register bears several references to the sale of Council assets; either handwritten notations, such as that attached to the reference to the dinghy and outboard, or more formal handwritten entries. For example, the assets register included a section titled "Domestic Furniture Register" to which is attached a handwritten note bearing a list of pieces of furniture. Each of these items is the subject of one of the pages that follow the title page, purportedly showing to whom they were sold. Sixteen items had been sold: seven to the third Councillor's son; six to the Chairman's sister-in-law; one each to the Chairman and the Deputy Chairman; and one each to the man who allegedly ended up with the boat and the Council mechanic. The tender file contained no reference to the sale of any of this furniture.

Another curious aspect of the records concerns the references to tenders in the Council minutes. The Council minutes bear only four references to tenders: two refer to the sale of the dinghy and outboard, a third to the sale of another dinghy; a fourth to the sale of a Council fax machine. Although the Council appears to have sold many items to Island residents, the propriety of the sale of each of the three items referred to was the subject of speculation by Island residents.

Conclusion

The original allegations relating to this investigation were vague, and the statements that residents later gave to CJC investigators, although generally in agreement, disagreed on the detail, if they were able to provide any detail at all. The nub of the matter seemed to be that an Island woman had won a tender for a dinghy and outboard and had been denied the opportunity to pay for and collect the goods. The tender had been won by one of the Chairman's sons.

Investigators found no direct evidence that the Chairman had intervened in the sale of the dinghy, unless the timing of his son's tender and the notification of the result of the tender in the Council's minutes indicates that the Chairman tampered with the tender process. The Council Clerk at the time of the sale could not be located for an interview.

Relevant documentation held by the Council, for example, assets register, tender files, Council minutes, was incomplete, confused, or lacking detail. Nonetheless, it raised concerns about either the manner in which the tender process was conducted or the accuracy of the Council's record-keeping. The announcement of the winning tender, according to the minutes, was made before the advertised close of the tender and before the winning tender had been submitted. Some time later, the Council minutes note that the tender file had been misplaced. Almost a year later, the tender documents were found and given to the CJC.

Further examination of the assets register indicated that the Council had sold numerous items of equipment and furniture to Island residents. The tender file given to the Commission contained documentation relating to two tenders: the dinghy and outboard the subject of this allegation; and a second dinghy that was brought by the Chairman's wife. The second dinghy apparently elicited only one tender, and that appeared not to have been opened.

The only reference to tenders in the Council minutes concerned three that were the subject of speculation by Island residents. The large majority of the people who purchased Council furniture and equipment seemed to be either related to members of the Council or were themselves Councillors.

The circumstances in which the Island resident had been denied her winning tender were also of concern. She apparently could not pay for the dinghy and outboard with cash and proposed a repayment scheme, but the Council had insisted on a cash payment before taking possession. In August 1990 the Chairman won a tender for a Council fax machine. When they visited the Island in March 1991, investigators located the machine in the office attached to the Chairman's store. The Chairman claimed that he could not recall when he took possession of the machine. He said that he had not got around to settling the account. The fact that one tender was made contingent on cash payment, while the other was apparently not, possibly contributed to residents' perceptions that some people received preferential treatment from the Council.

Despite these concerns, in the absence of reliable records about the tender process for the dinghy which the Chairman's son purchased, the investigation disclosed insufficient evidence to establish impropriety on the part of the Chairman or other Councillors.

Allegation 8 That the Chairman interfered with mail to enforce payment of outstanding accounts at his store and to harass electoral opponents

Background

This allegation was one of several forwarded to the Commission by the DFSAIA. In October 1990 a DFSAIA officer had visited the community to establish the genuineness of an Islanders' petition seeking dissolution of the Council.⁹¹ During the course of his investigation, the DFSAIA officer noted many complaints concerning the Council Chairman's alleged use of Council resources for himself, his family and friends. One of the allegations his report noted was: "Tampering with mail for the purposes of withholding Social Security Cheques until accounts were settled at [the Chairman's] store. Also interfering with his opponents' mail".

Notes that the officer kept towards producing his report show that two residents complained that the Chairman was intercepting mail before it was received at the post office, an apparent reference to Social Security cheques that were being held up until accounts at his store were paid. Four other residents, interviewed together, claimed that the Chairman had directed one of the community policemen "to intervene with letters from the dissident group to Solicitors to obtain the letters and burn them".

The "dissident group" probably included residents involved in the CDEP strike and the subsequent move to sack and replace the Council. When that action failed, the group began working with a solicitor to draft a petition to the Governor-in-Council. The submission of this petition ultimately led to the DFSAIA's officer's visit in October 1990.

Withholding cheques

Investigators questioned residents, as well as the Councillors and the Council Clerk about this allegation.

One woman, who had worked in the Chairman's retail store, said that people shopping at the Chairman's store were given a fortnight's credit, and at the end of

⁹¹ See page 44.

each fortnight they had to come in and pay their bills. She said that some people had owed the Chairman "a lot of money" and did not bother to come in to pay their bills. She said that the Chairman would hold back mail belonging to people who had not paid their bills for a couple of months. He would remind them that he had their mail, and "they don't seem to growl about it, they just come and sign and clear their bills and pay half of it and then go again". She said that she did not think that the Chairman opened up their mail. She said that she knew of only one instance in which the Chairman had held back a cheque until the recipient paid her bill.

In some respects, her statement may not have been entirely consistent. She claimed that the Chairman would hold back mail until people signed and cleared their bills, yet she also claimed to know of only one occasion that the Chairman had held back a cheque until the recipient paid her bill.

Her statement was also vague with respect to the documentation that people signed when they cleared their bills. Were they signing over cheques? The Chairman's bank deposit book showed that he regularly deposited social security cheques into his business account⁹² and analysts also examined a loose leaf folder in which the Chairman kept handwritten records of the amounts individual Islanders owed either him or his store each year. Or were the residents signing authorities to make deductions from wages? Some residents complained about deductions being made from wages without specifying what those deductions were for.

The Chairman's employee did not say if the mail the Chairman withheld was kept at the Council office or his shop.

One Council employee told investigators that he had seen a lot of mail tampering and had his own mail interfered with too. He said that he had found some of his mail lying in the Council Clerk's drawer with unopened accounts addressed to the Council. He claimed that it had been there for three months. He went on to say that the mail was addressed to him personally, care of the Island; it was not Council mail. He said that when he complained to the Council Clerk, the Clerk told him that it must have got mixed up with the rest of the mail and then boasted that it was his policy to never open any mail until three months after it was received.

⁹² The Chairman's deposit book shows that during 1989-90 an average of 10-12 Social Security cheques were deposited into his business' account each fortnight. The deposit book itemised the cheques by amount, but did not identify the recipient.

Forging cheques

One couple claimed that some people's cheques had been cashed with forged signatures. The wife blamed the Chairman because he was the first person to see the mail on the Island. She said that mail was delivered to the Chairman's house before it came to the Council office. She said that in 1990 a cheque for over \$1,000, made out to her husband, had been forged and cashed on another Island. She named three others who had suffered similarly. However, two could not be located and the third did not make any such allegation to investigators.

Her husband did not raise the matter the first time he was interviewed. However, later in the year he said that while he was in Cairns a cheque for about \$1700 had been cashed at either the Chairman's store or the IIB store. He offered to give investigators a copy of the cheque, but could not locate it. He said he had no outstanding accounts with the Chairman's store. Asked who he thought may have forged the cheque, he seemed to indicate that there had been rumours that the Chairman and his sons, in particular, the community policeman, were forging cheques: "they reckon he's very good at it, forging". This resident appeared to indicate that he had notified police in Cairns of the forgery and was dismayed at the lack of progress on the matter. Obviously, if he suspected the Chairman's son of being the forger, reporting the matter to the Island community police could have been unwise.

These accounts of the withholding or forgery of cheques were not tied to any particular time frame, though the residents seemed to be suggesting that withholding and/or forging cheques had been going on for some time. Other residents linked mail tampering and even destruction of mail directly to the CDEP strike.

Destruction and tampering

One of the residents who had raised the issue of mail tampering with the DFSAIA did not comment on what had occurred prior to the CDEP strike. However, he said that after the strike began the Chairman

... used to check all the mails out and check all the mails in and he continued to check them and even the mail goes out.

Q: What do you mean, by check, open them up does he?

A: Yes.

Q: How did you know that?

A: Oh, the car would pull up there, and he'd take the mail in and he sort them out there and anybody got debts in the store, like, if any pensioners, he hold their cheques.

- Q: He just kept the cheque, the pension cheque?
A: Yes, and they come, he signs and he makes them sign, and he just gets whatever, you know.
Q: What about credit at the store, was he giving credit at the store, [. . .] the Chairman?
A: Yes.

This resident's statement may suggest that the Chairman's alleged tampering of mail was in retaliation for the political unrest on the Island. But his statement could equally suggest a continuation of the practice described by the Chairman's former employee.⁹³

Another resident linked mail tampering directly with the CDEP strike. Consistent with his statement to the DFSAIA officer, he told CJC investigators that the Chairman had instructed a community police officer to destroy the mail of the people who were on strike.

Investigators were able to interview the community police officer in question during their second visit to the Island. His inability to name with any certainty the time he was a community policeman, his confusion regarding to whom he reported, and his apparent belief that the Council Clerk was a Councillor could cast some doubt on the value of his statement, especially since key parts could not be transcribed. However, those parts of his interview that could be understood seemed to indicate that the Council Clerk had been angered by the CDEP strike and had jokingly instructed him to destroy the strikers' mail. Not wanting to "take any chances", he had warned other residents. This warning may have lead to rumour that mail had actually been destroyed, rumour that eventually implicated the Chairman, as the other residents had alleged to the DFSAIA officer.

The community police officer told investigators that he did not think that the other community police officer received any instruction from the Clerk. He said that the Clerk had made only the one comment to him, in the office. Nobody else had been present.

⁹³ The allegation that the Chairman was withholding cheques was not the only way suggested that the Chairman encouraged residents to settle their debts at his store. According to another resident, one of the leaders of the CDEP strike, some people would receive no CDEP wages because they never turned up for work. Having received no money, they would tell the Chairman that they could not pay for the goods they had booked up at his store, so the Chairman would ring up the Council Clerk and tell him to pay them so they could come down to the Chairman's store and clear up their debts. Another resident claimed that the Chairman would open the shop up at 6 o'clock on the CDEP payday so that Islanders could pay their bills, "because that was when the government money was handed out".

The Commission was unable to locate the second police officer, the former Council Clerk, and the community police officer who was the Chairman's son. The Deputy Chairman told investigators that he had heard rumours about the Chairman tampering with mail and withholding Society Security cheques, but he stressed they were only rumours. The Chairman denied interfering with the mail, instructing the Island police to open the mail, or having anything to do with withholding Social Security cheques.

Procedures for handling mail

No doubt the manner in which mail was handled owed much to procedures that had been in place before the community achieved self-government. Although residents' accounts were vague, they generally agreed that it was primarily the responsibility of the Council. One resident told investigators that incoming mail went directly to the Chairman's residence. Another did not state specifically where the mail was sorted, but he believed that the Chairman himself would "take the mail in" and sort it out.

Asked if the Council Clerk interfered with the mail, the community police officer had said that all the mail that came in was checked by the Chairman. The normal procedure, he said, was that after it came off the plane he would deliver it to the Chairman's office; mail leaving the Island went from the Council office. However, he did not say if the office he was referring to was at the Chairman's shop or the Council. He said that there had been a letter box outside the Council office for about a year. However, Council employees, presumably the Clerk, had the key, and they would clear the box before sending it off to the airstrip.

The new Council Clerk, who assumed the position in December 1990, more than a year after the CDEP strike began, said that all mail for the Island came to the Council office, including Social Security cheques. She said the usual practice was that Council staff put all the letters out on the table, from where people would come and take them. She seemed to be saying that the mail came in on Tuesdays, Thursdays and Saturdays, with the Saturday's mail bag opened on Mondays. Her husband confirmed that account.

Even if mail was being delivered directly to the Council office, which was apparently the practice under the new Council Clerk, the fact that it was first received and then sorted by Council staff would indicate that both the Council Chairman and the Council Clerk would have had the opportunity to review its contents. But given the apparent frequency of his business trips from the Island, whether the Chairman could have regularly handled and sorted the mail is another

matter. His alleged frequent manipulation of the mail could have been achieved only with the cooperation of Council staff, perhaps the Clerk.

Even when the mail was lodged in a mailbox, Council staff would also have the opportunity to handle and sort through it before it was dispatched to Thursday Island.

Conclusion

This allegation again highlighted some of the persistent difficulties with conducting these investigations. Key witnesses could not be located or were unavailable for interviews. Some witnesses' statements were vague or contradictory.

Although lacking in detail and perhaps inconsistent in parts, the statement made by the Chairman's former shop assistant indicated that the Chairman could have been withholding mail, and perhaps Social Security cheques, to ensure that residents who owed money to his store honoured their debts.

Two residents who claimed that cheques were being forged, perhaps by the Chairman or his sons, identified a particular cheque, but they could not supply a copy of the cheque and their accounts of the particulars of the cheque did not assist in taking the matter further. Both of these residents admitted that their information concerning the forging of cheques was based on rumour.

Some residents claimed that the withholding of mail or forgery had been going on for some time. However, at least one resident suggested that the withholding of mail began after the CDEP strike, though he did not appear to linking the withholding of cheques to retaliatory measures against the CDEP strikers or the dissident group.

Only one resident made such a claim. He said that the Chairman had instructed a community policeman to destroy the mail belonging to CDEP strikers. He did not say that mail had actually been destroyed. However, the community police officer he identified indicated that the Council Clerk, not the Chairman, had *joked* about destroying mail and, not taking any chances, he had apparently warned other residents. This may have begun a rumour about the destruction of mail, similar to the rumours about forgery.

In view of the conflicting statements and lack of documentary evidence, there was insufficient evidence to substantiate the allegations of mail-tampering and forgery against the Chairman.

However, the witnesses' statements indicated that the procedures in place for the handling of mail before and after the CDEP strike, and apparently still today, placed great responsibility on the Council Clerk and relied heavily on the Clerk's integrity. It is easy to understand why residents who might not have confidence in the Clerk could be persuaded that mail was being interfered with. The fact that the Council, through the Council Clerk, acts as a gatekeeper for the passage of mail to and from the Island is another example of the tremendous power that the Council exerts on Island life.

Beyond the Clerk's responsibility in receiving and sorting mail, the Council's procedures also raise the question of the controls in place to prevent the wrong person taking mail after it had been laid out by the Clerk. This aspect of the mail distribution procedure could well have afforded others the opportunity to steal and forge cheques.

Allegation 9 That there were irregularities in the wages paid

Background

When interviewed by CJC investigators concerning the allegations that originally prompted this investigation, a former Council member, one of the leaders of the CDEP strike and the subsequent move to elect a new Council,⁹⁴ made several new allegations concerning the operations of the Council. Some of those new allegations concerned the oldest of the Council Chairman's sons.

The first time he was interviewed, the former Councillor said that the son in question had been paid under the CDEP program when he was away from the Island. He went on to say that when the son's wife left him and found herself a job, the son had become eligible for only single person's pay on the CDEP. He said that

[the Chairman] saw that the CDEP was too small for his son so he put him on the police pay, however, he never ever did one day's police work. At the time he was working the swamp.

Interviewed later during the year, the former Councillor said that an audit report had noted that the son had been overpaid by \$700.

Police work

Commission investigators received similar comments from other residents, though none mentioned the overpayment in the audit report. Several residents claimed to know that the son had been paid as a policeman but had never actually done any police work. One said that the son was being paid police wages when he was away from the Island on holidays.

However, no resident could give the allegation much detail. In particular, they did not identify the period that the son may have been receiving wages while away from the Island or the period during which he was alleged to have been paid the policeman's wages without performing policemen's duties. Nor could they provide much detail about the work the son was supposed to have performed. One resident said that the son had driven the Council taxi, another that he had worked on "other

⁹⁴ See page 37.

projects". Still another said that he had been enrolled with him in the mechanical training program at the Council workshop. However, in common with several others, he believed that the son did no work for the community at all. If correct, this would have explained why others had difficulty naming his line of work.

Residents' failure to provide those details was not unusual. When asked to name the *current* community policemen, several stated that there were two: another of the Chairman's sons, plus another man. Investigators were unable to interview the other son, however they were able to interview the second man. He, however, was no longer a community policeman and had difficulty in naming the time that he had been one.

An officer without a uniform

Investigators located the Chairman's son (the subject of this allegation) in Cairns. He told investigators that he had suffered a heart attack on Anzac Day 1990, whereupon he had been flown to a hospital on the mainland. He said that he had since been recuperating while receiving an invalid's pension. He said that before his hospitalisation he had been working for the Council as a "plant operator"; his duties were to "just shift things, the sand for building and shift the earth". He said that at the time of the CDEP strike, he had been working on another Island and when he returned home on a week's leave he had been asked to take the job as the plant operator.

Investigators questioned him about his time as a police officer:

- Q: . . . Were you ever a police officer there at all? You were never a police officer?
- A: Oh, yeah, but I don't wear the uniform.
- Q: Did you? Well, when were you a police officer, then?
- A: Oh---
- Q: For how long?
- A: About a year I think, or half a year.
- Q: Why was that, was a, why did you become a police officer?
- A: I don't know.
- Q: Well, how, were there three police officers then? [. . .] and your brother and then yourself?
- A: No, no. I think there was, um, oh, I can't answer that question.
- Q: Was that while you were working as a plant operator too? Were you still working the machinery?
- A: No, no.

The absence of a uniform may have reinforced residents' suspicion that he did not perform community police duties.

Although the Chairman's son could remember being a policeman for "about a year . . . or half a year", the Chairman himself said that this son had "never been a policeman". He said that this son had been working on the CDEP and when it finished he moved across onto the dole. He said that the son had gone to another Island to work under a TAFE training scheme and when he came back to the Island he operated a machine for the Council.

Payroll records

Council payroll records for the period July 1987 through June 1990 showed the Chairman's son had been receiving wages for various kinds of employment (see Table 1).

Table 1: Council payroll records for the Chairman's son during the period July 1987 - June 1990

1 July 1987 - 9 June 1988	paid as a policeman for hours varying between 40 and 80 per fortnight, mainly 40 hours from February 1988 onwards. His hourly rate was \$7.94 through May 1988, then at varying rates. There is no indication as to why the rate varied.
1 January 1988 - 15 June 1988	paid as an airstrip worker for 40 hours per fortnight at a fixed rate of \$345 per fortnight (\$8.625 per hour) until 4 May 1988, then at \$8.12 per hour. There is no indication why the rate varied. His total pay for the 1987/88 tax year was \$15,182.19.
3 June 1988 - 4 July 1988	purportedly covering this period, paid on the 9 June 1988 for 120 hours (three weeks) holiday at \$6.82375 per hour plus 17.5% loading for a total of \$962.14 gross. Again, there is no indication why the rate varies from those paid earlier.
1 July 1988 - 16 June 1989	paid as a labourer to work on airstrip maintenance, beginning with 40 hours during the first fortnight and averaging 80 hours per fortnight thereafter at the rate of \$8.12 per hour to 2 December 1988 then at \$7.8525 per hour thereafter. There is a four-week gap from the week ending 10 February 1989 - week ending 10 March 1989, when he was not paid by the Council. His total pay for the 1988/89 tax year was \$12,090.26.
3 November 1989 - 4 May 1990	paid for unspecified work for an average of 80 hours per fortnight at a rate of \$8/hour.

15 June 1990

paid 80 hours holiday pay (*without* 17.5% loading) plus 16 hours sick leave at \$8.00/hour, for a total of \$768.00 gross. The records do not indicate the period this payment covered.

His total pay during the 1989/90 tax year was \$9,128.00.

Table 1 shows that the Chairman's son was not paid for the following periods:

- the week ending 17 February - 10 March 1989
- 17 June - 2 November 1989 (the CDEP strike began in September 1989)
- period beginning some time after 5 May 1990, depending on the time covered by the holiday and sick leave payment on 15 June

In a report to the Council dated 15 March 1989, the Auditor-General referred to the following overpayment of wages to the Chairman's son during the 1987/88 financial year:

- 3 June 1988---cheque for \$487.14 (gross \$962.14) for holiday pay, when the employee was being paid casual rates as an Island policeman and therefore not eligible for holiday pay.
- 15 June 1988---cash in the amount of \$292.90 (gross \$324.80) when the employee was supposedly on 4 weeks' holidays.

The Auditor-General noted that there were no timesheets available for employees paid out of the Council's SGFA fund. He wrote that the Council Clerk had apparently been unaware that employees on casual rates were ineligible for holiday pay but could offer no explanation as to why the Chairman's son was paid whilst on holidays. The Auditor-General recommended that the above overpayments totalling \$780.04 be presented to the Council for recovery action.

In addition to the overpayments noted by the Auditor-General, the records show another possible anomaly. The Chairman's son said that he had not worked since 25 April 1990 when he suffered a heart attack and was medically evacuated to the mainland. Yet payroll records show that he was paid for a 40-hour week ending 4 May 1990. Analysts could not establish if he was eligible for the holiday and sick leave.

Beyond these observations regarding overpayments, Council payroll records presented a bewildering picture of Council payroll. They offered no explanation, for example, for the variation in the hourly rate paid to the employee. In general, his hourly rate had suffered a steady decline since 1988, even though the nature of employment did not seem to change greatly. Again, if he was entitled to the

holiday leave paid on 15 June 1990, he apparently failed to receive the usual 17.5% loading.⁹⁵

Investigators were able to locate only one sign-on/sign-off book, covering July 1987–October 1988, and the Chairman's son's name did not appear there. Furthermore, although he was paid fairly consistently during the period, the Council did not hold timesheets for all of his employment. The lack of timesheets to support payroll had been identified by the Auditor-General in his reports.

Neither Council records nor statements made by residents helped in establishing the identity of the son's supervisors or the CDEP clerk. One of the Chairman's other sons, who had been a community policeman since 1987, could not be located for an interview. There was some suggestion that the former Council clerk had handled wages and CDEP payments, but he had left the Island late in 1990 and could not be located. Although many residents thought the Chairman and the Council Clerk enjoyed a close, mutually beneficial relationship and that the Chairman operated the Council as a benefit for his family and friends, investigators could find no evidence to establish the Chairman's role in the preparation of wages or the allocation of jobs.

Conclusion

The allegations that prompted the Commission's interest in these matters suggested two irregularities in the Chairman's sons wages: that the son had received wages when he had been absent from the Island, presumably with the sanction of the Council Clerk and/or the Council Chairman; and that the Chairman had used his influence to supplement the son's wages by appointing him a policeman, in which position he had not performed any police duties.

The original complainant did not name the time during which these actions had taken place. Although other residents generally supported the notion that the son had received the wages of a community policeman but had not performed any related duties, they also could not say when the activity had occurred. Furthermore, there was some disagreement about the kind of work he had performed, if they thought he had done any work at all.

⁹⁵ These were not the only irregularities analysts found during their examination of Council payroll records. For example, during the financial years 1987/88 – 1989/90 another of the Council Chairman's sons was apparently the subject of two parallel payroll cards that although never totalling more than 80 hours a fortnight at various times used different combinations of his first names and initials.

With respect to the first issue, the Chairman's son admitted he had been away from the Island for certain periods. Payroll records for 1987-1990 showed two periods during which he did not receive a wage. At least one of those periods was consistent with both the Chairman's and the son's accounts of his absence from the Island.

With respect to the second issue, the Chairman's son said that he had been a police officer for 6-12 months. He did not know why he became a police officer. He said he did not wear a police officer's uniform. His father, the Council Chairman, denied that the son had ever been employed as a policeman.

Council payroll records show that the Chairman's son was paid as a policeman on varying hours and at varying rates of pay from 1 July 1987 - 9 June 1988. However, investigators were not able to locate a duty statement to establish the kinds of duties performed by a community police officer. Furthermore, Council's payroll records were inconsistent or incomplete, especially so far as the Chairman's son was concerned. Investigators were unable to establish with any certainty the identity of the son's supervisor(s) or the wages clerk. A key Council employee of the time, the Council Clerk, could not be located. There was no information to establish the role, if any, that the Council Chairman may have played in allocating jobs.

Given these difficulties, there was insufficient evidence to substantiate the allegation.

Despite being unable to find evidence to support the allegations, the information presented to the Commission did raise serious concerns regarding aspects of the Council's management and operations, in particular, the apparent failure to consistently maintain timesheets and a poorly managed payroll system.

CHAPTER 3

Island Council B

Pearls and families

In the early part of the century, the Island served by Island Council B was fairly typical of Torres Strait communities, its residents enjoying a combination of gardening and hunting, supplemented by cash obtained through the Island's involvement in the growing pearling industry. Pearling seems to have played some part in the reordering of the Island's social structure, as the clans were eclipsed and replaced by three groups of Islanders, each headed by a *mamoose*, or chief, and later a Councillor, and each running its own company boat and occupying its own distinct section of the village that had grown around the new church. The later rise to prominence of particular families on the Island similarly owed a lot to the success of individuals within those families in the pearling industry.

One family, whose members had earlier been distributed among the three groups by a form of adoption, gained particularly from the emergence of the families as the basic units of social organisation. Under the strong leadership of its senior member, who could call on many of its members to work on the family's boats, its influence and control over Island affairs increased in proportion to its wealth.

The senior family member held power on the Island through his control of pearling, the church, and the Council. By the late 1950s, he held the positions of Council Chairman and churchwarden, skippered his own boat, and managed a further eight. The two other Councillors, who were also skippers, were his brother and his son. Another brother was the community police sergeant, store manager and parish secretary. The wives of the police sergeant and another skipper-brother were the officers of the Island's Mothers' Union. The Island court sat in the home of one of the Councillors. Once in charge of elections on the Island, the senior family member was able to reject nominations. In due course Council office rarely if ever left the family.

The Council's cancellation of the traditional system of land tenure in the 1950s, in favour of allocation according to need, further reinforced the family's control over everyday life. By requiring all able-bodied men to work and simultaneously blocking emigration to the mainland, it ensured a source of labour for its pearling operations.

When the pearling industry declined, the family's luggers were converted to crayfishing. In the 1980s members of the family, possibly by virtue of their

positions with the Council, were able to secure grants and assistance from government agencies interested in developing Islander-based enterprises.

The family continued to dominate the Island's political life. Its leader had several brothers and many children, who in turn had many children themselves, and their marriages with other families eventually meant that most Islanders could claim some kind of kinship with the original leader. Rather than diffusing the family's influence, it may have merely reorganised and concentrated it into certain branches of the family, for the Island's political structure offered a finite number of positions. In these circumstances, claims and deferences normally expressed through Island custom had to be channelled through the Island's political structure as well.

Upon the death of the long-serving Council Chairman in the 1970s, his brother assumed the position. This man also died and was in turn succeeded by the original leader's son, the present-day Chairman, who, apart from a short period when the present Deputy Chairman's father held sway, has held the position since the introduction of self-government under the Community Services (Torres Strait) Act.

A sphere of influence

At the time of the Commission's first visit to the Island, the Chairman claimed to have held his position for 13-14 years. His "nephew" had been elected Deputy Chairman twice. The third Councillor was one of the Chairman's brothers and also the Deputy Chairman's brother-in-law. The Council Clerk and Postmaster was the Deputy Chairman's wife. She had held that position for 13-14 years. The Councillors and their immediate families were involved in the majority of businesses on the Island and appeared to have the best forms of employment. The Chairman was a CDEP project officer, the Deputy Chairman a CDEP supervisor, and the third Councillor the community police sergeant. Other close relatives of the Chairman held positions in the Council office or with Council management. The standard of housing enjoyed by Councillors and their families appeared generally higher than that of other residents.

At the time referred to in the complaints, the Island boasted four shops: the IIB store, a retail shop jointly operated by the wives of the Chairman and Deputy Chairman, and a takeaway store operated by the Deputy Chairman's brother. The only establishment that did not fit this pattern was a large supermarket-style store operated by two residents who were in contact with the person who would first bring this Council to the Commission's notice.

One of the better situations in the Torres Strait

Like their counterparts in other Torres Strait communities, when the Community Services (Torres Strait) Act took effect, the Clerk and the Councillors were not fully conversant with the range of responsibilities their new positions would involve and, consequently, were heavily dependent on the training afforded by the then Department of Community Services and the periodic visits that its Transition Team made.

Early audits drew unfavourable comment in several areas, e.g., unavailable or deficient paysheets, lack of documentation for voucher payments, lack of an assets register, lack of Council minutes, failure to collect outstanding rents, shortages in canteen revenues. These criticisms were common to many Councils.

But Transition Team consultants working with the Council were able to report positively on some aspects of Council operations. For example, in September 1987, a Transition Team report noted

[t]he Clerks at [Island Council B] are efficient and are well aware of their duties and responsibilities. Some problems exist in wages and the obtaining of certification and approval signatures. Fund ledgers were explained in full and no foreseeable problems are expected in their upkeep.

In April 1988 the Transition Team consultant reported that "[o]verall the [Council] is running well" and in May, that, apart from problems with the canteen, "the work situation is good . . . "

But the optimistic tone of the Transition Team reports was not reflected in the Auditor-General's reports. By March 1989 the Auditor-General had issued qualified statements for the current period, as well two of the three preceding financial periods, and had registered his dissatisfaction with the "most unsatisfactory state of the Council's financial administration and accounting records". He identified problems concerning, for example, cash security, office security, bankings, payment vouchers, beer canteen shortages, tenders, assets purchases, payroll, and general record keeping.

Nonetheless, in July 1989, after noting problems with minutes, canteen shortages, and voucher preparation, but judging that time-sheets, payroll sheets and individual pay records were being maintained to audit standards, the Transition Team consultant wrote that the staff had "[o]verall . . . adequate knowledge of and satisfactory performance of the functions and responsibilities of a local government body" and in August, that

[p]ayroll sheets and wages payments are prepared to audit requirements. Wages reconciled at each pay period. Minutes are adequate . . . I would expect that the

Council's accounts and financial records for the financial year 1988/89 should receive an unqualified report from the Auditor-General.

In fact, despite identifying problems in areas such as cash security, payment vouchers, wage preparation, and assets registration, the Auditor-General was able to issue an unqualified statement of accounts for the succeeding period. In his view, the

Council's position [had] improved considerably since the last audit due mainly to the efforts of the Department of Community Services Consultant who performed many of the accounting functions of the Council while also training the Council Clerks. The Council Clerk also showed an improved performance level in the keeping of Council books and records. It is considered that continued assistance and training should be provided by the Department of Family Services and Aboriginal and Islander Affairs particularly in the areas reported upon herewith.

The Transition Team consultants reflected that praise on the Council workers. In February 1990 they wrote that "[o]verall, the Council administration staff are relatively competent, and, with a few exceptions, the majority of work is current", and, in March, that the Council "continues to be a well-managed, and administered, local government council".

Speaking later to Commission investigators, a DFSAIA officer said that despite a number of concerns at various times

I would say that, um, generally speaking, as far as an overall administration is concerned, that [Island Council B] is one of the better, um, situations in the Torres Strait . . .

Complaints made to the CJC

In August 1990 the Commission received a letter listing various complaints concerning Island B. The majority of those complaints concerned the elected Council and its administration. The complainant was a regular visitor to the Island and had many contacts there. He told the Commission that his information came from "people living on the Island who are afraid to be named and also business people from [. . .] Island".

A short time later Commission investigators travelled to the region to interview two residents known to the complainant. They repeated many of the same allegations, although it became apparent to investigators that some matters appeared to be "Island talk" or the product of hearsay conversations. Investigators also interviewed a local political identity who made further allegations in relation to the Council. His information also appeared to have come from the two residents

interviewed earlier. The consultant who figured prominently in the allegations made against Island Council A also spoke about Island Council B. His information seemed to have come from the political identity.

A visit to the Island

Investigators visited this and several other Islands in early 1991. It had taken some time to finalise arrangements for the trip. The need to arrive at the islands unannounced, an integral part of the investigation strategy, effectively reduced the options so far as transportation and accommodation were concerned. Moreover, some Islands were apparently unable to provide accommodation. After some lengthy inquiries, the Commission secured the use of a vessel funded by the Commonwealth Government and operated by the Queensland Government. This vessel would take investigators to the Island in the course of its regular patrols.

The vessel anchored off Island B late one afternoon and investigators journeyed to the shore by tender. They were met by community police and introduced to the Deputy Chairman, the Council Clerk and other office staff. While some officers began interviewing residents, others served Notices to Produce in respect of the Council Clerk's business, the takeaway store, and the Council. The Clerk and other staff searched the Council office to locate documents on the Clerk's business.

Investigators conducted more interviews the following day. They again attended the Council office and took possession of a large number of documents. During the course of that visit, an adviser affiliated with the Chairman and Deputy Chairman's businesses and the ICC entered the office and began to comment on the presence of the CJC officers. He demanded to know how long investigators would be in the area and if they intended to interview him. He complained about the presence of the motor vessel, claiming it should be at another Island for the beginning of the prawning season. Appearing to have free access to Council phones and facilities, he made numerous calls to Canberra and Brisbane and told investigators that they would lose use of the vessel if they were not off the Island by that afternoon.

In fact, late in the morning, investigators were forced to negotiate with the captain of the vessel and were granted continued access to and use of the vessel on the provision that it departed from the Island at 4:00 pm that afternoon.

When the Chairman and third Councillor returned from Thursday Island later that day the advisor called them into the Council office and said that he wanted a Council meeting. He appeared to investigators to be in charge of proceedings.

Prior to investigators leaving the Island, he was seen dictating a letter to one of the assistant clerks.

Interviews with residents

The sudden departure from the Island meant that investigators had insufficient time to locate some potential witnesses and to conduct interviews with all of those who could be located. Moreover, the interviews conducted after their travel schedule changed had to be rushed.

This was not the only problem they encountered. Many Island residents appeared frightened to speak openly to the investigators. Those who were not closely related to the Councillors spoke haltingly or refused to comment on certain issues dealing with the Council's operations. Many spoke softly so as not to be overheard. For example, one man was interviewed as his wife stood at the door to make sure no-one was listening. Another man agreed to speak to investigators on the beach so that he could be sure no-one overheard the conversation. The resulting poor quality tape recordings compounded the difficulties transcribers later experienced in understanding the interviewees' accents.

Residents apparently feared retribution by the Council once investigators left the Island. Investigators were told that given the extent of the Council's influence over everyday affairs, retribution could take any of several forms. Some examples given were: their houses might not be repaired, they could be denied occupancy of a house, and loans for the purchase of dinghies through ATSIC might not be approved. As the complainant had noted in his letter to the Commission, "all aspects of the people of [the Island's] daily life---thoughts, gossip, where they are allowed to spend their money, where they work, their children's schooling is totally ruled by the Council".

Documentary evidence

When investigators entered the Council office to take possession of documentary evidence relating to the allegations, they found an administration in some disarray. The records system left a lot to be desired, and there appeared to be no organised form of filing. Books and documentation were on top of cupboards and over the floor. Records from the Council Clerk's business were interspersed with Council records. Group certificates belonging to residents and relating to the previous two and three years were found on the floor behind the filing cabinets. Documents relating to one particular matter were located in various rooms and in different

locations instead of being filed together. Obtaining Council records relating to the matters the Commission was investigating was not a simple task.

Investigators' experience with documentary evidence from the Island was more or less repeated when they later attempted to secure records relating to the Chairman's and Deputy Chairman's businesses. The accountant for the Chairman and Deputy Chairman, who worked as a sole employee/operator running a taxi/spare parts/tyre repair/accounting business, kept an extremely poor filing system. He told investigators that documentation relating to the companies in which they were interested had been lost or misplaced.

A flying visit

In October 1992 CJC officers again visited the Island, this time in conjunction with the Police Air Wing. Community police met investigators and QPS staff at the airstrip and drove them to the Council office to meet the Chairman.

The Chairman agreed to investigators interviewing Council staff. No other residents came forward and, handicapped by lack of their own transport, investigators could not travel out of the village to locate them. After interviewing the Chairman, Deputy Chairman, and Council Clerk, Commission investigators left for a tour of the Island in the company of the Chairman. He concluded the tour at the airstrip, thanked investigators for their interest, and left.

Allegation 1 That the Council Clerk was making unauthorised deductions from wages paid by the Council

Background

When interviewed by CJC investigators in 1990, the complainant's contacts made a host of allegations concerning the activities of the Councillors and Council employees. They also spoke extensively about employment on the Island, the work performed by Council employees, and the management of Council payroll.

They said that the Council paid its employees in cash and, until shortly before they were interviewed, the Council Clerk, who was also the Deputy Chairman's wife, had sole responsibility for preparing the payroll. The Council Clerk, they said, regularly deducted rates and rents from employees' wages, but the pay envelopes did not contain receipts for rent or rates. Furthermore, she had also been deducting monies for beer taken on credit from the Council canteen---the Council allowed residents as much credit as they wanted for beer, they said---and monies for goods purchased at the store she operated with the Council Chairman's wife. No of forms were used to authorise the deductions.⁹⁶ Some people with spouses and children had been taking home as little as \$46 to last a fortnight.

The complainant's contacts said that the deductions were not being shown on the payslips. The only indication that deductions may have been made were handwritten notations on the backs of pay envelopes, notations so small as to be barely legible.

They went on to suggest that the practice of making the deductions without the authority forms had apparently stopped, but in its place the Clerk was now making people sign authority forms before they were able to shop in her store. The IIB store was doing similarly.

The complainant's contacts, who ran a rival store, said that residents had approached them to petition ATSIC to change their mode of pay from cash to cheque and to stop the use of authority forms. Their shop, they claimed, did not use authority forms unless a resident had a outstanding bill more than three months old.

⁹⁶ Under Ministerial Directions, Councils were not permitted to sell beer on credit. See Allegation 5, page 144 ff.

Interviews with residents

No residents who spoke to CJC investigators raised the issue of illegal deductions from their pays. However, some did confirm that deductions were being made, for example, for beer purchased on credit at the canteen, for rent, for services such as welding provided by Council employees, and for parts that the Council mechanic may have ordered to repair an individual's vehicle or machinery. No-one spoke of deductions being made for goods purchased at the Council Clerk's retail store. One resident who worked in the Council office told investigators that people were always asking for credit, especially for beer: "Sometimes they'd pay cash, but we had to get it from their pay".

A cash deduction system

When investigators visited the Island in early 1991, they took possession of all documents in the Council office that appeared relevant to Council payroll, as well as related documentation from both the retail store operated by the Chairman's and Deputy Chairman's wives and the takeaway store operated by the Deputy Chairman's brother.

The Council's payroll sheets for the period July 1989 to early 1991 showed that deductions had been made for payments to banks, insurance companies, and the ambulance service, and for rent and rates. They disclosed no deductions from any employee's pay for debts owing to the Council Clerk's retail store or the takeaway store. However, among the documents that came from the Council was a file containing some 113 authorities to deduct covering the period July 1990 to October 1990. The majority of these authorities related to monies owed to the Council Clerk's retail store and the takeaway shop. Some explanation for these authorities to deduct may be found in correspondence prepared by the DCS Transition and Local Government Development Team.

In August 1989 a Transition Team consultant reporting on a three-day visit to the Island wrote, in part, that all payroll sheets and wages payments were being prepared to audit requirements, wages were being reconciled at each pay period, and the Clerk was currently preparing the 1988/89 group certificates. He concluded by anticipating that the Council's accounts and financial records for the 1988/89 financial year would receive an unqualified report from the Auditor-General. A copy of the Transition Team consultant's report was forwarded to the Council Chairman with a covering letter.

The copy of the cover letter held in DFSAIA's files bears a handwritten notation to the Transition Team's principal consultant asking "that on next visit the matter of unauthorised deductions from wages (if any) be closely looked at. Some concerns have been expressed by community residents".

In early September, the Transition consultant responded in writing that all wage deductions recorded on the payroll sheets were in accordance with Ministerial Direction 5.34 and were supported by signed Wage Deduction Authority Forms. He went on to say that

[h]owever, the Council Clerk also admitted to operating a cash deduction system for Council and CDEP employees. Under this system, amounts of cash (relating to outstanding credit accounts at the IIB Store, and other private stores on the Island) are deducted from wages payments, and an appropriate notation is made on the Pay Envelope. The Council Clerk assured me that the employees using this system gave their verbal consent to each deduction.

The Transition consultant apparently informed the Clerk that such a practice contravened Ministerial Directions and that all wage deductions should be supported by signed authority forms.⁹⁷

This advice confirmed residents' claims that money owed to businesses operated by Councillors' relatives were being deducted from pay. But it did not explain why the only authorities to deduct held by the Council covered a period beginning some 12 months after the Transition Team consultant advised the Clerk on the matter and ending some four months before investigators visited the Island and took possession of documentation.

The consultant's report went some way to explaining how the Clerk was making the deductions without their being noted on the payroll sheets. Evidently, the Clerk would subtract amounts owed to the retail businesses after the pays had been converted to cash. The deducted cash could then be turned over directly to the retailers, or in the case of the Clerk, the store she ran in conjunction with the Chairman's wife. While this may have saved the Clerk/retailer paperwork, it left both the Council and employees with a less than satisfactory record, and probably

⁹⁷ This may not have been the first time the practice of making deductions came to the notice of the Department. In April 1988, responding to an unfavourable report on the operation of the beer canteen, the Chairman wrote that "a system of credit sales was operating where employees on Council wages or CDEP wages were given credit until pay day when the money was automatically deducted from their wages". The Chairman added that on the advice of the Auditor-General the Council had apparently decided that this practice must cease and all canteen sales would be paid for in full.

accounted for the Transition Team consultant's mistaken observation that wages were being prepared to audit requirements.

The payroll sheets would have shown employees when rent, rates, or other deductions were made. But if, for example, they were buying beer on credit, or buying goods on credit from the retail stores, they would have had little or no documentation to show how much they owed or if, in fact, they had paid their outstanding bills. The Clerk/retailer kept a credit book identifying how much money was owed to her store, but investigators found no documentation among the files from either her store or the takeaway shop to indicate that monies deducted from employees' pays had actually been received and credited against outstanding loans.

Conclusion

From both the documentary evidence and statements made by residents, there can be no doubt that the Council did make deductions from its employees' cash wages. In contravention of the Ministerial Directions, beer bought on credit from the canteen had long been deducted from employees' wages. The evidence suggests that the Clerk had been making deductions using a verbal authority, and, consistent with the statement made by the complainant's contacts, using only a handwritten notation on the pay envelope to indicate that the deductions had been made. According to the Transition Team, in September 1989 the Clerk had been advised that failure to use the requisite authorities contravened Ministerial Directions. Perhaps the Clerk should also have been advised to use a more appropriate method to notify employees when deductions had been made.

Some residents had previously complained to the Department about "unauthorised" wage deductions. The fact that no employee raised the matter with CJC investigators does not necessarily indicate that the practice had ceased. However, the only "complaint" as such came from the owners of a store that competed with those operated by Councillors' relatives. Their statement would indicate that they resorted to using authorities to deduct when patrons' outstanding bills were overdue by three months, whereas the Clerk's, and perhaps other retailers' stores, if they had used written authorities to deduct at all, used them as a matter of course.

The decision to use the authorities to deduct would be a matter for the proprietors of each store, providing they came to an appropriate arrangement with the Council Clerk. However, the lines of propriety blur when the proprietor of the store and the Clerk are the same person. They are almost negligible when the Council Clerk also prepares payroll. Certainly, the conflict of interest involved in such an

arrangement creates the opportunity for the misappropriation of monies or, at the least, a situation where the integrity of the Clerk/proprietor is at risk.

The Commission found no evidence to suggest that monies were stolen or misappropriated in the case at hand. But given the state of both the Council's records and the retail store's records, employees, or even the Council or the stores, may have lost money due to inadequate administrative and accounting procedures.

Allegation 2 That there were "ghost-workers" on the Council payroll

Background

Finding employment in the Torres Strait can be difficult. There are few employers apart from Government, and the income generated by fishing or trochus hunting can be unreliable. For many years, those residents who did not have employment received unemployment benefits. However, with the introduction of the CDEP Scheme,⁹⁸ all residents who were able to work in effect became employees of the Council, performing a number of hours work for the community commensurate with the benefits they would otherwise receive through the Department of Social Security.

The management of the CDEP Scheme has proved to be a thorny and potentially divisive issue in a number of communities. Although not generating the same intensity of feeling as in some other communities, on Island B the Scheme was also under scrutiny.

The first issue regarding the CDEP Scheme on Island B concerned CDEP "ghost-workers" on the Council's payroll. Two of the complainant's Island contacts, who were interviewed in 1990, told investigators that members of the Council were collecting the wages of fictitious people whose names were entered as CDEP workers on the Council payroll.

They told investigators they had approached ATSIC about the matter, and it was an ATSIC representative who had informed them of the term "ghost-workers". Asked whom they had seen at ATSIC, the residents said: "Oh, he, he was, he didn't want us, he, he told us confidential, saying don't tell anybody, you know, that this was happening".

⁹⁸ The CDEP (Community Development Employment Projects) Scheme is a Commonwealth Government scheme designed to provide positive alternatives to social security (including unemployment) benefits. The scheme allows a community to channel its members' social security entitlements into "productive employment" in and for their community. What constitutes "productive employment" is largely a matter for each community. The scheme is now managed by ATSIC.

Who worked on the CDEP?

The Island residents said that the Council had 95 persons listed as CDEP workers, whereas they had added up the number of people they knew to be working on CDEP and counted only 71 at the most. That number, they said, was perhaps an over-estimate since it included people who were known to be CDEP workers as well as those employed directly by the Council.

CJC analysts examining Council payroll records for the period July 1990 to February 1991 found that Island Council B employed 120 people during this period. Their pay record sheets were maintained in a file marked CDEP.

Analysts made several attempts to verify those persons' names. They checked the current electoral roll. They consulted a book maintained by the Council entitled "Population 1990", but it appeared to be incomplete. They cross-checked the pay record sheets against CDEP participation schedules.⁹⁹ They compared them with the names listed in the credit book maintained for the Council Clerk's retail store. They checked the Council's rent ledger.

Analysts also sought, but did not locate, an Unclaimed Wages Register.¹⁰⁰ However, all the wages sheets that analysts examined were signed, allegedly by the recipients. Recipients were not required to date the receipt of their wages.

Only 68 names presented immediately as bona fide CDEP workers. Most of the remaining 52 names did not feature in the population book, the electoral roll, or the CDEP participant schedule. Nor were there tax file numbers recorded on their pay record sheets. Over half of these 52 people were paid only for odd weeks or months during the period.

⁹⁹ The ATSIC *Community Development Employment Projects (CDEP) User Guide* (January 1991) states that each community is responsible for providing a certified list of participants (Participant Schedule) to the ATSIC regional office, either quarterly or monthly, depending on the stability of the population. Participant schedules are forwarded to the Department of Social Security, which checks participants' eligibility and, where appropriate, ceases unemployment benefits payments to individuals. The guide states that it is the responsibility of the DSS to advise ATSIC where individuals listed on the Participant Schedule are considered ineligible for CDEP.

¹⁰⁰ In February 1990 the Auditor-General had alerted the Chairman to the Council's failure to establish an Unclaimed Wages Register as required under Ministerial Directions 5.26-5.31. The Chairman had apparently stated that "he was unaware of the requirements and undertook to set up the Register immediately".

A moving population

Analysts' lack of success in verifying the names of people on the payroll does not necessarily suggest that the names were fictitious. There could be several quite legitimate reasons for their inclusion. The Torres Strait region has a small but significant itinerant population. Islanders may also pay lengthy visits to other Islands to visit relatives, attend training programs, fish, or take on other work. Papua New Guinea nationals visiting relatives living on the islands might also qualify to receive CDEP.

Conclusion

There was insufficient evidence to substantiate this allegation. Perhaps the only way that investigators could properly bring the matter to a conclusion would be to make successive return visits to the region in the hope of locating all of the Island's population and all those listed on the Council's payroll. The cost of such an undertaking would be prohibitive, a problem that other agencies more closely involved in administering the CDEP Scheme have no doubt already faced.

Allegation 3 That workers on the Council payroll were carrying out tasks for businesses belonging to Council officers

Background

In his letter to the Commission that prompted this investigation, the complainant said that Council equipment and workers were being used to unload cargo intended for the two stores run by Councillors' relatives; that the Chairman's and Deputy Chairman's relatives received CDEP but worked on privately owned boats, or at privately-owned stores; and that CDEP workers had also been used to work in the Chairman's and Deputy Chairman's yards, as well as in the construction of the Deputy Chairman's brother's takeaway shop.

His contacts on the Island were able to give the allegation more detail. They claimed that the Chairman and Deputy Chairman "constantly used CDEP labour at their store . . . everyone at [the Island] knows that". Throughout the course of the interview they named eight people who, while collecting CDEP wages, either worked at retail businesses operated by the Chairman's and Deputy Chairman's relatives or around the Chairman's or Deputy Chairman's yards. They also claimed that

there's heaps and heaps who work out in the boats, who never, you know, work . . . they're all on the CDEP while they move out there. When they get back, they collect all the money like they been working.

They named boats owned by the Chairman and by the Deputy Chairman, as well as a third boat skippered by the adviser who would later threaten investigators with loss of transport unless they left the Island.

Not saying anything about that

Investigators questioned residents closely regarding the work performed by Council, and particularly, CDEP employees. They received different views on how many hours were required of CDEP workers. The Deputy Chairman, for example, told investigators that single people worked 2 days a week, and married people work 5 days a fortnight. "Not really fair, you know", he said, "where the single people, like". But other residents gave different accounts. One said he worked 8 am - 5 pm every second week, another that he worked 4 days a week.

But if their failure to agree on the hours of employment was curious, so too were the kinds of responses that questions on this issue elicited from residents, as illustrated in the following exchanges:

- 1) Q: . . . Do you know of any of the people on the Island work on ah, say, [. . .]'s boat and claim the CDEP?
A: I'd rather not say anything about that.
Q: Have you heard anything about it though?
A: Yeah (ui) heard things like the boys go out fishing and (ui) crayfishing and that but they come back in still get their fortnightly pays and that
Q: (ui)
A: CDEP pay and—
Q: And who gets the money for the crays they catch?
A: Half goes to the (ui) and half goes to the boys (ui) . . .
Q: [. . .] takes half and the boys get half. Do you know who some of the boys are?
A: No, I don't really know . . .
- 2) Q: . . . How long have you been employed on the boat?
A: Ah, since November last year.
Q: November last year?
A: Hmmm.
Q: And, ah, how ah, what were you doing for employment prior to working on the boat?
A: Ah, with the boat in bad condition like it is now, I go on the dole, I mean on the CDEP work.
Q: Right, yeah, yeah. And have you been working on the boat now since last November?
A: Yeah, got, ah, only when we got out pearl shelling.
Q: Pearl shelling?
A: Yeah, we work I only just look after it, that's all.
Q: Yeah.
A: She's got the gearbox trouble.
Q: Yeah.
A: And, ah, while I'm going that I go, he doesn't pay me, so I, I go on the, ah, CDEP project.
Q: How long have you been on the CDEP?
A: Ah, December I think we had problems in this boat since December.
Q: Mmmm. When, and what this boat, hasn't been out since last December?
A: No.
Q: And, ah—
A: —weather, bad weather and all that.
Q: And have you been working on the boat since December?
A: They just looking after doing a favour for the owner.
...
Q: And how long have you been on the CDEP, for many years or?
A: Oh, since I, since I left Brisbane, come up here, yeah.
Q: When was that?
A: Ah, it was three years ago now.

In the yards and the boats

Not all residents were reluctant to speak or were so puzzling. One man named several people who collected CDEP wages while performing private work. He said that they usually performed jobs around Councillors' yards or repair jobs. He also named a relative of the Deputy Chairman who

ever since we started work he, he only come to sign on, and he goes home . . . and right now he was 'sposed to be working on the [Deputy Chairman's] boat . . . and he gets CDEP and doesn't do anything for the community at all . . . we had two, oh, a few boys had to going out in the boat working for pearl diving and that . . .

Another resident spoke about a period when "90 percent" of the workforce were away for three months on a trochus trip to Cairns:

Yeah, and they come back (ui) broke and still, ah, money owing to them from that trip. A lot of boys never even got paid . . . And also, ah, while I was there I know that the Council did make out the pays for them boys that were away and I also noticed that when the boys gone out crayfishing they're still on CDEP money pays being made out to 'em . . . Even they're out fishing if they have a bad season or a bad nip, as they call it, they come back and then the pay packets are waiting for them when they come back.

Investigators were not able to locate all of the people alleged to have received CDEP while working for private enterprise. Of eight people interviewed, only two admitted to having worked for both the Council and for private enterprise. They claimed to have worked for the Council and the business during different periods.

Payroll records

Analysts were able to examine payroll records from the Council, as well as those kept by the Clerk's shop and the takeaway store. Similar records from the Chairman's and Deputy Chairman's fishing operations could not be obtained.¹⁰¹

Comparing the Council's and the two retailers' payrolls showed that two people had been employed by both the Council and the retailers, the same two who volunteered the information during interviews. However, consistent with the information they gave during the interview, the payroll sheets showed that they had worked in the two places at quite different times.

¹⁰¹ See page 124.

Bearing with everybody

Given the unavailability of records pertaining to the Councillor's fishing operations, investigators could not take this allegation any further. However, the information provided through the interviews painted an extraordinary picture of the organisation of employment on the Island.

Not only did residents fail to agree on the work requirements of the CDEP and suggest that some people were employed in areas other than for the Council, many were of the opinion that a reasonable number of people did no work at all.

One resident, who held a responsible position in the Council, said that workers were supposed to start at 8:00 am but often they could not start work until 9:00, because the Council office would not open until 8:30 and they had sign on. He said that although there was a CDEP foreman, the Chairman and Deputy Chairman directed the work, often side-stepping the foreman altogether. The foreman, he said, was having trouble getting "the boys" to take any notice of him. They would sign on, then go and do what they wanted to. He said the Chairman's son, who works in the Council office, signed on the football team in the morning: "Doesn't matter if they don't work".

Another resident explained that people signed on each day but did no work:

the Councillors do not talk to the workers because they're afraid that if they speak against the workers that they won't get their vote for the next election.

While not referring to votes and elections, to some extent the Deputy Chairman's statement confirmed these residents' accounts. He said that each morning they were scheduled to work, CDEP employees came to the Council office to find out what they had to do for that day. If his wife, the Clerk, was not there, he himself would tell the foreman what to do. What did they do? "Roads, um, like, um football fields, basketball court, and cutting grass, and, you know . . . they've done building, you know . . . " But some did not work at all:

Yes, some doing work and some just, you know, get their (ui), you know.

Q: Yeah, so you haven't got much control over what they do?

A: Yeah, we've never been too hard with them, like, we've tried to bear with everybody, like.

Q: Mmmn. So some just sign on and then go?

A: That's right.

Q: Go and work somewhere else? Do they go fishing?

A: Sometimes, like, many people did, um—

Q: So, you don't really say, well, if you don't do that work, you're not getting any money?

- A: Sometime we do it, like, that, you know, you know (ui) sometime, you know, sometime we didn't know they'd gone, you know. Too many, like, in the one (ui)
- Q: What about working around the stores and that? Does any CDEP workers do that (ui) cut his grass?
- A: Not really, like, ah, well, very often (ui) this been done for many (ui) like doing (ui) you know, everybody doing (ui) everybody you know they, they (ui), that's why we say we can't say anything, because if people wanna go to (ui) rather (ui) you know, that's why a lot of people, you know, leave this (ui) and they don't know, after all they complaining about they never, they never see what done before, what they don't before and they never looking for the wrong run, you know, and they and they (ui) done that before. Everybody done that (ui) Council and everybody go like this we just (ui) because everyone doing on this Island same thing, you know.
- Q: Mmmm. So you're really not that hard on them.
- A: Yeah, not hard on, because, ah, if we were hard on them they'd say, very few people here, you know, they listen to Council, you know. We don't argue with them, but in something like this after this we go hard on everybody, mate, like, if we're goin' back (ui) because we think we run before like our Islanders run, you know, but many Islanders they, they don't run, like us like (ui) [. . .] Island or whatever, like, like, European community or whatever, but Island community, they always, they'll be (ui) if someone wanna help, they come and ask us or (ui).

Conclusion

This investigation was handicapped by the unavailability of key records and vague or inconsistent statements by Island residents. It was also handicapped by the fact that the CDEP Scheme guidelines about what work constituted "productive employment" within the community appear not to have been clearly understood in many Aboriginal and Island communities. The use of CDEP workers to assist in private business, if it occurred, was certainly not restricted to this community.¹⁰²

But while investigators were unable to find any evidence to substantiate the allegation, the information they gathered painted an unflattering picture of the

¹⁰² According to information obtained during the investigation of Aboriginal Council B, in early 1991 ATSIC, to clarify this issue, issued new guidelines about the use which could be made of CDEP workers, in the following terms:

"CDEP resources are not to be used to assist with income generating activities where the profits from such activities are used for the sole benefit of individuals". See page 221.

Council's management of its workforce, in particular, those employed under the CDEP.

This view may not have been universally shared, however. Reporting on a visit to the Island in the early months of 1990, a Transition Team consultant wrote:

Overall, the Council administration staff are relatively competent and, with a few exceptions, the majority of work is current. The C.D.E.P. scheme continues to operate effectively and is closely supervised by the Chairman and Deputy Chairman.

Allegation 4 That the Council purchased mobile accommodation and other equipment at inflated prices from a company directed by the Chairman and Deputy Chairman

Background

Writing to the Commission in 1990, the complainant told the Commission that the Council on Island B had won a tender for equipment owned by a company whose directors included the Chairman and Deputy Chairman. He said that the price they offered, \$38,000, was well above other tenders because, given the condition of the equipment, "there were no fools ready to part with that much money".

He described the equipment as a transportable home, which had been damaged by vandals; two generators, which had lost their alternators; a broken down welder, lengths of heavy duty electrical cable, plus shop fittings and a freezer. He claimed that the shop fittings and freezer were being used by a business owned and operated by the Chairman and Deputy Chairman's wives, that the Council had spent "a small fortune" reconditioning the generators but was still not using them, that the welder had been traded in for a new one, that the electrical cable had been given to the Deputy Chairman's brother for use in his takeaway store; and that the welder had been used exclusively for repairing dinghies owned by the Chairman and the Deputy Chairman (see Allegation 8).

When interviewed later by investigators, the complainant's contacts gave much the same story. However, they named three generators in the transaction, and they alleged that a separate tender had been made for a cash register and a soft-drink machine.

They claimed that they, like some other people, had tendered for various of the pieces, but had missed out because of the Council's high offer.

Conditions of sale

Investigators' inquiries revealed that the Chairman and Deputy Chairman had been co-directors with a third gentleman in a business whose principal activity was listed as crayfish processing. Registered in 1985, the business initially operated with some success before financial difficulties led to the Aboriginal Development Commission (ADC) assuming management of its assets.

The ADC had made a stocktake of the company's assets in 1988. Some items, for example, two generators, were described as in fair condition. The mobile home was "generally in good condition". Other items listed under "Council Shed" were also described as being in fair condition, with a few items in poor condition. In early 1989, the ADC decided to take possession of equipment and appointed a firm of accountants to act as its agent.

By April 1989 a second inventory, conducted by agents for ADC, proved similar to the first, although the condition of some items had deteriorated, in particular, the mobile home, which had been broken into. Advertisements were placed in newspapers inviting tenders for the assets.

According to Council minutes, in June 1989 the Council decided to make an offer of \$10,025 for the mobile home and \$6050 for the workshop and tools. The mobile home would be used as the Council's guest house. The workshop would be "used by the Council for repairs, etc". The motion was moved by the Chairman and seconded by the Deputy Chairman. The Council proceeded to make those tenders as planned, and a short time later submitted a third, in the amount of \$12,150, for two alternators, a large freezer and a diesel tank.

A letter to the ADC from its agent in July recommended that the Council's tenders be accepted as "they are considerably higher than the other offers and the assets would remain for use by the [community] as a whole".

A later report prepared by the agent for the ADC stated, in part, that the Council had been informed that its tenders had been accepted and that

[f]ollowing discussions with Mr [. . .] regarding the freezer container, during which he informed us that it would be of little use in the near future, we accepted the Island Council's tender for the freezer. We have now received a cheque for the sum of \$28,335 which we intend to use as additional working capital in accordance with the Commission's recommendation . . .

In August 1989 the Council used two cheques, both signed by the Clerk and the Deputy Chairman, to pay the agent. The first, in the amount of \$18,350, covered items including a generator and tools, two alternators, a freezer and diesel tank, and a security fence, plus freight. The second, in the amount of \$10,025, was for the mobile home. These items were entered into the Council's assets register.

Fair market value?

Investigators were able to inspect some of the equipment purchased by the Council during their visit to the Island in 1991. The mobile home was sighted along with a generator, which was running power to Council offices and to some of the community residences. The generator shed in which it was housed still bore the name of the company from which it had been purchased. Other items could not be located.

It is always difficult to form an opinion about the true and fair market value of used goods. However, the offers made by losing tenderers give some guidance on the issue of whether the Council paid a fair price for the goods:

Mobile Home. The mobile home had been purchased in 1986 for \$17,169. Other tenders for the home were made at \$3,050 and \$3,755. Both were made by or on behalf of people who would have been able to see the mobile home and make their own estimates of its value. The Council paid \$10,025.

Alternators, freezer and diesel tank. The schedule prepared by the agent shows that two generator sets had been acquired in December 1985 for \$16,612 and a refrigerated shipping container in October 1986 for \$2,500. The agent received a tender of \$1,800 for one of the generator/alternator sets, and a tender of \$600 for a "freezer room". Both tenderers would have been familiar with the items in question. The Council paid \$12,150 for two generator/alternator sets, a freezer container (freezer room), and diesel tank.

Workshop, including tools. The schedule prepared by the agent shows that in 1987 a "garden shed workshop" had been purchased for a little over \$300, the equipment for approximately \$1,000. The total of best offers received on individual pieces of equipment was \$2,335. The Council shed, which appears to have housed the "workshop", apparently also contained additional tools and equipment, but whether the total value of all items, especially given the condition of the company's other assets, justified the Council's paying \$6,235 is debatable.

Conflicts of interest

The Council may very well have seen some value in paying a premium price to ensure that the assets remained on the Island for the benefit of all the community, rather than risking them leave the Island or become the possession of one or a few individuals.

However, from the Commission inquiries, the Council did not appear to have attempted to make any inquiries to establish the value of the second-hand equipment, action which might have led to more competitive tenders on its part.

The Ministerial Directions required that the Council obtain three written quotes from suppliers before any purchase of plant and equipment between \$3,000 and \$20,000. Perhaps such quotes, even on new equipment, would have informed the Council's decision.

The Council's decision to tender for the equipment was made by the Chairman and seconded by the Deputy Chairman. Both were directors of the company that stood to gain from the sale. The Council resolution to purchase the equipment makes no mention of the Councillors announcing their interest in the matter. At the time the Council made its decision, Councillors were not required to do so.

In December 1990 the Community Services (Torres Strait) Act was amended by providing:

27A. Disclosure of interests at meetings.

- (1) A member of an Island Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the council must, as soon as possible after the relevant facts have come to the member of the council's knowledge, disclose the nature of the interest at a meeting of the council.
- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the council and the member of the council should not –
 - (a) be present during any deliberation of the council with respect to that matter;
 - (b) take part in any decision of the council with respect to that matter.

But these amendments would have been of little practical use to Island Council B, even if they had been current at the time it decided to purchase the equipment. The third Councillor at the time was the Chairman's brother. Even if the Chairman and Deputy Chairman had voluntarily announced their interest in the matter at hand, they would have done so to others who were similarly, if not as directly, compromised. The Council would not have been able to form a quorum to vote on the matter.

Conclusion

A considerable amount of time has elapsed since the purchase the subject of this allegation took place. Even in 1991, it appeared that some of the property had been lost or misplaced and an independent estimate of its value would have been extremely difficult. Nonetheless, in the Commission's view, the evidence suggests that the Council was *extremely generous* in the amounts it paid for the equipment. The fact that the equipment was being purchased from a company directed in part by the Chairman and Deputy Chairman can only have contributed to residents' suspicions that Councillors would benefit personally from the sale. Rumour had apparently already increased the purchase price by \$10,000 and expanded the number of items covered in the purchase.

Whilst it is clear that the Chairman and Deputy Chairman took part in the Council decision to tender for the equipment, and were involved in the company which stood to benefit from the sale, the legislation governing the Council at the time did not require pecuniary interests to be declared.

Many of the Torres Strait communities have less than 200 residents of voting age. Members of the Councils are often related, though perhaps not so closely or consistently related as on Island B. This investigation in particular highlights the problems that this causes for these communities in managing their affairs in accordance with the legislation and the usual and customary procedures to ensure the integrity and accountability of its elected representatives.

Allegation 5 That a former Councillor had stolen funds from the Council canteen

Background

In his letter to the Commission, the complainant claimed that audit reports showed cash and stock shortages arising out of canteen operations on Island B and that the canteen operator, either the Clerk or the third Councillor, was taking \$5 from every carton sold. He said that it was well known on the Island that the canteen operator used canteen money for his/her own purposes. He further claimed that the Council had been buying beer from a company that did not have a liquor licence, and that although the matter had been investigated by the licensing branch, nothing had been done.

Interviewed later in the year, two Island residents spoke at some length regarding the canteen losses. They said that in 1988 the canteen used to operate out of the house occupied by the third Councillor, who was also the Community Police Sergeant. They claimed that there was always a game of cards going on somewhere in the Torres Strait, but that there was a "massive amount of gambling" taking place at the third Councillor's house. Whenever people played cards at the third Councillor's house, his wife would "slip into the bedroom and come out with hundred dollar notes and keep on playing". They were aware of an audit report from around the same time that showed "a 33% shortage, or something like that, in the canteen fund or stock, or whatever".

The two residents also spoke about the source of the Council's beer. Apparently beer had been purchased from the IIB, and also from a company directed by the Chairman and Deputy Chairman, which was buying the beer from Cairns and selling it to the Council "at an inflated price". But this company, they said, did not have a liquor licence. They said that the "Licensing Board" had been up to investigate but found that the company had gone into receivership.

They concluded their statements on this issue by noting that as far as they knew, the canteen had made a bit of money this year. They had no concerns about how it was presently being operated.

An "open practice"

Several other residents seemed to be aware that the canteen had run at a loss, but they appeared reluctant to discuss the matter. One resident confirmed the

information about the gambling at the third Councillor's house, but his information was based on an account of a card game attended by his wife. However, he remembered overhearing a conversation between the Chairman and Deputy Chairman:

when they were talking that they didn't want to get [the third Councillor] into trouble, so they sort of, ah, didn't say anything about that, ah, or all that money as was missing.

One of the residents who had worked in the Council office attributed losses in the canteen to the mismanagement of credit and to break-ins due to "very bad security". She said that when the third Councillor ran the canteen, he kept beer "underneath the house or somewhere like that", then, shortly afterwards, that "it was kept in a shed at the back of the Council".

The notion that the canteen operator had been pocketing money from canteen sales was raised by a DCS officer who worked closely with the Council. He said that the third Councillor, who had been the canteen operator, might sell the carton for \$40 and pocket \$5 as a commission. He claimed that this

was an open, ah, I say, I think it was an open practice, that was, ah, ah, by Council resolution, but it, it wasn't a practice that, ah, was compatible with Ministerial Directions or other instructions.

He said it had taken some time for the Council to change the system.

The canteen conundrum

These interviews with residents raised several issues:

- had the Island canteen experienced losses or shortages and if so how much?
- who had been the canteen operator(s) at the time the losses/shortages occurred?
- from which vendors had the Council purchased beer?
- what had been the circumstances of the canteen when the alleged losses occurred?

Unable to uncover much information regarding this allegation from Island residents, investigators pursued the matter first with the Licensing Commission (LC), and second, by using records available from the Council, the Auditor-General and the DFSAIA. The information from those inquiries confirmed some

of the residents' information, while shedding some light on the difficulties that the Council faced in managing its affairs.

Licenced premises?

Investigators discovered that the questions of the canteen's premises and the licenced nominee had been a subject of discussion for some time. In July 1986, the LC wrote to the Council Chairman to advise him that the Trust area had ceased to have statutory authority and that no application had been received for a liquor licence.

The Council apparently responded that it desired to operate the existing canteen until the premises were of a suitable standard to justify the issue of a liquor licence. In January 1987 the LC asked for information on the third Councillor, who was to be the "nominee/manager" in charge, and in March granted an application to continue trading with the third Councillor as the nominee.

In February 1988 the LC advised the Council that the authorisation to sell liquor was not intended to continue indefinitely and it was necessary to lodge an application for a full canteen licence.

In December 1988 the LC received an application for a canteen licence with the Council Clerk as the intended nominee. In January 1990, the LC wrote to the Council asking for more information regarding its licence application, without which the LC would consider withdrawing its authority to continue trading under the old Community Services guidelines.

At the time CJC investigators visited the Island, the canteen was still operating under an authority to trade, with the third Councillor as nominee. The canteen was housed in the Council office and was operated by the Clerk and her assistant. Beer was loaded into a freezer during the day and sold during the afternoon at prices ranging from \$48 to \$60/carton. The Council planned to move the canteen to a new community hall that was under construction.

The location of canteen during the previous five years was unclear.

Council records

Council payment vouchers for period 1986 - 1991 show that in October 1988 the Council began purchasing beer from a large southern brewery that levied an unlicenced surcharge of approximately 5% on all supplies. Prior to that time, the

Council's suppliers had been the IIB, a company whose directors included the Chairman and Deputy Chairman, and a company specialising in the transportation of seafoods.

The Council paid the brewery \$18-\$20 a carton. The usual cost per carton from the company in part directed by the Chairman and Deputy Chairman was almost \$24 a carton, from the IIB almost \$27, and from the transport company \$27 also. The Council had stopped buying beer from the company directed by the Chairman and the Deputy Chairman in March 1988.

The Council maintained profit statements for the canteen that may have been prepared by auditors or DCS Transition Team members. These statements show wildly differing profit margins and "selling price control" shortfalls:

<u>Period</u>	<u>gross profit</u>	<u>shortfall</u>
1.2.86-30.6.87	35.9%	\$7,333
y/e 30.6.88	26.4%	\$21,934
y/e 30.6.89	48.6%	(\$2,464)
y/e 30.6.90	60.2%	(\$2,407)

The Council's records did not readily identify who may have worked in the canteen.

A Sound Administration, An Unsatisfactory Shortage, No Fraudulent Intentions

In August 1987 the Auditor-General advised the Council Chairman for the year ending January 1987 the canteen showed a selling price control (SPC) shortage of \$3,270 or 5% of sales.

In September 1987 a Transition Team consultant noted that the beer canteen showed a shortage of \$2,168 for the period February to June 1987. But elsewhere in his report, the consultant noted that

The correct accounting methods are in use and are well maintained . . . The clerks at [the Council] are efficient and are well aware of their duties and responsibilities. Some problems exist in wages and the obtaining of certification and approval signatures. Fund ledgers were explained in full and no foreseeable problems are expected in their upkeep.

Canteen stock shortages were one of many matters raised in advice given to the Chairman in January 1988. An SPC check on the canteen showed a stock shortage of \$3,924 (32% of sales) from February 87 - June 87 and stock shortage of \$7,801 (32% of sales) from 1 July 87 - 9 November 87:

Explanations given by canteen operators revealed it was normal practice to sell stock cheap or give it away when people had trouble paying. The Council Clerks confirmed this story and also indicated that the Chairman knew of this situation and condoned it. These practices contravene Ministerial Direction 9.11 which states 'No canteen sales are to be made to any customer on a discount basis or on a no-charge basis. The full price must apply to all sales'. The canteen operators gave no assurance that this practice would be discontinued and the Chairman was not present to answer.

In April 1988 a Transition Team consultant, reporting after a 2-day visit to the Island, noted that the amount of outstanding credit sales was \$3,075 and credit sales were still being made. He "impressed upon the Chairman that these Credit Sales cannot continue", and the Chairman said he would hold a Council meeting and discuss the matter with the third Councillor. The consultant concluded by noting that "Overall, the [. . .] Council is running well". This drew the praise of the Under Secretary of the Department, who later wrote to the Chairman congratulating him on the Council's performance, while expressing "concern" about the large amount of beer sales on credit.

Later that month, the Chairman wrote to the Auditor-General regarding the audited statements for the year ending June 1987. His letter stated in part:

Contradictory to what is mentioned in the audit report it is not normal practice to "sell stock cheap or give it away". A system of credit sales was operating where employees on Council wages or CDEF wages were given credit until pay day when the money was automatically deducted from their wages. The Council has decided that this practice must cease and all canteen sales must be paid for in full.

But credit sales apparently did not end. Nor was the stock being stored securely. In May 1988 a Transition Officer visiting the Island reported that

[c]ontrol over beer stocks and the selling of beer is very poor. The last shipment of beer was being stored under the canteen operator's house. Daily sales sheets are not being recorded properly. The Canteen Operator keeps a record of sales by scribbling on a piece of blank paper and then hands this to the clerk to write up the Daily Sales Book. This very inadequate system has resulted in several stock shortages.

Credit Sales are still being given even though discussions were held between the Chairman and myself on the previous visit about this subject.

A Canteen Profit and Loss Statement is attached. The Selling Price Control shows a dramatic shortage over the last year of trading.¹⁰³ Since January, 720 cartons of beer have arrived at [. . .] but the Daily Sales Book only accounts for 280 of these being sold.

...

I feel police action should be recommended to the Council with a New Canteen Operator appointed immediately.

In June 1988 the Auditor-General replied to the Chairman's April letter, in part commenting on the new procedures that were to have been put in place:

The change in procedures which will not allow credit sales should provide adequate control and result in reduced losses on the beer canteen. The trading losses such as those experienced for the periods Feb to June 87 and July to November 87 should not now be occurring. An improvement should be evident when my officers visit your Island for the 1988 audit.

The Transition Team consultant's report of May drew a stern reaction from the Under Secretary of the Department, who wrote to the Chairman in July, stating that

Generally, your Council's administration is sound, however, the Canteen Stock shortage of \$21,883.65 is not satisfactory.

Council should report this shortage immediately to the Police Department for investigation and also advise the Auditor-General's Department. It is recommended that you replace your Canteen Operator and ensure that strict controls are commenced immediately on your canteen.

Section 9.11 of the Ministerial Direction of Accounting for Islands states that Sales should not be on credit or on a no-charge basis. Failure by your Council to take positive action on this matter will lead to your Council receiving a qualified audit report.

According to a letter to the DCS later that month, the Chairman responded by calling a Council meeting to discuss the matter with the canteen operator and other members of our Council.¹⁰⁴ He wrote:

I herewith submit to you explanations given by himself and shortages which were recorded by our clerks of which you may already be aware of:

¹⁰³ The SPC shortage was \$21,883.65.

¹⁰⁴ The other Councillors at the time were his "nephew", the Deputy Chairman, and his brother, who was third Councillor, community police sergeant, and canteen operator.

1. 19 cartons were stolen from the shed in which all beers were kept locked in. This is equal to \$912.00. (\$48.00 per carton)
2. Total of \$415-00 Canteen money which was to be banked, was stolen at the office and which was written off as a bad debt in a Council Meeting .
3. Money amount unknown, was stolen from home of Canteen Operator.
4. There are still outstanding debts owing to Council by people who booked down beer but are non-Council workers. At present \$288-00 still outstanding.
5. Last Auditor, [. . .], worked out Profit and Loss Statements at \$48-00 per carton. Previous to this visit by the Auditor, Clerks recorded all cartons at \$45-00 per carton. The \$3-00 surplus went to the Canteen Operator. However, Auditor did not record this in this report and counted this surplus as a shortage to the canteen. We wish you to take into consideration that the Canteen Operator was not being paid and to this date still has not been paid due these occurring shortages.¹⁰⁵
6. Previous to the 19 cartons being stolen, security measures were not tight and we are aware that some of our shortages could be due to any previous thieving from the sheds.

He concluded by noting that the Clerk would in future be responsible for the canteen and that new security measures would be implemented to ensure that beer could not be stolen from the shed.

In October 1988 the Under Secretary again advised the Chairman that in line with audit requirements, the Council should report the matter to the Police Department for immediate investigation.

The Transition Team continued to make their periodic visits to the community. After a 4-day visit in September 1988, an Administration Officer wrote that canteen stocks were now kept in a locked room inside the new Council office and the Council Clerk had become the new canteen operator.

The problems identified by the Transition Team were eventually raised by the Auditor-General. In March 1989 the Auditor-General issued a qualified report for the Council's 1987/88 financial accounts, writing that "[t]his audit has again revealed an unacceptable position in the financial administration of the Council which is mainly attributable to a failure to comply with Ministerial Directions". One of the points he raised concerned the shortage amounting to 34.62% of canteen sales for the year, a matter which the Auditor-General recommended be reported to police in the event that the shortages were not resolved to the Council's

¹⁰⁵ According to a DCS officer the third Councillor would sell a carton for \$40 and receive \$5 as a commission. This was an "open practice" sanctioned by Council resolution, although it was not compatible with Ministerial Directions. See page 145.

satisfaction. "The Council's control over its beer canteen operations had deteriorated to a most unsatisfactory level", he wrote. Interestingly, the Auditor-General also noted an SPC *surplus* during July 88 of \$2,144, which the Clerk apparently explained as monies receipted for credit sales relating to the year ending June 1988. "Due to insufficient records maintained for the beer canteen operation it could not be established by audit whether further outstanding amounts relating to unofficial credit sales existed".

The Auditor-General also commented on the vendors from which the Council had purchased beer, particularly the company directed by the Chairman and Deputy Chairman. He suggested that the "Chairman ensure future purchases of beer were obtained from normal trade suppliers, i.e., authorised suppliers under the Liquor Act, in order for the Council to obtain purchases at competitive prices . . . "

Later that month, the Under Secretary of the Department wrote to the Chairman, referring to "successes and failures" since handover, and the reports from departmental consultants and the Auditor-General indicating "some continuing problems in [. . .] Island Council's administration, particularly as they relate to financial management". He said that the Department wished "to assist your Council and others to achieve the best possible results" and had asked the Executive Officer assigned to work with the community to be "more involved with the Council and its operations than perhaps he has been in the past . . . Their assistance will be available on a regular basis for the checking of Council's procedures and processes."

However, the canteen was still having problems. In April 1989 the Transition Team could report on improved security over canteen operations and "some action by Local Island Police over 87/88 shortage".¹⁰⁶ However, for the period July 88 - March 89, the canteen's SPC shortage was \$7,931. Time restrictions over the Transition Team's next two visits did not permit the preparation of SPC's on the canteen.

But the matter of the canteen shortages had apparently been the subject of investigations by State police, who had concluded their investigation by May. Although their inquiry failed to identify anyone criminally responsible for the shortage and found no evidence to charge anyone with an offence, it did arrive at a new explanation for the shortage:

¹⁰⁶ The status report did not specify the action. The community police sergeant was the former canteen operator and also the third Councillor during this period.

The Beer Canteen was being run by the local Community Police Sergeant who is believed to be honest. The Sergeant ran the canteen from his home initially and due to work commitments he could not always be in attendance. The Sergeant enlisted the help of a Community Police Constable to run the canteen in his absence. Apparently it became obvious that the mathematical skills of the Constable left much to be desired and, although it was not done intentionally, he would sell a carton of beer, for example, for the sum of \$48.00 and when handed a \$50.00 note he would, on some occasions, give back \$48.00. When it was discovered that this was occurring the Constable was dismissed. I am advised that the Constable had no fraudulent intention in doing this as it appeared he did not favour any particular person nor is there evidence to suggest that he received any of the missing monies.

After it was discovered that the canteen was not operating efficiently from the Sergeant's house, a shed was constructed, of the lawn locker style, at the rear of the Council Chambers on [. . .] Island. This appeared to solve the problem, however it was discovered that entry was being gained to the shed by inserting a small amount of upward pressure on the roof and the door would pop open. It seems that this was common knowledge amongst the drinking community on the Island. It has been revealed that up to 20 cartons of beer would go missing in one or two nights.

The results of the investigation might not have been widely circulated. In June 1989 the Auditor-General acknowledged the Chairman's response to the 1987/88 audit and asked, among other things, if the thefts from the canteen had been reported to the State police, and, if so, if the investigation had produced any results. The following month, the Under Secretary wrote to the Chairman stating that "[i]t is pleasing to note that your Council's Administration is performing satisfactorily", and that "advice on what action Council has taken to investigate the Canteen shortage would be appreciated".

Transition Team consultants continued to visit the Island with some regularity, and reported, amongst other things, on the canteen's operations. In July 1989, a consultant wrote that "[c]ontrol over the Beer Canteen appears satisfactory, although a Selling Price Control for the period 1.7.88 to 30.6.89 still resulted in a shortage". In fact the canteen had operated with a net profit of over \$21,000, despite an SPC shortage of \$2,464.

But the canteen's operations evidently improved during the new financial year, showing small surpluses in July, August, and September, and a small shortage in October, which according to the Transition Team may have been due in part to "the Clerk's previous habit of counting full cartons during her stocktakes in late September and early October". The pattern of relatively small shortages and surpluses continued, culminating in a balanced February 1990 Selling Price Control.

Conclusion

Records showed that the Council may not have had an appropriate place from which to run the canteen. At various points, probably during the period when the third Councillor was in charge, the canteen operated from under the third Councillor/canteen operators' house, and subsequently from a badly secured shed.

The canteen ran at a major loss during the period that the third Councillor/police sergeant was operating the canteen---March 1987-June 1988. Explanations for the loss were many and varied:

- mismanagement of credit sales;
- mismanagement of cash sales and poor sales records;
- stock give-aways or discounting;
- low arithmetical skills on the part of sales assistants;
- poor security allowing theft of stock.

There was some evidence to support the claim that the canteen operator received a percentage of money from the sale of each carton, but this had apparently been done with Council approval. There was also some evidence to suggest that amounts of cash from beer sales may have been held in the canteen operator's home---according to the Chairman, the theft of money "amount unknown" from the canteen operator's house was one of the reasons for the canteen's loss.

A police investigation into the matter failed to identify anyone criminally responsible for the shortage and no evidence to charge anyone with an offence.

In the Commission's view, records for the period that the third Councillor was operating the canteen were lacking and would not alone support a prosecution. The Commission found no evidence to suggest that, as one resident suggested, the Chairman and Deputy Chairman were "protecting" the third Councillor.

Investigators were able to verify that prior to October 1988 the Council had in fact been purchasing beer at less than competitive prices. One of the companies that traded with the Council was in part directed by the Chairman and Deputy Chairman. It does not appear to have had a licence to wholesale beer. The Chairman and Deputy Chairman may not have been aware of the conflict of interest that this represented. In any case, at the time there was no provision in the legislation governing the Councils which required Councillors to declare pecuniary interests.¹⁰⁷

¹⁰⁷ See page 17.

The records relevant to the canteen's premises and licence, purchases and sales, its operators and their management practices were largely in disarray. Transition consultants had noted losses of several thousand as early as September 1987, but the records seem to show that it was not until the shortage reached in excess of \$21,000 that the matter assumed some urgency. Even after the canteen became a subject of close scrutiny by the Transition Team and the Auditor-General, it continued to operate with SPC shortages. The first time the canteen's books balanced was in February 1990.

In the Commission's view, the saga of canteen woes suggests that a management system involving closely related members of the one family may not have been in the best interests of the community. Certainly, claims that the Council would meet to discuss the shortage and that community police were taking action appear hollow when the canteen operator was also a member of the Council and the senior member of the community's police contingent, as well as the Chairman's brother.

Allegation 6 That the Council gave favourable treatment to a relative regarding the purchase of equipment

Background

At the time that the Commission received notice of these allegations, Island B had four retail outlets: the IIB store; a general store operated by the wives of the Chairman and the Deputy Chairman, one of whom was also the Council Clerk; a takeaway store owned and operated by the Deputy Chairman's brother; and a general store operated by another couple.

In his letter to the Commission in 1990, the complainant alleged that the community had not been approached regarding the Council's purchase of gym equipment from the takeaway shop. Nor had the Council sought comparative prices for similar equipment. The Council, he claimed, had no reason to buy the equipment other than to help out the Deputy Chairman's brother.

Interviewed later in the year, before investigators visited the Island, two Island B residents confirmed much of what the complainant told the Commission and were able to add some context to the allegation. They said that when the Deputy Chairman's brother had built his takeaway store underneath his rented Council house, he had also built a room to hold some gym equipment. Residents wanting to use the gym room were charged the "really reasonable" rate of \$5/hour. But nobody used the equipment, they said. Rumour got out that the brother was in financial difficulties and that he wanted to sell the gymnasium. He sold it to the Council for \$10,000.

They said that the Council had never approached the community to see if they wanted the gym equipment, but " . . . why would the community want it if they never used it before at such cheap rates anyway?" They said that they had approached one of the DCS accountants about the matter and were told that the Deputy Chairman claimed that there had been a public meeting. But the two residents had never heard anything about a public meeting.

Asked if they had looked up the Council minutes, they claimed that this was impossible because the Council did not make its minutes public (see Allegation 7).

That was it

When investigators visited the Island in 1991 they found a rusting ten-man stationary gym under the front awning of the former premises of the retail store operated by the Chairman's and Deputy Chairman's wives. During the course of their inquiries, they learned that this was the gym equipment that had formerly been located at the takeaway store.

The owner of the takeaway store told them that he had purchased the gym equipment for \$12,000 about two years ago, after examining leaflets from vendors in Brisbane. He had set it up in his takeaway store, but no one had used it. Recognising that the purchase was not making any money, he had placed advertisements in the regional newspaper, which generated some interest from other Islands, and "we had it, had it on display for a little while and, ah, Council come with and they (ui) want to buy it. That was it". He said the Council paid him \$9,000.

He said that after the Council made the purchase, he had been asked to keep it at his store until a suitable space could be found. But it was getting in the way of his store's business, so it was moved to the front of the Clerk's store until the new community hall was finished.

Everyone was there

He said the decision to buy the equipment had been taken at a Council meeting:

- Yeah, and well, which I, everyone was there, and, oh, they decided they were going to buy it and then they say yes.
- Q: Everyone went to the meeting? Did you go to that meeting?
- A: Yeah, I was there. Everyone was there.
- Q: What did they just have a vote, they put up their hands?
- A: Well, they were talking and said, everyone stood up and what they think about it's no good, not buying it at all.
- Q: Yeah.
- A: And, ah, so everyone agreed.
- Q: Everyone agreed, yeah?
- A: Yeah, I didn't put my hand up 'cause I was the one (ui).
- Q: You were selling it, yeah. And how many was at the meeting?
- A: Oh, hardly remember that.
- Q: Lot of people you know?
- A: Yeah, people like (ui) . . .

Both the Chairman and the Deputy Chairman were questioned in relation to this matter. The Chairman could not say much about the matter---for example, how

the Council had arrived at a price for the equipment, other than to say that the Council had "bought for the, ah, for the boys, for the community. (ui) we try to keep our boys fit." His account of the reason for the purchase was confirmed by the Deputy Chairman, who also told investigators that the Council had paid \$9,000. He confirmed his brother's claim that the decision to buy the equipment had been made at a public meeting.

Physical health and community spirit

Analysts found two references to the gym equipment in the Council minutes. The first stated:

That on 20 July 1990, a public meeting was held at the public community hall. The purpose of the meeting was to inform the public community of the council's wish to be part sponsor of a [. . .] football team to represent [. . .] in the competitions. The council's aim was to encourage physical health and community spirit within the people and to give the youth an interest. They also planned to buy an equipped gym from owner, [. . .]. This gym was free-of-charge for all members of the community and people with health problems were encouraged to use the gym. After further discussion the community all were in favour of the above and gave their total support for the Council to go ahead. With the sponsorship of the team and also for purchasing of the gym for community use.

The resolution was moved by the Deputy Chairman and seconded by the Chairman.

Minutes of a Council meeting held the same day record a Council resolution noting that the community had approved the purchase of the gym equipment at a public meeting and that the Council would purchase the equipment for \$9,120.

The equipment was duly purchased with a Council cheque and entered into the Council's assets register.

In the Commission's view, the procedure followed for this purchase was to some extent in compliance with the Ministerial Directions, in particular, Section 3 (purchasing) and Section 4 (payments). However, Section 3.3 required that Councils invite written quotations before making any purchase of plant and equipment between \$3,000 and \$20,000 to ensure a reasonable measure of competition, an action that the Council did not apparently take. Whether this resulted in the Council paying above the fair value is unclear, as is how the Council arrived at the purchase price.

Other residents' views

The Council minutes contradicted claims made by the original complainant, and some residents, that the community had not been approached regarding the purchase of the gym equipment. They also seem to contradict the claim that the purchase was of little or no benefit to the community.

However, other interviews that investigators conducted gave a further perspective to the matter. Some residents were not aware that the Council had purchased the equipment and not all residents agreed that the purchase had been worthwhile. Some apparently thought that the purchase had been made mainly for the footballers.

Asked if he knew anything about the exercise equipment near where they were being interviewed, one resident said that it was owned by the takeaway store. He said he had never used it. Another resident thought that the Council had bought the equipment specifically for the Island's football team.

A third resident knew that the Council had bought the equipment from the takeaway store for \$10,000, but he was not aware that it could be used free of charge. He had heard that if you want to use it you paid "\$40 or something". He claimed that the Council had bought it for the football players, but even they never used it: "It was a case of \$10,000 just gone for nothing". Although he seemed to be generally well informed regarding the Council's activities, he evidently had not been to the public meeting, or at least he could not remember there being a public meeting. He claimed that "the Council just decided to buy it".

One of the members of the football team told investigators that the decision to buy the equipment had been made at a public meeting:

That was at, ah, outside the community hall (ui), outside the hall (ui) . . . There was, um, there was mainly boys there they told them, like some other, they don't put (ui) . . . So Council told everyone who's interested, nearly everybody attend, attend the meeting . . . 'cause, um, when the Council passed the word around, many of the boys attend because boys have more interest in a gym.

But he went on to suggest that even they had lost interest in using the gym.

Conclusion

Although Council minutes showed that the community had been consulted about the purchase of the gym equipment during a public meeting, in the Commission's

view there is some reason to believe that the meeting's attendees may not have been fully representative of the community as a whole and perhaps were more disposed to approve the purchase than members of the general community.

The Council's decision to purchase the equipment to encourage physical health and community spirit was an admirable one. Yet, if some residents can be believed, very few, if any, people used the equipment when it was available for \$5/hour, and apart from a brief period of use by footballers, after it was sold to the Council it fell into complete disuse.

The purchase of the equipment was to some extent carried out in accordance with Ministerial Directions. However, contrary to the Ministerial Directions, the Council did not call for the three quotations required for purchases of more than \$3,000. There was no evidence to suggest how the Council arrived at the purchase price of \$9,120.

In the circumstances, there is not sufficient evidence to conclude that the Council's action amounted to favourable treatment of the Deputy Chairman's relative as opposed to merely disregard, lack of understanding, or ignorance of the Ministerial Directions.

Allegation 7 That the Council failed to make records of meetings available to the public

Background

One of the key issues in Allegation 6 was whether or not the Council had in fact held a public meeting at which residents approved the purchase of gym equipment. Island residents discussing the matter with investigators in late 1990 claimed to know nothing about a public meeting, although a Departmental Transition Team consultant had told them that a public meeting had been held.

"Have you asked to see any minutes of the Council meeting?" investigators inquired.

"No. They don't give no minutes to the people of [. . .]. They don't give no minutes", they responded. In fact, they said " . . . In the last six years when [. . .] and [. . .] been in the Council and even before that, even you can go back for 20 years, nobody get any minutes or things"

Above-average minutes

By some accounts Island Council B kept quite good minutes of Council meetings. Writing in May 1990 after a 3-day visit to the Island, a Transition Team consultant noted that "[t]he Council holds regular Council meetings and maintains above average Minutes which overall comply to the requirements of Ministerial Directions". A short time later, he wrote in another report, "The format, and contents, of Meeting Minutes is above average."

Way of life?

The Chairman confirmed the residents' perception that Council minutes were not available and seemed prepared to defend the practice as part of the Torres way of life:

- Q: Yeah, but do you put a copy of the Council minutes up, a photocopy up on the wall for people to read so they know what's going on?
- A: Everybody know what's going on.
- Q: Yeah, is it only by word of mouth?
- A: (ui) a public meeting. But that's our way of life.
- Q: Mmmm.

- A: (ui).
Q: Mmmn.
A: If you've got problems you stand up and talk.

On the other hand, the Council Clerk was not sure if minutes were available for inspection by residents:

- Q: Are community members allowed to inspect the Council records?
A: Well, ah—
Q: The Council minutes, I mean.
A: (ui) might as well find out with the (ui) officer.
Q: Mmmn. Yeah, but what I mean is if any of the residents want to come in to find out what's been happening in the Council meetings—
A: No, I don't think so.
Q: —are they allowed to inspect the, ah, minutes or even a copy? Do you post a copy of the minutes on the wall for them to read so they—
A: No.
Q: No? What happens?
A: No.
Q: Are the, how is information passed on to the community members, if a decision's made at Council?
A: (ui)—ah, public meeting.
Q: How often have these public meetings—?
A: Well, ah, um not very often.
Q: Not very often.
A: Yeah.
Q: What do they just send word out around the village?
A: No, we just put notice up or send the case around, like, we gonna have the public meeting on (ui).

In the Commission's view, public meetings would have a place in the community, but the range of issues raised during those meetings would not allow the same breadth of understanding as perusal of a well-kept set of Council minutes. Furthermore, if residents were afraid to speak to investigators about the state of affairs on the Island, they were probably unlikely to "stand up and talk" at a public meeting. As one couple commented to investigators, residents on this Island were "too frightened to speak up to anybody".

The Commission learned that Council meetings were held at the Council office, and with minor variations, seemed to have been held with some consistency every fortnight or so. However, these meetings were closed to the public. With little or no information about Council proceedings available other than that passed by word or mouth, rumours of corruption or nepotism grew quickly, were embellished and flourished almost unchecked.

The issue of public meetings and minutes are only one aspect of openness and accountability. Generally, the Commission's view was that residents on this Island

did not feel as if the Council consulted the community on many, if any, issues and that Council decisions were made in a vacuum. This view is supported by comments made in a review of Council's CDEP program:

Until recently the community had very little input into decision making. It must be remembered that culture and tradition are very important factors in Torres Strait Islanders' lives. The Chairman and Deputy Chairman are the recognised traditional/clan leaders on the Island and their word has always been law . . .

A DFSAIA officer who had enjoyed some contact with the Council used stronger language. He described the Council on Island B as "particularly, ah, authoritarian and domineering".

The Commission cannot pretend to have the same understanding or insights into the management of community affairs as Councillors. Nonetheless it finds it hard to understand how "way of life" or "culture and tradition" could justify the lack of openness with which Council administration and decision-making were evidently carried out on Island B.

Conclusion

Unlike mainstream local authorities, Island Councils were not required under their governing legislation to make the minutes of their meetings available for public perusal. Under present legislation and guidelines they are still not required to do so. In the Commission's view, this should be changed.¹⁰⁸

¹⁰⁸ For the Commission's recommendation in relation to this issue, see page 397.

Allegation 8 That the Council policy directly favoured the Chairman and Deputy Chairman's business interests

Background

In his letter to the Commission in 1990, the complainant had alleged that a new Council welder had been used exclusively for repairing dinghies belonging to the Chairman and Deputy Chairman.

The complainant's contacts on the Island, interviewed later, said that the Council had recently posted a sign advertising free welding by Council staff for anybody in the community. They suggested that such a move could benefit only the Chairman and Deputy Chairman, since between them they owned "a fair few" dinghies that were used by other residents who sold their fishing catches to the Deputy Chairman. One of the residents went on to claim that the Chairman and Deputy Chairman had received free welding on their dinghies for years.

Welding and repairs (i)

Inquiries with other residents did not lead to a clear picture of how welding was handled on the Island. Some residents believed that the welding equipment was privately owned, others that it was the property of the Council. However, those residents who did acknowledge having repairs done to their dinghy stated that they had paid for the service, though they were not always able to identify clearly whom they paid.

One resident claimed that the repairs he had recently had done to his dinghy had cost in excess of \$700, which he was "paying off". He had previously taken his boat to TI, where he apparently paid considerably less for similar repairs. The Council Chairman also said that he had his welding done on TI. He claimed that if he had it done on Island B he would have to pay for it like anyone else.

When investigators visited the Island in 1991 they found a sign on the wall of the Council workshop:

Workshop Timetable

People to weld aluminium material included dinghies.

Hours basis: \$35/hour Monday to Friday

\$45/hour weekend rate (Saturday)

\$10 minimum held cost.

Please pay at Council office before welding hours.

There was no indication as to how long the sign had been there. Investigators could find no sign advertising free welding on the dinghies.

The practice of paying Council workers to undertake work on behalf of individual residents was apparently not restricted to welding. One resident gave a careful account of the repairs carried out on private vehicles at the Council workshop. He said that owners had to go to the Council office where they paid according to how many hours was spent on the repair.

Welding and repairs (ii)

Analysts were able to examine a Council "welding invoice book" that contained 44 invoices for a 32-day period during November and December 1990 for a total of \$7,351. Approximately 60% of the invoices described repairs to dinghies. The invoices were made out to 36 different names.

One invoice was made out to the Chairman, in the amount of \$375 for dinghy repairs. Five invoices, in amounts totalling \$1,359, were made out to the Deputy Chairman for dinghy repairs.

Interestingly, the invoice book contained six original invoices that evidently had not been sent on to residents. Four of these, totalling \$784, were made out to the Deputy Chairman and one to an adviser to the Chairman and Deputy Chairman's company.

But only five of the 44 invoices in the welding book were annotated with the number and date of an enterprise account cash receipt indicating that the job had been paid for. Analysts were unable to check the Council's Enterprise Fund ledger to ascertain if payments may have been made without an appropriate annotation having been made in the welding book.

Conclusion

Investigators found no evidence to confirm the complainant's assertion regarding a Council policy to provide free welding. Rather, on face value, the evidence

suggested that if residents had actually paid for the services rendered, welding may have been a lucrative source of revenue for the Council. The evidence suggested that many people other than the Chairman and Deputy Chairman used the workshop for repairs.

The notion that the Chairman and Deputy Chairman were somehow benefiting from free welding would no doubt have been encouraged by practices such as the workshop's apparent failure to issue invoices to the Deputy Chairman for four of the five tasks undertaken for him over 32 days.

CHAPTER 4

Aboriginal Councils

The Commission's investigation of Aboriginal and Island Councils focused on four Aboriginal Councils at various locations throughout Queensland. These Councils will be referred to in this report as Aboriginal Councils A, B, C and D.

The investigation report on each of these Councils will be preceded by a brief history of the Aboriginal community which the Council serves. Operating under the provisions of the Community Services (Aborigines) Act 1984 each of the Councils exercises all of the powers of mainstream local authorities and are elected by triennial polls. In addition to carrying out usual local government functions for the communities which they serve, Aboriginal Councils, especially in remote communities, often have a much greater degree of control over the lives of their constituents than mainstream local authorities. Aboriginal Councils often control housing, leasing of Council-owned commercial outlets within the area, and provision of basic services including electricity, water supply, sanitation and maintenance of roads. The Councils may enforce their by-laws through Aboriginal police and Aboriginal Courts. Under the provisions of the Act, Councils may restrict the access of non-community members to the area and eject persons who are present without authority in areas under its control.¹⁰⁹

Aboriginal Council A

A brief history

Aboriginal Council A serves an Aboriginal community located in an isolated area in Northern Queensland. The community has a population of between 2,500 and 3,000, relatively few of whom are descended from the group or clan that originally lived there. According to local history, which has largely been handed down by word-of-mouth, the original inhabitants were moved by the State Government to another area, but returned in 1918 after a natural disaster destroyed the other settlement.

According to the residents, after the re-settlement of the community, the government policy of removing Aboriginal people from other areas of Queensland

¹⁰⁹ See, for example, page 168.

to this community increased the population to its present level and resulted in a community whose clan or tribal backgrounds varied greatly. Some 22 different languages were represented among the people re-settled in the area. Many of those sent to the area were re-settled there involuntarily, often because of minor offences committed elsewhere in Queensland.

Writing in 1982, a local resident stated that the community:

... is not a tribal community, which is sad to say, but as you all know most of the people [in the community] were put there. They're from different tribes, from all over Queensland.

According to one estimate, the unavailability of jobs in the community had led to an unemployment rate of about 87%. Absenteeism from school was a continuing problem, and upon completing his/her education the average child in the community read at the level of a 7½ - 9 year old. Mortality rates in the community have been estimated to be at least three times those of Queensland as a whole.

As the resident writing in 1982 said:

The average number of persons living per house is about 14 ... health ... there is below standard. Most problems are indirectly caused through alcohol.

Alcohol was legally introduced to the community in 1973, and the community now has a canteen.

The community has an Aboriginal Court, which hears complaints of offences against the by-laws. Aboriginal police work in the community with officers of the Queensland Police Service, but do not have the same powers. The Aboriginal police do, however, have the power to arrest local residents and bring them before the Aboriginal Court for breaches of the by-laws.

From superintendents to self-determination

Until the 1960s the community was under the control of superintendents. Many of these superintendents, according to local residents, exercised an almost military control over community members, who could be imprisoned for offences ranging from swearing to failing to show proper respect for authority.

Writing in 1970, one author noted that the administrative and social structure of the community under the rule of the superintendents revealed

in an exaggerated form the most striking peculiarities of many Aboriginal settlement communities. The administrative system is perhaps better described as monarchical than as hierarchical. Effective power was concentrated in the person of the superintendent.

The author went on to note that in the early days of the settlement the superintendent exercised an extraordinary degree of control over the lives of the residents and that the behaviour of residents was closely circumscribed by regulation.

Although the community achieved greater self-determination in 1984, when Aboriginal Councils began to more fully assume the functions and responsibilities of local government, many residents considered that the Councils which took the place of Government protectors and superintendents also failed to consult with the general community. In 1982 one resident wrote that the then Aboriginal Council had held only two public meetings in seven years and was not properly consulting with the local community prior to making decisions affecting the community.

Aboriginal Council A owns or controls most facilities in the community, including the canteen and commercial outlets such as stores. It controls the provision of most services and the allocation of housing.

As it is entitled to do under the Act, the Council has made by-laws specifying that "guests" cannot stay in the community area for more than four weeks without the written consent of the Council and that "business people" can stay no more than seven days without its consent.

Complaints made to the Commission

The Commission's investigation in relation to Aboriginal Council A commenced when a resident of the community made various allegations against the Council and in particular against the Council Chairman.

The community resident's letter of complaint was supported by a petition signed by 80 residents. When interviewed, the resident said that he wrote the letter on behalf of himself and three members of another family and that he was one of the principal instigators of the petition.

Although these three family members were related to the Council Chairman, one said that friction had developed within the family over a number of issues.

One of the complainants was the then current Chairman's aunt. According to one witness, this woman had been an organiser for the Chairman's election campaign, but had subsequently fallen out with him. This led, according to the witness, to a dispute which spread to other members of the community, and eventually resulted in the complaint to the Commission.

"The culture has been lost"

A former Chairman of Aboriginal Council A gave investigators his opinion about how the tribal or clan origins of community residents affected their interaction. Speaking of the involuntary re-settlement of Aborigines from various parts of Queensland into the community, he said that one side-effect of this had been that "... the culture has been lost".

He said that about 15 different clans or tribal groups were represented in the community and that many of those groups had brought their own cultures with them. In his view, petty jealousies had developed among families and groups and the community had become divided along "blood-lines". Family factions, accentuated by intermarriage, had even developed within certain "blood-lines". He said that there were seven main family groups represented in the community, and that issues which began as family issues often developed into community issues. Many of the complaints investigated by the Commission arose from allegations of nepotism relating primarily to the jobs and benefits given to the Chairman's relatives.

Another complaint

Some months after the residents' complaint was received, the DFSAIA forwarded a complaint concerning Aboriginal Council A to the Commission. This complaint concerned possible corruption in the Council's purchasing practices.

Aboriginal Council A: Auditor-General/DFSAIA officers' reports

As part of its investigation in relation to Aboriginal Council A, the Commission examined previous reports from the Auditor-General, as well as reports from officers of the DFSAIA who attended the community as training or transition officers. These reports showed that some of the financial and record-keeping problems that the Commission encountered during its investigation had been present for many years.

December 1988---The Auditor-General wrote to the Chairman regarding the Council's audit report for the period ending August 1988. He referred several matters for attention and early advice of corrective action, including:

- Rental arrears: the Auditor-General noted that housing rental arrears had increased from \$39,069.21 on 1 July 1987, to \$85,545.54 on 30 June 1988.
- Investment of surplus funds: he noted that the Council had not been taking advantage of the opportunities to invest surplus funds in approved investments to maximise returns on Council funds.
- Contract register: whilst the Council was undertaking capital expenditure for the upgrading of roads under Council control and for supply of residential accommodation, no contract register was being maintained. He noted that such a register would assist in the financial control of committed funds and progress payments made by the Council to honour claims lodged by contractors.

2 March 1990---The Council was issued an unqualified audit report for the period ending 31 August 1989, but the Auditor-General noted a number of unsatisfactory matters which were mainly attributable to a failure to comply with Ministerial Directions,¹¹⁰ including the following:

- Purchasing: there were instances of payments proceeding on unsigned orders whilst the accounts payable clerk advised that some purchase requisitions had been signed by delegated officers, in lieu of the order. Audit could not confirm this as there was no purchase requisition number recorded on the order to enable location of the appropriate requisition.

¹¹⁰ See page 16.

- CDEP projects:¹¹¹ payments made to employees under the scheme could not be substantiated with approved rates and other entitlements as the Council had not formally determined these matters. The Auditor-General noted that under DAA guidelines, community Councils were to determine for each project the activities to be undertaken, the persons to be employed and their entitlements, including hours and payment for work performed based on appropriate hourly rates.
- Canteen operations: while a daily independent stocktake was undertaken, daily selling price control calculations were not performed, as required under the Ministerial Directions. A selling price control calculation at the time of the audit indicated an unaccountable shortage of \$35,418.00.
- Grants in aid: the report noted that the Council had provided loans or met the debts of community members by way of grants, and that the balance owing to the Council as at 30 June 1989 amounted to \$36,041.00. The report noted that under Ministerial Directions 1.24 and 1.25, Councils could not under any circumstances provide loans or meet the debts of community members.

29 March 1990---In a report to the Acting Director-General, the Acting Divisional Head of the Aboriginal and Islander Affairs Division of the DFSAIA noted the following:

- The Auditor-General had issued an unqualified audit report for Aboriginal Council A. This was the third consecutive year that the Council's accounts had been unqualified. He noted the following unsatisfactory areas:
 - the Council did not regularly review its financial position through monthly reports by the Council Clerk.
 - plant and equipment records were unsatisfactory.
 - payments made to employees under the CDEP Scheme could not be substantiated with approved rates.
 - During the audit period Council made loans to community residents which it was not empowered to do.

¹¹¹ See page 37, footnote 60.

The report noted that departmental consultants would continue to visit the community to provide support and assistance on a needs basis, but went on to say, "the frequency of these visits could be minimised due to the overall satisfactory performance of this Council".

10 October 1990---A report prepared by a DFSAIA consultant for the Divisional Head of the Aboriginal and Islander Affairs Division said that, during a recent visit to the Council, DFSAIA officers had assisted the Council with queries regarding:

- goods inwards procedures;
- financial statements (preparation and complete);
- audit reply.

The consultants noted in relation to the goods inwards book:

Advice was received . . . that Council's goods inwards books were in a poor state. Indications were that the goods inwards book had not been completed for some time by an employee who had since resigned . . . Council needs to take urgent action in the form recommenced if it wishes to avoid severe criticism in the next audit inspection. It should be noted that this matter has already been raised previously.

14 February 1991---The Auditor-General's report to the Chairman of Aboriginal Council A noted that the audit had been completed for the period to 31 August 1990 and brought to attention the following unsatisfactory matters:

- Council meetings and minutes: while the Council held regular meetings throughout the year to review the Council's financial administration, the following had not been formally addressed or ratified:
 - a) guidelines for the basis of work in terms of the CDEP Scheme, for example, wage rates, number of hours to be worked, whether workers with dependants receive more pay etc.
 - b) delegation to responsible employees to hire and fire.
 - c) delegation of authority to those officers who sign purchase orders.
 - d) setting policy on the collection of outstanding debts.
 - e) approval of monthly expenditure for all funds.

- **Receipting and debtors:** some receipt numbers were not detailed in cash by post book.
- **Purchasing:** the goods inwards register had not been maintained satisfactorily. Goods inwards had not been recorded at all for the months of April, May and June 1990.
- **Control of plant and equipment:** it was advised and confirmed during the audit that periodic stocktakes had been performed. However, the plant and equipment register had not been maintained to a satisfactory standard, and there was no accounting process for the identification of plant and equipment upon purchase.
- **Trust fund:** a review of trust fund balances as at 30 June 1990 in respect of grants provided by ATSIC disclosed that there were overdrawn balances for CDEP wages (\$152,232.00), CDEP administration and support (\$78,478.00), and Council operating expenses (\$60,604.00), and that balances still existed for projects that had been finalised. This situation had occurred because individual ledger cards had not been prepared and maintained for each project for which grants had been received.
- **Canteen operations:** controls were reviewed and considered satisfactory, although the Council did not perform a selling price control reconciliation.
- **Generally,** the Council's accounting records were maintained to a satisfactory standard and improvement had occurred in some areas such as purchasing and canteen operations since the previous year.

20 February 1992---The Auditor-General advised that audit for the financial year ending 1991 had been completed and had disclosed an unacceptable position in the financial administration of the Council. A qualified audit report was issued with regard to the lack of documentation to support payments totalling \$261,689.00. Problems identified by the audit included:

- **Goods inwards:** no formalised controls over goods inwards.
- **Computerised payroll sheets** were not being authorised by the Chairman, Deputy Chairman, or Council Clerk.
- **Payment vouchers:** not all payment vouchers were authorised during the year.

- **Canteen trading:** trading statements did not reconcile to the cash books of the enterprise fund as at 30 June 1991, and therefore the possibility of loss of cash and stock was greatly increased.
- **Agency's agreements:** under the terms of the Council's agency agreement with a bank, the Council was required to restrict the amount of cash on hand to below \$50,000. A count during the audit identified cash on hand in excess of \$100,000 and auditors were informed that cash could exceed \$200,000 on certain days. As a result, Council could have been responsible for cash on hand with no insurance cover.
- **Council minutes:** it was noted that throughout the year not all Council minutes were signed by the Chairman of the Council, and accordingly, disputes could have arisen about matters discussed at Council meetings.
- **Budgets:** as raised in previous management letters, it was noted that the Council had not adopted a budget in accordance with section 29 of the Community Services (Aborigines) Act.

Allegation 1 That funds allocated to the Council for the construction of a fire station were not used for that purpose and had not been accounted for

Background

This allegation was made by a local resident who signed the complaint which led to the Commission's investigation.¹¹² He was employed in the community as the co-ordinator of a welfare project and was a distant cousin of the present Chairman of the Council. His father and brother were both former Chairmen of the Council, his mother had served as a Councillor, and his aunt was presently a Councillor. The complainant told Commission investigators that the letter which set out this allegation and others had been prepared by the Chairman's aunt, who was another of the complainants, and that he agreed with the letter's contents. He said that the letter was based on information provided to him by a person who was a Councillor at the time that the funding for the fire station was allegedly approved. The complainant admitted to having no personal knowledge about the allegation which he made.

Fires and other emergencies

Investigators interviewed a person who had been the Council executive officer when the funds referred to were allegedly allocated. The executive officer said that during the period in question, major works in the community had been financed by the Commonwealth DAA. He said that he was not aware of any funding being received for the construction of a fire station, but funding had been provided for an emergency services building and had been applied to that purpose. The building was presently used as a ranger station and housed search and rescue vessels.

A former officer of the Commonwealth DAA was interviewed about this matter. He had been involved in allocating funds to Aboriginal Council A for capital works, and said that the funds in question had been provided for the construction of an emergency services building, not a fire station. He said that the funds had been applied to that project. He said that confusion may have arisen because an

¹¹² See page 168.

application was made to construct a building to house a fire truck, but that that application was neither approved nor funded.

The present Council Chairman, who was a Councillor but not Chairman at the time these funds were allocated, told investigators that the funds were provided for construction of a ranger station, and said that no money had ever been received to construct a fire station.

Conclusion

It was clear from the interview with the complainant that he had no personal knowledge of this allegation and had relied entirely upon what his brother had told him about the alleged misuse of funding for the fire station. Investigators established that funds received by the Council had been used for their intended purposes. This allegation, like many investigated by the ATSI Task Force, was an example of a rumour which assumed the proportions of fact in some people's minds, largely because Council decisions had not been regularly conveyed to the wider community.

Allegation 2 That the Council-funded major extensions to a business operated as a private enterprise by the Council Chairman, and that the Chairman used his influence with the council to obtain Council accommodation for an employee of that business

Background

These allegations were made in the original letter and petition to the Commission referred to in Allegation 1.¹¹³ The complainants objected to the fact that the Chairman of the Council had obtained a lease from the Council on the only fuel outlet in the community, and that the Council had paid for "major extensions" to the garage. The garage the subject of this complaint was owned by Aboriginal Council A and leased to the present Chairman of the Council as a private enterprise.

The complaint also objected to the fact that the Chairman had hired "a non-Aboriginal mechanic" to work in the garage and had arranged for this person to be accommodated in a Council-owned house at a time when, according to the complainant, the community was experiencing a severe housing shortage.

The complainant told Commission investigators that within weeks of the Chairman's election to the Council, at a time when some community residents required repairs to their Council-owned homes, major extensions had been carried out to the garage. The complainant said that he believed that the question of funding for these extensions had not been raised at a Council meeting, as a relative of his who was a Council member had searched the minutes and could find no reference to the funding being approved.

A tenant's rights

The Council Clerk told investigators that the garage in question was owned by the Council and leased to the Chairman, who had held the lease since it was built. Although the present Council Clerk had been absent from the community when the

¹¹³ See page 168.

extensions to the garage were made, she had, since her return to the community, seen documents indicating that the extensions had been paid for by the Council. She had been required to prepare a report for Council in relation to this matter as a result of an article which appeared in a local newspaper. The article related to an alleged conflict of interest on the part of the Chairman and read, in part, as follows:

[Aboriginal] Council [A] Chairman . . . has strongly defended himself against serious allegations of impropriety. A petition is circulating . . . alleging among other things, a "conflict of interest" in [the Chairman's] extension of his . . . garage. [The Chairman] said there was no truth in any of the allegations, which he believed had come about because of bad feeling in the community. [The Chairman] agreed work had been done on the garage he runs . . . [The Chairman] said he leased the garage from the Council, and recently asked the Council to have the premises improved, as any tenant would be entitled to do. He said he was not Chairman at the time he made the request, and did not attend the meeting where the issue was discussed.

The Clerk was unable to tell investigators whether the Council had approved funding for the extensions to the garage. She believed that this allegation had arisen as a result of a family feud involving the Chairman and his aunt.

Council records

Council minutes dated prior to the extensions to the garage being carried out contain the following entry:

19. From Works Supervisor [. . .], submission of material costings on proposed extensions to service station as proposed. Carried.

Although the minute is not clear, it appears that during the Council meeting some motion was put and carried in relation to accepting costings on proposed extensions to the service station. The minutes also note that the Chairman (who at that stage was a Council member, but not Chairman) was not at the meeting. The question of the service station extensions was the subject of mention at another Council meeting six months later. By that time the Councillor who leased the service station had been elected Chairman. Under general business, the following entry appears:

4. Queries re: extension to garage. Councillor [. . .] informed Councillors that she has been approached by a number of people asking who paid for the extension for "the service station". [the Chairman] said that all this was passed by the last Council.

Extensions to the garage

When interviewed by investigators, the Chairman told investigators that he had applied to the Council in writing to establish a service station in the community at a time when he was not a member of the Council. He said that funding was subsequently made available and a service station was constructed:

- Q: All right, now that subsequently was leased to you.
A: I applied for the lease and the Council, ah well, actually, the Council did put up, call for applications, at the time I think [another community member] was back [in the community], so it was to be, I thought [he] might have applied to it but he didn't because he was already employed—
Q: Do you recall that, when that was?
A: No, I couldn't remember when it was.
Q: Were you a Council member at the time you obtained that lease then?
A: Yes I was.
Q: You'd become a Council member?
A: Yeah, I'd become a Council member after, after that.

In relation to the extensions which were carried out on the garage at Council expense after he took up the lease, the Chairman said:

- Q: Well, the next matter is the suggestion that extensions were carrying out, carried out to the garage and that you admitted to someone that Council actually paid the cost of those extensions. Is that correct?
A: Somebody, the Council paid the cost of the extension, yeah. 'Cause I, I applied to the Council for an extension 'cause there was not enough room in the place.
Q: You applied to the Council for extension?
A: Mmm.
Q: And did you take part in the—?
A: No.
Q: Meeting too?
Q: —Can you explain why Council funds were used to fund that?
A: It was the Council premises and they're responsible for any maintenance or extensions requested if they're made—

The Council Clerk's report to Council concerning funding for the extension of the service station referred to minutes of the meetings outlined above. It also noted that the extensions to the service station had cost \$18,289.

Accommodation for the mechanic

Some months after the extensions were carried out to the garage, and after the election which saw the garage proprietor become Chairman of the Council, a letter was tabled at a Council meeting, and referred to in the minutes, as follows:

[The Chairman] submitted letters for Council consideration. Request accommodation for mechanic recently employed by [the garage], he asked if Council could either, build a two-bedroom caretaker flat near his garage, permanent room in the guest house or [. . .]'s home. Council agreed that a room will be allocated for and to advise [the Chairman] that a caretaker flat or flat will be built when funding becomes available.

The Council minutes indicate that the Chairman was not present at the meeting when the suggested accommodation for his employee was discussed.

Although the minute seemed to suggest that the employee was to be offered a room in the guest house, at some point during the following months the Council appears to have decided to offer the Chairman's employee a house, a house that the Council Clerk considered had already been promised to her.

According to the Chairman, this decision was made at an "informal" meeting of Councillors and was to be ratified at the next Council meeting. He said that based on the informal decision, he had employed the mechanic and lodged him in the house. However, prior to the next formal meeting of the Council, residents became aware of the decision to give the house to the mechanic, and certain community members approached Councillors to voice their disapproval.

"The decision was changed"

The Council Clerk said that she received a letter from the Chairman indicating that he had allowed the mechanic to occupy the house, which she considered had been promised to her. She said that although the house in question was owned by DFSAIA, the Council had been given authority to rent it to staff members. According to the Chairman, the informal decision to allow the mechanic to live in the house was never ratified at a Council meeting because of community pressure:

Q: So was it ever ratified at a meeting?

A: No, obviously, along the line somewhere [the Council Clerk] got into the Council ears and, you know, made her sort of views known, and the decision was, the decision that they sort of discussed the matter again and reversed their decision that they told me.

Q: So they never ever put it in writing?

A: No, they never did, but every week the decision was changed.

Council minutes for the relevant period show that the matter was discussed at several meetings after it was first raised by the letter of request from the Chairman. A week after his letter was tabled, the Chairman attended a Council meeting during which he asked that his previous request for accommodation for the mechanic be discussed. According to the minutes, the Council agreed to discuss the matter later in the meeting. But the minutes do not show that the issue was raised again.

Minutes for a meeting held a few weeks later, while the Clerk was away, show that the Council considered advising the Council Clerk that the house had been allocated to the mechanic. Two Council members present at that meeting did not want to take that course of action because the decision to allocate the house to the mechanic had not been recorded in any Council minutes.

The Council discussed the matter again a month later. But the minutes for that meeting do not show what was discussed and whether or not the Chairman took part in the discussion. A month later, again, the Council carried a motion that allocated the house to the Council Clerk and indicated that rooms in the guest house would be made available for the mechanic. Again it is not clear from the minutes whether the Chairman was present for that discussion and vote. During a meeting a week later, however, the Chairman asked for the minutes to note that he disagreed with the decision made at the previous meeting to allocate the house to the Council Clerk. This could indicate that he was not present during the previous discussions to register his disapproval.

About two weeks later, a letter from the Chairman's company was tabled at a Council meeting indicating that he was considering taking legal action against the Council for its decision to allocate the house to the Council Clerk. A motion that "legal advice be sought" was moved and apparently carried.

At a Special Meeting attended by the Chairman two days after the threat of legal action, the Council Clerk was offered a compromise in which the mechanic would remain in the house until another house under construction in the same street was finished. The proposal seems to have been that the mechanic would then move into the new house and the Council Clerk could have the staff house. A decision was deferred until the next Council meeting a week later. At that meeting the Councillor who had originally moved the motion allocating the staff house to the Council Clerk refused to rescind her motion. Having reached this stalemate, the matter was deferred.

The issue was finally settled about two months later when a motion that the Council Clerk be allocated the house was put and carried.

Conclusion

There is no doubt that the Council paid for extensions to a Council-owned service station leased to the Chairman for private enterprise. The Chairman stated that he requested Council funding for the extensions in his capacity as tenant of the garage and that the extensions had been approved at a Council meeting. Council minutes were ambiguous to say the least. All that can be said with any certainty is that a motion of some kind about a quote for extensions to the service station was carried at a Council meeting. While members of the community may well have been justified in suspecting favouritism in the Council's approval of these extensions, there is no clear evidence that the Chairman improperly used his position to obtain the approval. He denies that he did so, and he was not present at the meeting where the quote for the extensions was apparently accepted by Council.

The minutes show that the Chairman did attend at least some of the meetings during which the Council discussed the allocation of a Council house to his employee. He clearly had a conflict of interest in this matter.

Since 1990 the Community Services (Aborigines) Act has contained a provision similar to the Local Government Act, making the failure to declare a pecuniary interest an offence. Unlike the Local Government Act, which applies to mainstream local authorities, the Community Services (Aborigines) Act does not require the Council to keep a pecuniary interest register or make it available for inspection. Rather, it requires that Council members disclose conflicts of interest, that these disclosures be recorded in Council minutes, and that members not be present for or take part in discussions on those issues.

In the present case it is impossible to determine from the minutes whether such disclosure was made, and whether or not the Chairman absented himself from discussions. It appears clear that on at least one occasion he did absent himself, but his absence is not recorded in the minutes.¹¹⁴

Although the Council appears to have kept minutes for all its meetings, the quality of those minutes left much to be desired. For example, as far as the present case was concerned, the minutes did not show whether or not the Chairman was present for some or all of the discussions of the matters in which he had an interest. In the absence of a requirement that the Council keep a pecuniary interest register, it is also difficult to determine what interest, if any, the Chairman declared during discussions in respect of this matter. It is clear that he had an interest in obtaining accommodation for his employee and that he may have taken part in some

¹¹⁴ See page 181.

discussions about the matter at Council meetings. But in the absence of a pecuniary interest register, and reliable minutes about his presence at meetings where the issue was discussed, there is not sufficient evidence to determine whether the Chairman has breached the pecuniary interest provisions of the Community Services (Aborigines) Act.

If the Council had properly recorded the basis for its decisions in the minutes and made those minutes available for public inspection, community members' suspicions about the Chairman's possible influence in both these matters could have been reduced and perhaps dispelled.

Allegation 3 That Council funds and equipment were used to maintain a road to an area where the only full-time residents are the sister and brother-in-law of the Council Chairman

Background

This was another complaint which seems to have been based entirely upon information provided to the complainant by another resident, in this case, his brother, a former Councillor.¹¹⁵ The complainant's brother told him that Council funds and machinery were being used to maintain a road to an area where the only permanent residents were the sister and brother-in-law of the Council Chairman.

A road and a side-road

Investigators examined the road in question and noted that the initial portion serviced several residences. Beyond those homes the road serviced a number of huts which were owned and used by a religious group for camp outings and retreats. Local police advised investigators that residents also used the road for access to a recreation area.

About half way between the last permanently occupied residences and the recreation area, a side-road, or track, left the main roadway and crossed very rugged, steep terrain to the Chairman's relatives' residence. When investigators visited the community this side-road, or track, was virtually inaccessible, even to 4-wheel drive vehicles. Not surprisingly, the Chairman's relatives said that they did not use this side-road to access their residence and instead travelled along the road and through the nearby recreation area.

The Chairman's brother-in-law advised investigators that his home was located near the road in question and that to his knowledge the road had been repaired several times using a Council bulldozer. He confirmed that the road serviced several other residences, a recreation area, and cabins owned and used by a religious group for camping trips and retreats. He denied that the Council had shown any favouritism by maintaining the roadway, which he said was in a poor state of repair compared to other roads for which the Council was responsible.

¹¹⁵ See page 175.

The Chairman told investigators that the road was maintained by the Council and that it would be maintained whether or not his sister and her husband lived in the area. He said that the road was used by many members of the general public to travel to the recreation area and that maintaining the road showed no favouritism to his relatives.

Conclusion

This, like several other allegations made to the Commission, seemed to be based on hearsay and inaccurate information. The Commission's investigation disclosed that community members other than the Chairman's relatives used the road in question and that it was a public road which the Council would be required to maintain. The use of Council equipment to maintain the road was not, therefore, improper.

Allegation 4 That the sister and sister-in-law of the Council Chairman were employed in Council administrative positions for which they had no qualifications, and that the cousin of the Council Chairman was appointed to the position of project officer with the CDEP¹¹⁶ Scheme administered by the Council

Background

The complainant alleged in relation to these matters that relatives of the Council Chairman had improperly obtained positions with the Council, positions that had not been advertised. He also said that the Chairman's relatives were not qualified for the positions to which they were appointed.

The sister and the sister-in-law

The Chairman of the Council told investigators that his sister and his sister-in-law were employed by the Council. He said that the positions they filled had been advertised by placing notices in the public area of the Council offices, and that all applicants for the position were interviewed. He said that he took no part in the interviews or in the selection process. He said that it was not his practice to take part in any selection process in which his relatives were interviewed.

The Chairman's sister told investigators that she had applied for a position with the Council after seeing a position advertised. She was interviewed for the position by the Deputy Council Clerk and another person. Two other applicants were interviewed. The Chairman's sister said that she had had previous experience with the Council in the same position.

The Council Clerk told investigators that the Chairman's sister had been employed as a purchasing officer and his sister-in-law as a receptionist. The Clerk said that she was not present when the positions were filled but was aware that the positions had been advertised.

¹¹⁶ See page 37, footnote 60.

The cousin and the brothers-in-law

The complainant also objected to the fact that the Chairman's cousin had been appointed to a position of CDEP project officer. He said that he was not aware of any qualifications the cousin had for the job and that, to his knowledge, there had been no interviews conducted for the position. He said that the position should have gone to a resident of the local community.

The Chairman told investigators that two positions had been created for project officers with the CDEP Scheme. Four people had applied for the positions, two of whom were not living in the community at the time. One of them was his cousin. Two of the remaining three applicants were his brothers-in-law, but, according to the Chairman, community pressure forced them to withdraw their applications.

Speaking of the applicants the Chairman said:

- A: . . . As far as I knew I think there were four of them I think, I think four. I can remember only four.
- Q: Four? Do you recall who they were?
- A: At that stage there were [. . .] he was from Townsville. [My cousin] and [two others], and both of those two are my brother-in-laws (ui), but they pulled out, they withdrew their application, because people sort of, people within, within the Council workforce, they know who applies for jobs around the place and the rumours start around the place you know, people were saying things like 'yeah (ui) his family'. [One of the applicants] said if that's going to cause undue problems for anybody and so [they] withdrew their applications.

The remaining two applicants were interviewed by a selection panel comprising two ATSIC regional Councillors and a member of the ATSIC regional office. The panel recommended these two persons be appointed, one of whom was the Chairman's cousin. The Chairman said that neither he nor the Council took part in the selection process, but the recommended applicants were accepted by vote of the full Council.

When interviewed by investigators, the Chairman's cousin said that he had applied for the position of project officer after he saw the position advertised. He was interviewed for the position by officers from ATSIC. He said that he had previous experience performing clerical duties, and had been employed part-time in a TAFE college in a provincial town.

The Council Clerk confirmed that the position of project officer had been advertised, that a selection panel was constituted by ATSIC members, and that the Council took no part in the selection process.

Conclusion

In relation to this allegation of favouritism in employing the Chairman's relatives, it seems clear that the complainant had no real knowledge of the procedure followed to fill the positions, but assumed that the Chairman had used his influence to secure the positions for his relatives. The investigation found no evidence to support the allegations.

Allegation 5 That Council purchased equipment from an agency at grossly inflated prices in circumstances which suggested corrupt purchasing practices

Background

This allegation was referred to the Commission by DFSAIA, as a result of information received from a regional office about the purchasing practices of Aboriginal Council A.

The information from the Department related to invoices from a Council supplier totalling \$58,000. The Department had approached another supplier for quotations on identical terms and found that Council A was paying more than twice the retail price quoted by the other supplier. The Department had been advised by two Councillors that Council A had a long-standing purchasing arrangement with the supplier in question, an arrangement established by the Council's Works Supervisor, who also acted as purchasing officer.

A profitable relationship

The Commission's investigation in relation to this matter involved an extensive analysis of the financial relationship between the supplier and the Council. The Commission examined all invoice and deposit books, financial accounts and statements to the Council held by the supplier and also examined all Council creditors' files, including orders to the supplier. Analysts prepared a schedule of purchases made by the Council from the supplier which showed an excessive mark-up on equipment that the supplier sold to the Council. The analysis of selected purchases showed a range of mark-ups from 9.93% to 569.10%, leading to a profit of \$72,173.99 over a four-year period. In some extreme cases items had been supplied to the Council at five to six times their original prices. As the stock was sold under an arrangement where it was not held by the supplier but merely ordered and delivered to the Council, these were significant mark-ups.

The analysis also showed that a lot of the equipment purchased by the Council from the supplier was not the usual kind of equipment sold by the supplier. One of the supplier's directors told interviewers that the supplier specialised in tractor parts and accessories, grass-cutting equipment, hardware, abrasive screws, belts, etc. In its dealings with the Council, the supplier obtained and sold to the Council

bar refrigerators, water coolers, typewriters, photocopiers, beds and mattresses and other items which it did not normally sell to any other customers.

Analysts' examination of documents obtained from the supplier showed that a large majority of the products it sold to the Council were not in fact held in store by the supplier. The supplier obtained these products from other companies that would have delivered directly to the Council on request. Interviews with staff working for those companies showed that, in almost all cases, the companies would have sold goods directly to the Council at the same prices they charged the supplier. According to these staff, none of their companies had been approached by the Council to quote on items it purchased through the supplier.

A clerk, who had been seconded to the Council to assist in streamlining office procedures, told investigators that the Council was dealing with the supplier at the time of his work there. He said that he became aware of overcharging by the supplier when the Council purchased 10 whipper snippers for \$6,000. He said that his inquiries showed that the whipper snippers could have been purchased for \$350 each. When he rang the supplier and complained about this, the Council was given a credit.

The Clerk said that, in his experience, if purchasing involved Works matters, material would be ordered through the Works Supervisor, who acted as the purchasing officer for Works material. He said that the Works Supervisor would fill out an order form and have it signed by the Chairman and that this order form would be attached to the invoice when it arrived.

Analysts' examination of the supplier's sales showed that over a four-year period from 1988 the supplier's total sales were \$964,656, of which \$452,055 (46%) comprised sales to the Aboriginal Council A. Some of the inflated prices the Council paid were:

Item	Sale Price \$	Cost \$	Profit \$	Mark-Up %
1 agitator quadrant	866.00	433.00	433.00	100.01
fertiliser spreader	1,004.00	520.00	484.00	93.08
1 earthway row crop planter	963.00	204.00	759.00	372.06
4 Furrow hyd.rev.plough	6,386.00	4,400.00	1,986.00	45.14
221 shoe	1,519.30	759.55	759.75	100.03
6 hoes and handles	260.40	69.00	191.40	277.39
14 night latch indust hd	1,384.60	512.40	872.20	170.22
10 garden rakes	454.60	127.50	327.10	256.55
8 lawn rakes	339.60	92.00	247.60	269.13

30 entrance lockset indust hd	2,329.80	425.70	1,904.10	447.29
50 privacy lockset indust hd	3,713.50	555.00	3,158.50	569.10
8 hammers	504.00	219.84	284.16	129.26
1 chainsaw	966.00	459.00	507.00	110.46
38 powder coated metal frame single beds with mattresses	10,274.42	6,460.00	3,814.42	59.05
12 plastic buckets	63.36	12.00	51.36	428.00
22 wheelbarrows	4,376.90	1,430.00	2,946.90	206.08
10 crow bars	409.60	99.50	310.10	311.66
12 garden forks	569.28	119.40	449.88	376.78

"On their instructions only"

The Works Supervisor was questioned in relation to the Council's relationship with the supplier. He said that he no longer worked for the Council, but that during his period as Works Supervisor, it was his understanding that three quotes had to be obtained for any major item to be purchased. He said that it was his understanding that the purchase of any item over the value of \$1,000 required three quotes, and that some larger items had to go to tender. In relation to whether or not he acted as purchasing officer:

- Q: Did the Council have a purchasing officer?
- A: Yeah . . . sometimes on and off---
- Q: Did you have any authority yourself?
- A: No.
- Q: To purchase?
- A: I only, only when it come from Council and they approve something for me to get it, you know, it went, as the price went through Council, a quote went through Council, they would tell me to purchase that item, say, like motor cars, big items like that.
- Q: What were the steps taken in ordering plant, ah, in other words if you wanted an item of equipment for your workforce, what would, what did you have to do?
- A: Well, I would make several phone calls to different companies, local companies or to get quotes, and I would say Council had told me they'd want a machine, say like a---
- Q: No, this is the point where when you want something, you say look I need, ah, a small tractor?
- A: I would put, I would ask Council, we are in our budget could we get that, yep, you know, could that, um, be bought?
- Q: Would that be a written request?
- A: Sometimes yes and sometimes no. I'd just talk to the Council . . . there, the Councillors would be with you all the time and say, look, ah, we've, the Councillors would know what's going on. They'd say we need this, and I said, hey, you know, whatever.
- Q: But who would call the, who would check the prices, the quotes etcetera?
- A: Well, all the machinery, whatever, that it was, it all went to Council, Council approved all the, ah, which ones to get from a Council meeting.

- Q: But who would physically ring up?
A: I would.
Q: The various suppliers?
A: In, in the big things sometimes I would.
Q: Would you keep a record of all those?
A: Yeah, there's . . . yeah, not the telephones, the quotes and everything'd be each, each thing we've done there was a file on it, quotes on each one, but the Council should have it all there.
Q: Would you ever write out the orders yourself?
A: On the, on the ones that I was instructed to do, nothing else...that's only on the big items that Council say order this one, they're the only I would do, on their instructions only.
Q: Would you sign those orders?
A: No, never signed any orders.

In relation to the supplier which allegedly over-charged the Council for products:

- Q: . . . To move on to the question of [the supplier], was [the supplier] given preference in ordering?
A: No.
Q: Were any instructions given to give [the supplier] preference?
A: No . . . never have.
Q: By anyone at all to your knowledge?
A: Not to my knowledge.
Q: Had you personally placed many orders for [the supplier]?
A: No, no, no, no, not really, you know, you'd get the, um, like I said, that machine and that he won in tender, you know, some big items, well, he won 'em, he won 'em as a quote, quoted price that's all.

"The right price, the cheapest price"

The former Works Supervisor said that he remembered one emergency which required an order being placed with the supplier without quotes having been obtained, but he denied that the supplier received many orders without quotes having been called. In relation to the Council buying items which were not usually sold by the supplier:

- Q: Going through the records for Councils and their dealings with [the supplier] it would appear that there were quite a reasonable number of items purchased by them which is outside their normal operations, for instance photocopies, typewriters, tea urns, beds, etcetera. Did you have any dealings with [the supplier] in purchase of these items?
A: Er, no.
Q: Would you be aware of why they used, the Council used [the supplier] for purchase of these?
A: I don't know, s'pose because of the right price, the cheapest price, I don't know. You know, like, my job was very busy, you know, you're trying to

look after a lot of people and you run, run, run, and, and things happen all the time.

Q: Would you be aware why [the supplier] was used to purchase items of plant and there were dealers in [a nearby town] for which the Council could have purchased the same items at a cheaper price?

A: Which plant?

Q: There's brushcutters, there's ride-on mowers, there's other items?

A: Well, if you look in the file, you'll find there's three, everything like that there's quotes on those from all the other suppliers and he was the cheapest quote on those, but all that sort of thing did go through Council, the Council approved those to make those purchases.

The Works Supervisor suggested that the supplier may have been favoured by the Council because of prompt delivery:

But he did give good service, he said he wanted something, it'd be [delivered] that day or the next day . . . I did buy a little bit of stuff off him myself for here for me, tractor and things like that. He give me good service.

In relation to why the Council did so much business with the supplier:

Q: See it's put to us . . . that you instructed people on the island to deal with [the supplier], that [the supplier] was to be given preference?

A: No, I never said a thing like that. Ah, you know, because I would never do that because that contravenes the Trade Practices Act.

Q: Why would the Council staff use [the supplier] to purchase a photocopier when that photocopier comes from [another] supplier?

A: I don't know.

Q: You had no dealings whatsoever with the purchase of a photocopier?

A: No, must've been knowledge, I don't, I don't think so. I know it came and I took it . . . you know I could've wrote the order out I don't know—

In relation generally to purchasing procedures for Aboriginal Council A:

Q: The purchasing procedures in the period '89 to '92, do you know if there were any written purchasing procedures, in other words the guidelines on purchasing?

A: I don't know. I, only in the later time I set up a purchasing procedure in a booklet form that had to be done, before that there was nothing. I did that because of, I, with discussion with the auditors, asked them would it be you know to cover, save any problems to do it that way?

Q: And these were written?

A: That was done through Department of Local Government training officers.

Of his relationship with the supplier the Works Supervisor said:

Q: What was your relationship with [the supplier]? Was he a mate of yours?

A: No way . . . no way, he was like any other supplier just talked to me when he was there and that was it—

- Q: Have you ever received stock from [the supplier] at no cost?
A: You've got to be joking, no way in the world.
Q: Have you ever received commission from [the supplier]?
A: No way.
Q: Did you have an account with [the supplier]?
A: No . . . I paid cash, I pay cheque whatever. That's it, I do not come under any bullshit like that.

"Odds and sods"

The supplier told investigators that he had met the works supervisor in the mid-1980s and that, although he did receive some orders through the Works Supervisor he also received orders through another councillor, as well as other workshop staff.

In relation to whether he had provided written quotes to the Council for equipment ordered:

- Q: With your transactions with the Council, have you ever been in a position where you've had to give written quotes?
A: Yes.
Q: For any of the sales you've made?
A: Yes.
Q: Would have you copies of those quotes here?
A: More than likely, current ones. Those that have gone previously, I'm not too sure that they'd still be—in file.
Q: When you say current, do you mean running ones or just recent ones?
A: Recent ones.
Q: How far back would that be?
A: Only in the last two or three months or so.

The supplier was asked whether he had submitted any tenders for council jobs:

- There's, a few, look, I can't can't recall them all, but I know that has been in the past, but I've read them in the [newspaper] and tendered through there
Q: Yeah, that's what I mean, yeah. And you've probably answered the question, but how, how would you become aware that there was a tender in existence?
A: Well, those I don't find in the paper, occasionally, [a councillor] would ring through and say "we need prices on this list of goods", [the Works Supervisor] did the same thing, [two Council employees] from the workshop, [another Council employee] . . . he was in a workshop too.

He was also asked about the fact that the Council appeared to have purchased from him items which he did not supply to other clients:

- Q: . . . I was just wondering why the Council would have used your business to purchase items of plant which would appear to be outside your normal area of business. As an example to you of a bar fridge, water cooler, electric typewriter, hot water urn, photocopier, beds and mattress, probably some other things too.
- A: I've got no idea. The only people that could answer that would be [the Council]. They ring for a quote and I chase 'round getting prices from suppliers.
- Q: Would you have sold these items of equipment to any other persons . . . ?
- A: Well, it would depend on what's on the list.
- Q: Well, bar fridge, water cooler, for instance, typewriters, photocopiers?
- A: No, not that I can recall.

The supplier was questioned about his relationship with the Works Supervisor:

- Q: Did the [Works Supervisor] do much of the ordering of material for the Council?
- A: He ordered some, but as I said, [a Councillor] ordered some, [a Council employee], I don't know what the breakup is or who ordered what at this particular point.
- Q: Have you made sales yourself to [the Works Supervisor]? Does he purchase from you?
- A: Yes, he's brought some slasher blades and odds and sods and things like that.
- Q: Would he have an account with you? Would he be on your debtors system?
- A: I think he is, but he's a cash sale customer, pays for things as he gets them.
- Q: And what's your relationship with [the Works Supervisor]? Do you know him personally?
- A: I know him personally. I wouldn't consider him my greatest friend, I know him as an acquaintance, I think would be the better choice of words. I don't socialise with the man.
- Q: How long have you known him . . . ?
- A: I first met him when he rang from [the community] chasing prices for something back in the mid-80s, I think.

The supplier said that he had been to the Works Supervisor's home twice, on both occasions to repair equipment for him.

The Council Clerk

Investigators asked the Council Clerk about the Council's relationship with the supplier. The Clerk said she knew of occasions when proper purchasing procedures had not been followed. She gave an example which had occurred in the previous year, when the Works Supervisor placed an order for a brick-making machine. According to the Clerk, the Council did not approve the order until some

months later. The Clerk told investigators that requests for small day-to-day materials needed only a signature, but for larger items three quotes had to be obtained and a decision made at a Council meeting on which quote to accept. The Clerk said that under the Ministerial Directions (which she considered to be recommendations on how the Council should administer its finances) the Council should obtain three quotes for items over \$1,000, and normally the cheapest quote should be taken unless there were reasons for not accepting it. The Clerk said that quotes were to be obtained for items between \$1,000 and \$20,000, and that over that amount the item had to be purchased through tender.

The Clerk said in relation to Works purchases that the procedure was that a budget was drawn up and sent to Council for approval. Items were listed in the budget, quotes were called for the purchase of those items, and the quotes then went back to Council for approval. She said that this procedure had been in place since some time during the 92/93 financial year, and that she was unaware of how the decisions were made prior to that time. The Clerk said that the Council had no formal written agreement with the supplier. She said that on one occasion she saw an invoice from the supplier for wheelbarrows, and later saw the same item in a catalogue listed for \$95 less than the supplier's price. The Clerk said that she knew that the Council was buying equipment from the supplier, and that some of the orders had been placed by the Works Supervisor. The Clerk stated that she had spoken to the Works Supervisor about the high prices charged by the supplier, and told him that the Council should find another supplier. The Clerk told investigators that the supplier had visited the community on a number of occasions and that when he was in the community he normally met with the Works Supervisor. To her knowledge, the supplier had never had an official meeting with the Council.

"A little bit expensive"

The present Chairman of the Council, who took office after the Council had already been dealing with the supplier for some years, told investigators that he had had some personal dealings with the supplier. He said that he used to buy some equipment from him, but after checking around on other prices, decided that the supplier was charging too much. The Chairman said:

Well personally I used to get my lawn mower blades from him. He, then I just checked around the prices, this guy's a bit bloody dear here . . . and I gave him the big, you know, the big A . . . He was a little bit expensive on that side of things.

The Chairman said he recalled that the Council Clerk had on several occasions raised with the Council the fact that the supplier's prices were too high. He said

that he could recall only one specific tender from the supplier and that, on that occasion, the supplier's tender was a lot lower than any other. He ruled out dealing with the supplier on that occasion, however, as the supplier was not a registered machinery dealer.

The purchasing officer

The Council's Purchasing Officer for some of the period during which the Council dealt with the supplier told investigators that towards the end of 1992, the Council had introduced a system where request books for the purchase of material from various sections of the Council were used. He said that previously the system had involved items being requested by the Council's senior administration officers of the Council, mainly the Clerk, the Works Supervisor and, on occasion, the Chairman or Deputy Chairman.¹¹⁷ He said that in the latter part of his service with the Council there had been written purchasing guidelines, but not in the beginning. He said that in the latter part of his service the Works Supervisor would make requests to him by means of a request book, and that he would then contact various suppliers to purchase the material. He said that if the request was for a large item he would obtain three or more quotations and obtain Council approval before proceeding with the purchase.

The Purchasing Officer said there were occasions when the Works Supervisor ordered machinery without his knowledge or authority. He also said that a lot of orders had been placed with the supplier without his knowledge. The Purchasing Officer said that on several occasions he saw invoices from the supplier and he knew he could have obtained the items in question elsewhere at substantial savings to the Council. He said that he brought this matter to the attention of his superior officer at the Council, and that eventually he was advised by the Clerk not to deal with the supplier any more.

Conclusion

From 1988 to 1992 Aboriginal Council A purchased equipment from a supplier to a total amount of \$452,000. Many of the items the supplier sold to the Council were obtained from companies that the Council itself could have approached. If Council staff had made those approaches, it would have paid considerably lower prices than its usual supplier was charging. Inquiries made by investigators

¹¹⁷ The Auditor-General reported on problems with the Council's purchasing and goods inwards system in 1990, 1991, and 1992. See pp. 170-174.

revealed that a competent purchasing officer who was prepared to telephone other companies could have bought the same equipment at substantially lower prices.

The Council paid substantially more for directing its purchases through the supplier. Some witnesses suggested to investigators that the Works Supervisor was responsible for directing orders to the supplier.

The Works Supervisor said that he always had approval for any orders he placed, but it is clear from his interview that sometimes this would have been in the form of verbal approval from the Chairman, Deputy Chairman or Council members.

Financial analysts attempted to determine whether any secret commission or corrupt payment had been paid by the supplier to the Works Supervisor in order to secure orders. No evidence was found of any such payments. It would be almost impossible to determine whether or not payments were made if, for example, payments were made in relatively small amounts of cash over a period of time. For much of the period during which the Council dealt with the supplier, there appear to have been no internal written guidelines for purchasing procedures. Witnesses spoke of occasions where orders placed without Council approval were ratified some months later at a Council meeting. The Ministerial Directions provided that written quotations should be obtained for purchases of more than \$3,000, but the Council Clerk, like many witnesses interviewed by investigators, considered that these directions were "recommendations only".

The Council's long relationship with this supplier, and the grossly-inflated prices charged, are highly suggestive of major inefficiency on the part of some of those responsible for the Council's purchasing practices.

However, the investigation revealed no direct evidence of the supplier making corrupt payments to any person connected with the Council, and it was not possible to build a case based on circumstantial evidence because of the general laxity in the ordering process that the Council followed for much of the period of its dealings with the supplier.

CHAPTER 5

Aboriginal Council B

A brief history

The community served by Aboriginal Council B has a population of 1,000-1,200 and is located less than an hour's drive from a provincial town. The community has strong tribal/clan connections to the general area in which it is located. Like many Aboriginal and Islander communities, the community's early existence was dominated, at least from the 1890s, by European missionaries.

Attracted to the area by the discovery of gold and the prospect of setting up farming and pastoral enterprises, settlers also had a dramatic effect on the original inhabitants' way of life. Some settlers regarded the local Aborigines as a threat and, according to some accounts, shot them whenever they encountered them.

In 1897 the Queensland Parliament passed an Act which gave the Government the power to proclaim any portion of the colony an "Aboriginal area" and to declare such an area "as a reserve for the exclusive use of Aborigines". The Act also gave the Minister the power to cause Aborigines to be removed from one area to another.

The missionaries

The Government gazetted a reserve area for the original inhabitants of this area in the late 19th century and shortly thereafter acceded to a request by European missionaries to establish a mission for Aborigines. The missionaries' stated aims were to provide the indigenous population with religious instruction, give secular education to the children, and train the adults to do productive work.

As it did in many communities, the mission settlement in the area operated a system in which male and female children were separated from their parents and lived in dormitories under the supervision of the missionaries. By the 1930s, although the community was still largely under the control of the missionaries, certain families emerged as dominant forces within the community, and their influence in the area continues to the present day.

In 1942 military authorities evacuated the Aboriginal population of the reserve to another area. It was not until the 1950s, after protracted negotiations between

missionaries and the Government of the day, that the people of the area were allowed to return and the community settled into the area which it now occupies.

The Aboriginal Councils

The forerunners to the present Aboriginal Councils were established on the reserves during the 1960s. Because of its close connection to Aboriginal community B over many decades, the Mission Board continued to exercise a strong influence in community and Council decisions, but by the 1980s, in consultation with community members, it had decided to largely withdraw from the community's decision-making process.

Since 1984 Aboriginal Council B has operated under the provisions of the Community Services (Aborigines) Act.

Members of the Aboriginal Council are elected for terms of three years, and elections are held on the same date as elections for mainstream local authorities under the Local Government Act. The Act envisages that Aboriginal Councils will discharge the functions of local government in the area which they serve.

Like other Councils that the Commission examined, Aboriginal Council B has substantial control over the lives of the people in the community it serves. It has the power to make by-laws restricting entry into the area of people who are not members of the community. It may appoint persons to act as Aboriginal police officers, and make by-laws concerning their duties and powers. The Council can also make by-laws concerning the powers to be exercised by the Aboriginal Court, which can hear and determine complaints about breaches of the by-laws in the area.

The Council owns most of the buildings housing private enterprise outlets in the community and decides who may lease these businesses. The Council is also responsible for the allocation of housing and for essential and municipal services.

Investigators were told that the community which Aboriginal Council B serves is a closely-knit one. Most people are distantly related, either through marriage or blood. There are several recognised clans, and inter-marriage throughout the clans has extended even further the relationship structure within the community.

Background to the allegations

The first complaint to the Commission about Aboriginal Council B came from the Parliamentary Commissioner for Administrative Investigations (the Ombudsman). The Ombudsman referred to the Commission an allegation that the Chairman of Aboriginal Council B, who was also the Chairman of another Aboriginal organisation, had misappropriated monies payable to the other Aboriginal organisation.

A month after making some preliminary inquiries in relation to this matter, the Commission received a telephone call from the Chairman of Aboriginal Council B. He said that a senior officer of the other Aboriginal organisation had told him of the Commission's inquiries. (Commission investigators had spoken to this senior officer to secure background information on the structure of the Aboriginal organisation.) Investigators made arrangements to travel to Community B to interview the Chairman, but on arrival they were told that, contrary to an earlier arrangement, the Chairman declined to be interviewed. The Chairman was interviewed during the following month in the presence of his solicitor.

"Aboriginal people were angry. . ."

Eight months after receiving the complaint from the Ombudsman, the Commission received a complaint from a man with a legal background who had been hired by an Aboriginal organisation to do consultancy work with Aboriginal Council B. The consultant made a number of allegations in relation to the operation of the Council. He said that there was no clear division between community projects and private enterprise, with the result that several Council-owned properties that the Council leased for private enterprise were still using Council equipment and Council CDEP workers.¹¹⁸ He made serious allegations about misappropriation of a Government grant of \$40,000 by a Council officer.¹¹⁹ He also spoke generally about widespread nepotism and favouritism by the Council in many of its decisions. Two weeks after the consultant made these allegations to the Commission, a senior officer of the Aboriginal organisation which had hired the consultant wrote to the Commission. The officer wrote that she was aware that the consultant may have made complaints to the Commission and that the consultant:

¹¹⁸ See page 37, footnote 60.

¹¹⁹ See Allegation 1, page 211.

... had some concerns with different aspects of the administration of [Aboriginal Council B]. I have taken steps to deal with these concerns internally and I feel this is appropriate at this stage. Also, the auditors have just left [the community] and I feel sure that any concerns regarding administration will be raised by the auditors to the Auditor-General.

In his written complaint to the Commission, the consultant had raised several matters which indicated the difficulties in having allegations such as these resolved internally. The consultant wrote:

After a good deal of research and preparation, I went to [Community B] at the request of the community Council, some five weeks ago ... In the preliminary stages it was necessary for me to educate and train ... staff. A central thrust of the program was to identify sources of anger, as [the Aboriginal organisation's] research had shown that Aboriginal people were angry and were turning that anger in on themselves and their family.

In the first two weeks it became apparent that central to the anger of the ... community people with whom I had contact was the conduct of their community Council and its administration staff.

What emerged in the early stages were allegations of injustice and inequity in areas concerning [CDEP] funding and the utilisation of state funding ...

The basic anger was that the funding was being directed towards the benefit of a small number of people [and perhaps three or four clans] when there are fifteen clans represented at [the community].

The consultant said that he had been contacted by a person acting on behalf of the Aboriginal organisation which had hired him to ask why he was trying to "cause trouble". He told the Commission that:

I tried to explain that I was not trying to cause trouble but if my conscience led me to do things ... and it had to hurt other people then there was not a great deal I could do about it. I explained that I did not want to hurt Aboriginal people but that something had to be done.

Rent, repairs, and maintenance

The consultant's claims that people in the community suspected that funding was being directed towards a chosen few are reflected in the minutes of public meetings Aboriginal Council B held with community members in 1992. For example:

- A community member expressed concern that he was paying rent to the Council for a house which did not have "facilities in terms of electricity and water supply ..."

- Two community members expressed concern that no maintenance was being carried out on their house even though they had "always paid their rent promptly and are up to date". They asked: "Whom do we contact in order to obtain house maintenance and repairs?"

- One resident said:

I am up to date in my rent but being tired of waiting for action and not knowing whom to contact in order to have leaking roof and sink repaired, I contacted the plumber directly requesting him to make the repairs which he did.

- One resident said that although seven Councillors had been elected, there were hardly ever any Councillors available during office hours to receive complaints.
- A community member said that he did not trust the Council and asked what had happened to the proceeds from a recent social event.
- A community member wanted to know why Council staff were paid travelling allowance of \$100 a day while other residents taken on trips were paid substantially less.
- A community member said that Councillors go to a nearby town and "shout people with community money". Another member added that when Councillors went to town or elsewhere "the community get no feedback. No reports . . ."
- A community member spoke about pecuniary interests and said that "people who are holding positions [having] direct pecuniary interest in business should finish up, vacate the seat".

The community members' comments suggest that there was much misunderstanding and mistrust about what went on at Council meetings, although in response to these criticisms, a Councillor responded:

It's good to see people with matters of concern, but when we have a series of meetings where we have involved the public, the same people show up with an interest.

Two other Councillors added:

Notice is given to people to attend our Council meetings at the . . . centre. The meetings are open.

"What you see . . . is confidential"

While the Councillors' comments suggest that at least some Council meetings were open to the public, copies of Council minutes were not available for inspection by community members. On some evidence, the confidentiality of these minutes was jealously guarded. Speaking to investigators in 1992, a Council financial officer said that despite repeated requests, even he could not obtain copies of Council minutes:

- Q: Do you get a copy of the minutes by the way?
A: No.
Q: Have you ever asked for them?
A: Yes, yes, yes, yes, yes.
Q: And they, you don't get a copy?
A: No . . .

A former employee of the Council said that during a conversation with the Council Chairman about a matter raised at a Council meeting she had suggested that his actions could appear like favouritism if other members of the community knew about them:

- Q: . . . you raised with him, you said if you do it for one you should do it for the other members of the community, what did he say to that?
A: Along the lines of, "What you see or hear here is confidential, so they won't know about it will they?" . . . and he said, "If they do, I'll bring it back to you".

A senior member of the community who told investigators that he had been concerned about the circumstances of a staff appointment at the Council was asked:

- Q: Do you know if there were minutes in relation to his appointment?
A: . . . when we asked that question about that they said, "No, look we, we are not giving out those details".

The confidentiality of Council minutes was also discussed at a Council meeting in 1990, where an employee who later made a complaint to the Commission¹²⁰ was queried about the release of information. This note appears in the minutes:

[The Chairman] and [the employee] had an argument concerning confidential information, eg minutes being photocopied and handed out to community residents.

¹²⁰ See page 205.

On the other hand, one Councillor told investigators that he would have no problem providing minutes to members of the public, although he could not speak for his fellow Councillors:

- Q: And would you agree that the community is entitled to know what's going on in Council?
- A: I agree, I totally agree, and the minutes from our meetings are available to anybody who wants to go and see them.
- Q: They are available?
- A: They are available. For me, I don't know about the rest of them, but anybody came to me and asked me I would put them out for them to see.

"Nepotism exists . . . and has always existed"

About a month after the consultant made his complaints to the Commission, the Commission received another set of allegations from a community resident who had formerly been employed by Aboriginal Council B. She made several allegations against the Chairman of Aboriginal Council B, to the effect that he had used his position as Chairman for personal gain. The complainant admitted that there had been a lot of conflict between her family and the Chairman's family, in particular, between the Chairman and one of her relatives, who had for a time been Council Clerk. (This relative was later to become Council Chairman.)

The complainant said that two Councillors who had been interviewed by Commission investigators about an alleged fraud by the Chairman¹²¹ had since told her that they had lied to the investigators to protect the Chairman.

When interviewed by Commission investigators, this complainant spoke generally about alleged factionalism and nepotism in the community. She said that people in the community who had relatives on the Council were shown favouritism in relation to repairs and maintenance on their houses, and also in respect of rental arrears owing to the Council:

- Q: And what do you think causes that?
- A: Well if you side with, if you have a relative that's in Council obviously you're going to get all the benefits.
- Q: Are you suggesting that nepotism exists between . . .
- A: I'm not suggesting . . . that nepotism exists, nepotism does exist and has always existed.

¹²¹ This was a reference to an allegation of fraud referred to the Commission by the Ombudsman. See page 201.

She also warned Commission investigators about approaching witnesses. She said that it was a good idea to allow a witness time to talk to other support groups prior to coming forward:

Q: Are you suggesting that they need the opportunity to check with others to see if we can be trusted before they will talk to us?

A: Not only that . . . I think the main concern is if any of the material that they're going to present will be referred back, and if their names are going to be mentioned along those lines.

. . . I'll do my bit in, um, you know, allay any fears in that matter, but it's got to be taken into account it's a small community and a lot of them will live here, you know, until they, they complete their journey on earth as it were, and I mean they've got to liaise and communicate whether they like the person or not, and if you've got something on someone you're going to make life extremely unpleasant.

A question of conflicts of interest

Several months later DFSAIA referred another complaint to the Commission about Aboriginal Council B. The Director-General of the Department had received reports from the Auditor-General and from a Departmental senior consultant alleging fraudulent behaviour on the part of the Chairman¹²² and conflicts of interest by other Councillors. The main concern raised by the Departmental consultant was the question of conflicts of interest, particularly where the Council was making decisions which would benefit private enterprises in which Councillors had an interest:

The question of conflict of interest arises continually and it is unfortunate that this issue is not covered in legislation (it is an area where I think serious problems are starting to emerge at a number of Councils).¹²³ A perusal of the minutes of the meeting held on [date] show three Councillors present which constitutes a quorum. Matters relating directly to two of those Councillors were discussed and acted on.

¹²² The alleged fraudulent behaviour of the Chairman will be the subject of a brief of evidence to the Director of Prosecutions for consideration in relation to possible criminal charges and will not be canvassed here.

¹²³ As a result of a Public Accounts Committee recommendation, the Community Services legislation has since been amended to include requirements that members of Aboriginal and Island Councils declare pecuniary interests. See page 17.

Aboriginal Council B - Auditor-General's and Transition Officers' reports

As part of its investigation in relation to Aboriginal Council B, the Commission examined some previous reports by the Auditor-General, as well as reports by officers of the DFSAIA. Some of those reports made reference to matters relevant to the allegations investigated by the Commission.

2 February 1990---The Auditor-General wrote to the Minister for Family Services and Aboriginal and Islander Affairs advising that an audit of Aboriginal Council B for the period ending 31 August 1989 had disclosed "an unacceptable position in the financial administration of the Council". He also advised that the audit certificate for the Council's financial statements for the period ending 30 June 1989 would be qualified. He said that the Council statements for two of the three preceding financial periods had also received qualified audit certificates. Among the matters of concern he raised were the following:

- A financial arrangement entered into between the Council and one of its Councillors with respect to his privately-run business.¹²⁴
- The fixed asset values as recorded in the annual financial statements could not be substantiated with the Council Asset Register as it had not been entered since December 1988.
- In general, the Council's financial administration had deteriorated markedly, and that achieving a satisfactory position would be facilitated considerably by the DFSAIA providing structured assistance and training.
- Other deficiencies including non-compliance with Ministerial Directions, missing money, and expenditure not supported by invoices and/or delivery dockets and/or orders.

March 1990---A senior consultant to the Department's transition team reported on the performance of Aboriginal Council B. He said that during his last two visits to the community he had formed the opinion that the Council was not acting in the best interests of the community. He wrote about the following matters:

¹²⁴ See allegation 3, page 224.

- **Factionalism:** the consultant said that there were a number of family groups in the community who were sometimes in conflict. He said that regular Council meetings were scheduled and generally held, however, special meetings were often arranged to change decisions made at previous meetings. While the special meetings had a quorum, they usually involved Councillors who were not involved in the decisions being revoked.
- Regarding the Council's decision to lease a Council-owned business to one of the Councillors at a reduced rate,¹²⁵ he said that the Council Clerk was reluctant to take the matter up due to "previous personality clashes" with the Councillor involved.

February 1991---A report from the Auditor-General to the Council Chairman said that audit had again revealed an unacceptable position in the financial administration of the Council. The Auditor-General had accordingly included a qualification in the Audit Certificate to the Council's financial statements. Issues raised in the audit report included:

- Council minutes were not of an acceptable standard, and did not record, amongst other things, approvals for expenditure, for write-offs of outstanding debts, of plant and equipment purchases, of expenditure on major projects, and of rental charges or reductions in rent.
- As reported in the previous audit report, invoices were not being reconciled to suppliers' monthly statements of accounts, thus failing to confirm the Council's position of debt or otherwise with the suppliers' records.
- The balance of outstanding debtors was most unsatisfactory as balances outstanding for rent, electricity, court fines, service station, telephones and leases amounted to \$309,577. The report noted that the matter of long-outstanding debts had been raised in the last two years' audit reports.

February 1992---The Auditor-General wrote to the Chairman of Aboriginal Council B, detailing the following matters of concern:

- The council was not maintaining a goods inward book.
- Third parties were collecting employees' pays without signing for them.

¹²⁵ See page 224.

- Council minutes were not addressing the following areas: the authorisation of travel expenses, the write-offs of debts owed to the Council, and setting of rental charges. The minutes were not always signed by the Chairman and Clerk.
- Purchasing: While it appeared that quotes were being obtained for the purchase of equipment as indicated in the minutes, no record of any quotes was being maintained on file.
- Bank agency: At the time of audit outstanding error notices from the bank amounted to \$18,744.45, which should then have been on hand. At the time of audit, the amount of cash on hand was \$2,061.21.

May 1993---Aboriginal Council B again received a qualified audit report in respect of the previous financial year. The Auditor-General raised the following concerns about the Council's operation:

- The Council's Trust Fund was overdrawn because of failure to exercise proper financial management.
- Trading statements in respect of business undertakings of the Council were not prepared and presented to Council.
- Audit was unable to verify the value of debts owing to the Council.
- Some pay records were not produced for audit.

February 1994---Aboriginal Council B again received a qualified audit report in respect of the previous financial year. The Auditor-General raised the following concerns about the Council's operation:

- Minutes of Council meetings did not contain decisions relating to financial management.
- Various bank accounts were overdrawn and the Trust Fund account was overdrawn by \$128,981.
- Disbursements were not always supported by official orders. Three overpayments totalling \$29,113 were detected.

- The Council's failure to follow up outstanding debts resulted in a significant increase in arrears of which 80% were estimated to be uncollectable.
- The Council failed to comply with the prescribed procedures in relation to tenders.

- Allegation 1**
- a) that the Chairman of Aboriginal Council B borrowed \$36,000 from a government grant intended to be used to develop a by-laws program, and obtained a bank loan to repay the amount prior to audit; and**
 - b) that a community resident was provided with a government grant to establish local by-laws and was at the same time receiving CDEP funding¹²⁶ through the Council**

These allegations were made by the consultant who was hired by an Aboriginal organisation to coordinate a project for Aboriginal Council B.¹²⁷

The consultant told investigators that he had heard both allegations during discussions with people in the community when he was working there. He said that a lot of the information he received at that time was given to him on the understanding that he would not record or reveal his source. He said that he had no personal knowledge in relation to either matter.

Four community residents later told investigators that they had heard the allegation about the Chairman circulating in the community. One said that he had heard the rumour from a Council member whom he was unable to identify, and another said she had heard it when talking to other unidentified community members. Two other community members said that they had heard the rumour but had no personal knowledge to support it. Both of these witnesses might have been expected to have some direct knowledge in view of their relationships with the Council. One was a serving member of the Council, and one had formerly served as Council Clerk.

¹²⁶ See page 37, footnote 60.

¹²⁷ See page 201.

The Chairman

The Chairman of Aboriginal Council B said that the Council had obtained a grant to develop community by-laws and had placed the grant money in an account. Funds from the account were provided to a resident whom the Council had employed to draft the by-laws. The Chairman said that he had never had access to the money or attempted to use it for any purpose and that he had never obtained a loan from the bank in order to repay money to the account.

Council records showed that a \$39,000 by-laws grant was received on 21 June 1989. The audited Trust Fund account summary of balances showed that, as at 30 June 1989, disbursements of \$6,715 had left a balance of \$32,285. Subsequent balances disclosed by audit were:

30 June 1990	-	\$28,485
30 June 1991	-	\$21,748
30 June 1992	-	\$21,748

According to these accounts, when the consultant alleged in 1990 that the Chairman had borrowed \$36,000 from the by-laws account, only \$10,515 of the fund had in fact been disbursed. A report to the Council by the community member who was hired to draft by-laws shows that \$9,950.80 of this amount had been disbursed, as follows:

Wages up to 30.9.89 [for the community member]	\$6,120.80
Typing overtime	\$30.00
Legal advice [... QC]	\$3,800.00
	[\$9,950.80]

According to Council records, no funds had been disbursed to the Chairman at the time the allegation was made, and there was no evidence that any funds were later disbursed to him from the account.

Bank records show that the Council Chairman applied for loans on 31 May 1990 and 14 June 1990, but his applications were declined. He subsequently applied for a loan on 30 May 1991, and his application was again declined.

The Chairman said about his matter:

The Council has thought about getting by-laws done for the community and through [a community member] we've made application for, to apply for that money. As far as I can remember that money came through [another Aboriginal organisation] for

the purpose of the by-laws . . . so that was, that was done, arranged that to be transferred to this account here for the purpose of the by-law work.

Q: Yeah, all right, the suggestion of course is that you actually borrowed that money though and only returned it prior to audit, that's the allegation.

A: Borrowed it from where?

Q: From Council, and later had to get a loan from [a bank] to repay.

A: I didn't even get any amount from [the bank] I mean that's totally nonsense. That money was transferred here and that was it.

The by-laws project

The consultant told the Commission that a resident he could not identify had said that the community member hired to work on the by-laws project had been paid from the Government grant to establish by-laws and was receiving CDEP wages at the same time. He said that he had no personal knowledge about the matter.

Community members interviewed said that they were aware of the grant received for the by-laws, but none was aware of whether or not the community member involved was receiving CDEP payments whilst in receipt of money from the grant.

The community member who worked on the by-laws for the Council provided a statement to investigators. He said that he had prepared a funding submission for a grant to develop a by-laws project when he was employed by the Council in 1987. In March 1988, he was elected as a Councillor, but apparently continued to work for the Council as an employee. In his statement, he said that after his election he continued to work on the by-laws project and to seek funding for it. He said that when a government grant was received for the by-laws project in about June 1989, he was paid from it to work on the project:

During the time I worked on the research for the project, my wages were derived from the By-laws Project Grant which was held by the Council. I received my weekly wage as every other Council employee.

He denied the suggestion that he was receiving CDEP payments whilst in receipt of wages from the grant:

If any suggestion has been made that I received a separate wage under the Community Development Employment Program (CDEP) at the same time as receiving my weekly wage, then this is clearly baseless nonsense.

The report prepared by the community member to the Council supports his claim that he was not receiving CDEP payments while working under the grant:

Re: Community By-law Project

I wish to report the following matters relating to the project:

1. I ceased to receive wages from the community Council from September 30, 1989. My reason for doing so was to ensure that I completed reports on this project before I received any payments. The following drawings have been made from the grant:

Wages up to 30.9.89	\$6,120.80
Typing overtime	\$30.00
Legal advice [... QC]	\$3,800.00
Balance	\$29,049.20

The Council received the grant on 21 June 1989. According to Council records, the Council continued to pay wages to the community member after receipt of the grant, but reimbursed itself from the grant funds for those wages.

The community member said in his statement to the Commission that he resigned as an employee of the Council in September 1989, and as a Councillor "towards the end of 1989".

Council records indicate that he was paid wages by the Council during the period up to 30 September 1989 and that those wages were reimbursed to the Council from the By-laws Fund. His wages during the period were described in Council records as "By-Laws Expenses".

There is no evidence in Council records that the community member ever received wages from the by-laws grant and at the same time was receiving CDEP payments.

If the community member had been receiving CDEP payments for the three-month period in question, it would have been contrary to the CDEP guidelines for him to receive income from the by-laws grant at the same time. Analysis of the Council records has shown, however, that the community member was being paid by Council funds, not CDEP funds, during the period in question.

Conclusion

The Commission's investigation into these allegations showed that:

- Aboriginal Council B received a \$39,000 government grant to undertake a by-laws project.

- A community member appointed by the Council to undertake research for the by-laws project was paid from the government grant provided.

The Commission found no evidence that the community member received CDEP wages at the same time that he was in receipt of income from the government grant. Similarly, there was no evidence that the Chairman of the Council borrowed any funds from the by-law grant funds, or that he later attempted to obtain a loan in order to repay such funds prior to an audit being undertaken.

Allegation 2 That Council-owned machinery was used on private property at no charge or at an unrealistically low charge, and that large groups of CDEP workers were used on private properties

These allegations were made by a consultant hired to co-ordinate a project for Aboriginal Council B.¹²⁸ As with his other allegations, the information was provided to him by community members whom he could not name. He admitted to having no personal knowledge of the matter.

Rumours in the community

A former Council Clerk told the investigators about allegations in the community about Council machinery being used to benefit private property, in particular, the use of a Council bulldozer on the Chairman's property.

The present Clerk told investigators that residents were allowed to use Council machinery through negotiation with the Council and that there were agreed rates which had to be paid. She said in any case that none of the land in the community was "privately owned"; it was subject to deeds of grant in trust, with the Council as trustee.

A Councillor said that Council machinery was used on properties occupied by community members. He said that this was done in part to create work for the Council-administered CDEP Scheme, because Council projects could not provide sufficient work for those wishing to work under the CDEP Scheme. He said that to his knowledge machinery was not provided free of charge, although there were cases where the community member would himself provide fuel for the machinery and pay the Council only for the driver, which may have given the impression that an unrealistically low fee was paid.

A former Councillor said that he recalled allegations about the use of Council machinery on private land being raised in Council meetings, mainly in relation to the Chairman's property. He said that people in the general community were unaware of payments being made for the use of Council machinery, and the fact that they were unaware led to rumours of this sort. He said that he understood

¹²⁸ See page 201.

Council policy to be that an hourly rate would be paid for the use of machinery, and in many instances it would be deducted from the wages of the person who obtained the service. He said that he did not know whether the Chairman had paid for the use of Council machinery on his property.

"Other priorities"

A Council employee told investigators that she knew of occasions when Council members had used Council machinery on their properties. She remembered some occasions when the Chairman had paid for the use of Council machinery and she had issued receipts for him. She had heard from other community members that the Chairman had used machinery on other occasions and no payments had been made, but she had no personal knowledge of this occurring.

Another community resident told investigators that Council machinery was used on the Chairman's property for lengthy periods. He said that often when he and other residents sought to use the equipment, having saved money to pay for its hire, they were told that there were "other priorities". He said that he did not know whether the Chairman or other Council members who used the machinery paid for its use.

"Dozer" for hire

Financial analysts tried to use Council records to determine whether or not community members using Council equipment for private purposes paid a hire charge. But the records were deficient. The Council did not keep a register showing who had used Council equipment and what rate had been charged for the use. Furthermore, examination of receipts for a two-year period showed that the Council had received some money designated as payment for the hire of Council plant, but it was impossible to tell from the records whether everybody who had used Council equipment had paid a hire charge, and whether or not each user was charged a uniform rate.

Council minutes recorded a "Special Discussion" held on 23 November 1988 involving the Deputy Chairman, two Councillors and the Council Clerk. The purpose of this discussion appears to have been to settle rates of hire for the Council bulldozer and to list property owners who would be entitled to hire it.

The minutes name 12 people, including the Chairman, interested in using the bulldozer on their properties. Beside the first two names the notation appears:

10 hours, \$600

5 hours, \$300

At the bottom of the list of names the following appears:

Rate: Dozer D53 hire - \$60 per hour

The meeting to determine hiring fees for the Council bulldozer may have been the result of a Council meeting held on 13 September 1988. According to the minutes, one of the items listed under "special business" was:

Council machinery and equipment being used on [the Chairman's] farm. This use is unauthorised and breaches a number of policy rules you have set up for the use of these things.

It was impossible to determine what precisely this referred to, and what, if any, decision was made about the matter.

It was clear from these entries, and the receipts for hire of Council plant which analysts were able to find, that at least some community members were charged by the Council for the hire of Council equipment. However, Commission analysts found it impossible to ascertain whether everybody was charged for the use of the equipment and whether or not everybody was charged a uniform rate.

The Council Clerk, who concurrently held the position of Councillor and ran a private business in the community, was questioned in 1993 about the hire of Council equipment, particularly in relation to its use in her business:

- Q: Does [your business] use any other equipment besides the truck, such as a backhoe?
A: We use a backhoe as well as a front end loader.
Q: Yes, who owns that equipment?
A: [Community members] own the backhoe, and the Council owns the front end loader.
Q: Do you have to pay for the use of the front end loader?
A: No, not at the moment.
Q: And do you use [the front end loader] frequently?
A: Whenever there's jobs going.

A senior finance officer with the Council was questioned in 1993:

- Q: . . . What's the current situation where members of the community use Council plant now, is there, is there a charge out rate which has been has been Minuted by the Council?
A: Nothing . . . the only one that I'm aware of at the moment is for the hire of, of the Council bus where there is a charge out rate, however, this I

don't believe is being enforced properly. All other plant and equipment, that is the use of motor vehicles, chain saws, no, no, there's no . . .

Q: What about the heavier bulldozer-cum-graders, probably not so much graders, but on say the farms?

A: No.

Q: Is that charged out or---

A: No.

"CDEP confusion"

Allegations that workers on a Council-run CDEP Scheme were used for the betterment of private properties or private enterprise were also examined in relation to Island Councils A and B.¹²⁹ As noted then, CDEP guidelines allowed Aboriginal and Islander communities a great deal of leeway in deciding what use to make of CDEP workers.¹³⁰

A former Council Clerk said that CDEP workers were employed on individual properties as a matter of Council policy. She said that approximately 26 properties were each allocated two CDEP workers.

A Councillor told investigators that CDEP workers had been employed fencing some properties in the community. As the present Clerk said, in any case, the properties were not actually privately-owned, but formed part of the deed of grant in trust which the Council administered as trustee.

A former Councillor told investigators that it was a matter of Council policy that individual farmers were permitted to collect CDEP pay for work carried out on the properties they occupied, and that the community had received advice from the Commonwealth Department of Aboriginal Affairs that CDEP funds could be used as the Council saw fit in order to develop the communities.

Another Councillor said that CDEP workers were used on individual properties as part of a Council plan, because otherwise there was insufficient work to occupy them.

Another Councillor claimed that it was Council policy to allow workers to work on individual properties for CDEP pay and, whilst most applicants were entitled to one or two CDEP workers, some were allowed more. She said that the Council

¹²⁹ See page 77 and 133.

¹³⁰ See page 81.

had held discussions with representatives of ATSIC (which administered the CDEP fund) and that ATSIC was aware of the practice.

Council minutes for a meeting on 2 October 1988 recorded the following resolution:

CDEP PRIVATE ENTERPRISE.

It was resolved that those land holders who are presently receiving employment and assistance under the EEA¹³¹ and other approved land holders will be permitted to place their employees on CDEP as of 27 September 1988. This will be subject to:

- The land holder providing a list of names of voluntary employees.
- The maximum number of employees on each farming or tourist enterprise will be three.
- The maximum number of employees of each commercial business enterprise will be two.
- Additional employees will be considered where a written report to Council shows that it is necessary . . .
- The land holder abides by Council's rules regarding the use of CDEP on private enterprise . . .

Clearly, Council policy at that date allowed CDEP workers to be used in private enterprise.

At a Council meeting on 5 February 1991, the following item appeared on the agenda:

CDEP CONFUSION

Councillor [. . .] asked to explain why it was that confusion arose in regards to CDEP policy.

The minutes made no further mention of the matter nor gave any explanation of "CDEP confusion".

A change of policy

A report to Council in February 1991 described to a visit by Council administration staff to ATSIC to discuss CDEP and the CDEP participants schedule. The report noted the following advice from ATSIC officers:

¹³¹ Enterprise Employment Assistance

It was informed to us that CDEP participants must work to collect wages. Those who are on CDEP are not entitled to receive any other Government assistance, such as enterprise employment assistance (EEA) and Abstudy which are funds provided by ATSIC through the Department of Education, Employment and Training (DEET).

Perhaps the confusion referred to at the meeting on 5 February 1991 related to the issues raised by ATSIC officers.

According to Council minutes for a meeting on 10 July 1991, the Council decided to change its policy on the use of CDEP workers:

CDEP.

Resolved: that due to the new ATSIC conditions of CDEP, Council will give all those people receiving CDEP who run commercial enterprises two weeks' notice before they are taken off CDEP.

* The new conditions read as follows:

3.4(iii) CDEP resources are not to be used to assist with income generating activities where the profits from such activities are used for the sole benefit of individuals.

Despite this decision that CDEP resources were not to be used to assist those running commercial enterprises, in 1993 a senior financial officer with the Council told investigators that CDEP workers were still being used for that purpose:

Q: ... With the CDEP - CDEP fund, sorry, are CDEP funded workers used by private enterprise?

A: Yes.

Q: Is that in breach of CDEP guidelines?

A: I believe it is yes.

Q: Would the Council be aware of that?

A: Yes. Council have made resolution that all enterprises can use CDEP labour given the fact that it's contributing to the community as they regard it.

Q: Do those enterprises repay the Council for those workers?

A: No.

On the other hand, a Councillor also interviewed in 1993 told investigators that use of CDEP workers on private property was no longer occurring:

Yes. There has been a few changes there. I have urged our Council to make a no work, no pay policy for the community. And I will stress that the community CDEP, community development employment programs, they'll have to come back to [the community] and work for the community. So we don't have much people waiting on CDEP and on

other people's properties now. If they do have to work on the property they have to write a letter in and give us a program.

Q: So there's been some control implemented in relation to that?

A: Yeah.

Q: Do you know of any instances where that, people are going outside of that . . . outside of that initiative that the Council adopted?

A: No. Yes, a couple of people didn't want to come back and work for the community, but they didn't get paid.

Conclusion

In relation to the allegation that Council machinery had been used to the benefit of private individuals, investigation disclosed that:

- Council machinery has been used on properties for non-Council activities.
- The use of Council machinery on individuals' properties was the subject of Council policy and was discussed at Council meetings.
- In at least some instances, residents paid the Council for the use of Council machinery. However, due to the lack of records on the use of Council machinery by private individuals, the Commission could not determine whether those using it always paid a hire charge or if the fee they paid was a uniform one.

In relation to the use of CDEP workers on individual properties, the Commission found that:

- Prior to 10 July 1993 it was Council policy to allow workers funded by CDEP to be employed in privately-operated business enterprises.
- Due to the state of Council records, it was not possible to determine whether those gaining personal profit or advantage from the use of CDEP labour ever reimbursed the Council.
- In July 1991, the Council resolved not to allow persons receiving CDEP payments to work on commercial enterprises, in accordance with provisions of the CDEP user's guidelines.

As was the case with many of the allegations examined by the Commission, community members' main concerns in relation to these matters was not that Council property and Council CDEP workers were used on private properties, but that members of the Council and their friends or relatives were favoured in being

allowed disproportionate use of the machinery or the workers. For example, one senior member of the community said during an interview:

Q: Do you see any favouritism or nepotism in the application of the CDEP funding to the community members?

A: . . . What do you mean?

Q: Do some people get favours in relation to pay because of their family associations with Council members and that sort of thing, do you see anything like that?

A: Yes, yes, ah, yes, there is in most cases.

Although these matters clearly concerned members of the community, it is impossible to determine from the Council records whether such favouritism occurred.

Allegation 3 That the Chairman of Aboriginal Council B was allowed to lease a Council-owned business to operate as private enterprise, and that he was lent \$28,000 by the Council to assist in the operation of the business

Background

This allegation was made by a consultant hired to co-ordinate a project for Aboriginal Council B.¹³² He could not recall who had provided him with this information. He had no personal knowledge to support the allegation, except that he had allegedly confronted two Councillors about the matter and neither of them had denied it.

A community member told investigators that she had heard about this allegation from other community members and had later mentioned it to the Chairman who became very aggressive. But she said that she had no information to indicate whether or not the allegation was true.

The Chairman's lease

In early 1989 the Council entered into an arrangement to lease the Council-owned service station to a person who, at the time of the initial negotiations, was Chairman of the Council and, during subsequent dealings, a Councillor.

One Councillor told investigators that the Chairman had applied to lease the Council-owned garage as a private enterprise. He said that the Council had not shown favouritism towards the Chairman because the business's availability for lease had been advertised on a notice board for 21 days to allow community members to object to the Chairman's application. He said that the lease stipulated that the Chairman was required to pay the Council for the stock on hand when he took over the garage.

A long-term employee of the Council denied that the Council had lent \$28,000 to the Chairman when he leased the Council-owned garage. She said that the garage

¹³² See page 201.

had stock on hand when the Chairman took it over and that he was required to pay the Council for that stock. She was aware that some of the fuel had been paid for, but not the full amount. She said that during the previous 12 months the Chairman had not paid money for either the lease on the premises or for the stock.

The Chairman told investigators that he had not received a loan from the Council to operate the business. He said that at the time he was granted the lease, the service station had approximately \$25,000 of stock on hand. He said that he took over the stock on the understanding that he would obtain a loan to pay the Council for the stock. He said that he had been unable to obtain a loan, but was still paying off the stock.

A senior financial officer of the Council was questioned in relation to the Council's lease arrangement with the Chairman. He said that as far as he could determine there were no records or correspondence in relation to the transaction. Asked whether the Council had ever recovered any of the \$26,500 loaned to the Chairman in the form of stock on hand, he said:

Q: ... Has the Council ever recovered any of that money?

A: No, no, not to my knowledge no. Unless they've recovered it in some other way ... but like any lease agreement would've been treated as a debtor ... no, but in relation, in answer to your question no, nothing has been recovered.

Council minutes

One Councillor claimed that the Council had shown no favouritism in awarding the garage lease to the Chairman. However, Council minutes showed that the Chairman attended and apparently participated in every Council meeting at which the prospective lease of the garage was discussed. This could only have fuelled residents' suspicions about the Council's partiality.

According to the Council's minutes, the garage lease was discussed at five meetings during 1989:

17 January 1989---Council Minutes indicated that the Chairman and his wife were to begin leasing the service station during March 1989 and that a notice calling for objections was to be displayed for 28 days.

The Chairman was present at this meeting, but the minutes do not indicate that he stepped down during the discussion or left the meeting. Four other Councillors were present.

24 February 1989----By this time the prospective lessee had been removed as Chairman but was still a Councillor. The minutes show the following resolution:

- Resolved that the Clerk prepare the necessary reports and lease documents and organise for the transition of the [service station] to be leased by [the former Chairman] as a private enterprise. Further, it is requested that:-
 - Notice expressing interest for leasing the business be publicly placed on the notice board.
 - All reports are to be prepared for the next Ordinary Meeting to be held on the 28th of March 1989.
 - A Council decision, after considering the facts to be presented, be formalised at the next meeting.

According to the minutes, the prospective lessee was present at this meeting. Again, they do not indicate that he absented himself during the discussion of this issue.

2 June 1989----The question of the lease was discussed again. Minutes for the meeting show that the Councillor seeking the lease was present, but they do not indicate that he absented himself from this discussion. The Clerk reported that the lease documents were ready and that a copy would be given to the Councillor for his perusal. It was also noted that the Councillor was to follow up his application for a loan to "establish his stock prior to hand over".

5 September 1989----The minutes record that the Councillor seeking the lease was present at this meeting. The Council resolved that the service station would be handed over to him on 30 October 1989 and that he would pay a rental fee of \$400 per week. The minutes note that the Council considered that it should trade with the Councillor's new business for a period to assist him, but "at some time in the financial year a depot of [the Council's] own should be established".

18 December 1989----The minutes of this "Special Meeting" disclose that there were three Councillors in attendance, including the Councillor who was seeking the lease. The minutes note that stock on hand at takeover of the business amounted to \$26,500. The minutes noted that the Councillor agreed to pay the Council \$1,000 a month over a period of 2 years 2 months and 15 days to reimburse the Council for this stock, effective from 1 January 1990. It was also resolved that in view of these repayments the Council would lower the rent on the premises to \$100 per month, in lieu of the \$400 per month previously agreed upon.

The Auditor-General's report for the period ending 31 August 1989 noted that the resolution allowing the stock to be paid off was contrary to the Ministerial Directions, which stated that a Council cannot make loans to individuals. The report also noted that the resolution involved a considerable conflict of interest on the part of the Councillor seeking the lease. It is likely that he took part in the discussion and voting on 18 December 1989, as there would not have been a quorum to vote on the issue without him.

Conclusion

At the time of his negotiations to lease the Council service station the person the subject of this allegation was either Chairman of or a member of Aboriginal Council B. The minutes show that he was present at several Council meetings during which the proposed lease was discussed but they do not indicate that he has absented himself or refrained from taking part in discussions. In fact, it is clear that at a crucial meeting during which the Council decided to grant him a loan of the service station's stock on hand, there were only three Councillors present to vote on the issue, including the prospective lessee.

The loan to the Chairman was a breach of the Ministerial Directions, but there is some doubt as to whether or not these Ministerial Directions have the force of law or are merely recommendations. Certainly, many persons interviewed in Aboriginal and Island communities considered that the Ministerial Directions were "only recommendations".

At the time of the Council meetings about the lease, the Chairman's failure to declare a pecuniary interest and absent himself from the meetings was not an offence. As a result of a Public Accounts Committee recommendation, in 1990 the Community Services (Aborigines) Act was amended to include a pecuniary interest provision in terms similar to the Local Government Act provision. Members of Aboriginal Councils are now required to declare pecuniary interests, and to take no part in the discussion of matters in which they have an interest.

Unlike mainstream local authorities, Aboriginal Councils are not required to keep a pecuniary interest register or to make the register available for inspection on request. In the Commission's view, there is no logical reason why Aboriginal Councils should not be required to keep a pecuniary interest register, in terms similar to the provisions of the Local Government Act.¹³³

¹³³ See page 404.

While the community members who made this allegation clearly had reason to be concerned about possible favouritism in the Council's business dealings with its Chairman, in view of the fact that there were no pecuniary interest provisions binding Council members at the time of these meetings, there is no evidence of any criminal or disciplinary offence by the Chairman.

Allegation 4 That the Council Chairman, who operated the local garage as a private enterprise, had on a number of occasions double-billed the Council for petrol and other supplies

Background

This allegation was made to the Commission by a former employee of the Council who made a number of allegations about the Chairman's behaviour.¹³⁴ When she first spoke to the Commission, the complainant told Commission officers that another Council officer had told her that he was concerned about suspect accounting procedures involving the Chairman's garage, including alleged double-billing of Aboriginal Council B for petrol and other supplies.

Concerned and alarmed

Later, when interviewed in more detail, the complainant said that she had not raised the matter as an allegation, but as "a concern". She said that the Council officer had approached her for advice about a better system for documenting fuel purchases. She said that the officer had raised with her specifically an account in the amount of \$18,000. Asked about information which had led to the suspicion of double-billing, she said:

- A: . . . he had several other documents there, receipts, invoices that were presented over a given period of time, plus the, the amount of \$18,000, and we both expressed alarm at the fact that the amount, at the amounts presented.
- Q: But was there any hard evidence that the same bill had been presented on two occasions?
- A: Not to my knowledge at that stage.
- Q: So it was a concern based on the amount . . . that was being charged?
- A: That's right.

Investigators spoke to the Council officer who had raised these concerns with the complainant. He said that he recalled the Council-owned garage being leased to the Council Chairman as a private enterprise. He said that, prior to that time, the Council had purchased fuel supplies directly from a fuel supplier, tax exempt.

¹³⁴ See page 205.

When the Council began to obtain fuel supplies from the Chairman, sales tax was charged on the purchases and the Council employee questioned whether this was appropriate. He said that he did not have any evidence that the Chairman had ever double-billed the Council for fuel supplies.

A Councillor interviewed by investigators said that the alleged double-billing of the Council for fuel to his recollection had never been raised at any Council meeting. He said that the garage leased by the Chairman was the only garage on the community and that it provided fuel and oil to Council vehicles.

Another Councillor said that he had never heard the allegation of double-billing. He said that it was his understanding that the Chairman only worked the bowsters at the garage. (This Councillor was not on the Council when the lease arrangement was made with the Chairman).

"Everybody's got to sign"

The Council Chairman told investigators that he had operated the garage for several years. He said that people driving Council vehicles had to sign for fuel purchased and a record of these transactions was kept. He said that he had never double-billed the Council for fuel or oil:

That's, that's nonsense I mean. Everybody's got to sign a thing and get the prices (ui) the only thing that I sell to the Council is fuel . . . yeah 'cause everyone, 'cause, 'cause Council won't pay without anybody's signature who is in charge of the vehicle and that's the system we operate on.

Q: How long has that system been operating?

A: Since we started.

Financial analysis

Financial analysts examined Council records in relation to this allegation. Those records show that the service station accounts were paid on the original invoices, which were signed by Council employees receiving fuel or oil. It was not possible to obtain all payment vouchers for the service station.

For double-billing to have taken place, the Council would have had to pay on photocopies of invoices which had been previously paid, or on unsigned invoices for material not purchased. Although analysis showed that, for a period, minimal records were kept of supplies of fuel and oil to the Council vehicles, there was no evidence of overcharging. Some time later, a procedure was introduced requiring

drivers of each vehicle to sign for fuel and oil. This restricted opportunities to overcharge or double-bill.

Conclusion

This allegation, like many others investigated by the Commission, arose from community perceptions of possible corruption because of the Chairman's dual role as Councillor and lessee of the garage. Examination of the records available showed no evidence of double-billing or overcharging by the Chairman.

Allegation 5 That Aboriginal Council B provided \$3,000 to another Aboriginal organisation to be used for electoral research, and that the Chairman of Aboriginal Council B used some of the funds to purchase a colour television set and for travel expenses, and directed that the remainder of the funds be placed in his personal bank account

Background

This complaint was referred to the Commission by the Parliamentary Commissioner for Administrative Investigations (the Ombudsman). The allegation had been made to the Ombudsman by a former employee of Aboriginal Council B.

A donation for electoral research

The allegation was referred to the Commission in 1990. It related to events which had allegedly occurred in 1988 and 1989, at a time when the Chairman of Aboriginal Council B was also the Chairman of another Aboriginal organisation.

At a Council meeting on 7 June 1988, the Chairman and three other Councillors passed a resolution that Aboriginal Council B would contribute \$3,000 towards research on "the recent elections for communities". The money in question was to be forwarded for that purpose to an Aboriginal organisation of which the Council Chairman was also the Chairman.

A cheque for \$3,000 was drawn by Aboriginal Council B and given to the Council Chairman in his role as Chairman of the other Aboriginal organisation. The cheque was given to him on 20 June 1988, but he did not present the cheque to the other Aboriginal organisation until 3 August 1988.

On that date, the Chairman presented the cheque to the accounts clerk of the other Aboriginal organisation and, according to her, told her to enter the cheque into the cash book as funds for his travelling expenses. On the same day, the Chairman approached the accounts clerk and told her that he wanted to purchase a television

set to watch video-tapes about Aboriginal communities. She gave him a cheque for \$399 for this purchase.

On 11 August 1988 the Chairman directed the accounts clerk to give him a cheque for \$350 for his travelling expenses to Brisbane. On 17 August 1988 the Chairman returned from Brisbane and requested a cheque for \$2,251 (the balance of the fund) from the accounts clerk. He told her that the money was to be used for his travel. He told her to bank the amount of \$2,251 into his personal account.

In January 1989 as a result of inquiries from officers of the then Department of Community Services and media reports about the matter, Aboriginal Council B resolved that the \$3,000 should be returned to the Council.

The Chairman arranged for the \$3,000 to be returned in the form of a cheque for \$3,000 from the other Aboriginal Organisation. Of the money returned to the Council, an amount of \$2,251 was made up of funds drawn from the Chairman's personal account.

"No further action is required . . ."

When this allegation was referred to the Commission in 1990, the bare bones of the story outlined above were already known to the Department of Community Services, as a Departmental report had been prepared about the matter in February 1989. A Departmental officer who prepared a report to the Minister wrote:

These facts as presented to me by the officer who investigated the allegation reveal that were irregularities in procedure and some temporary mismanagement of [the Aboriginal organisation's] funds. There does not appear to be any misappropriation of [the Aboriginal organisation's] funds by the Chairman.

. . . I advise that no further action is required with regard to this matter.

"Research on the recent elections"

Council records contain a minute of a Council meeting held on 7 June 1988 during which Councillors evidently discussed the question of a donation to another Aboriginal organisation for electoral research. Three Councillors, as well as the Chairman and Clerk, were present at the meeting. The following notation appears in the minutes:

4.3 - Research on the recent elections for communities. Councils to contribute \$3,500 towards this project. To be paid from the CDEP support.

Although the minute refers to an amount of \$3,500, when a cheque was drawn on 20 June 1988 the amount provided by the Council was \$3,000.

The three Councillors who were present with the Chairman at the meeting on 7 June 1988 were interviewed about what happened on that occasion. One Councillor said that the Council Chairman had moved a motion that the Council should provide \$3,000 to another Aboriginal organisation (of which the Council Chairman was also Chairman) for electoral research. He said that he had heard later from a community member that the Chairman had banked some of the money into his own bank account. He said that he did not recall being present at any meeting where the Chairman was given permission to apply the monies to any purpose except electoral research but that he had missed a number of Council meetings about the time, through illness. He said that he had attended a later meeting during which the Chairman claimed that he had given the money to a staff member of the Aboriginal organisation, who had banked it into his personal account. He said that the Chairman had been asked to refund the money to the Council, and that he later learned that the money had been repaid. He said that as a result of the incident the Chairman subsequently was required to step down as Chairman of the Council.

A second Councillor, interviewed by investigators seemed to have no clear recall about the matter. He said that after the 7 June meeting he attended a meeting during which Councillors agreed that the \$3,000 could be used by the Chairman for travelling expenses. He also recalled that the \$3,000 was later paid back to the Council. Apart from this, he did not seem to have any clear recollection of the circumstances of the payment.¹³⁵

The third Councillor at the meeting told investigators that he was present when the matter of using \$3,000 for research into voting patterns was discussed, but could not recall who raised the matter. He said that the Council passed a resolution to give \$3,000 to another Aboriginal organisation for this research. He said that he had had numerous conversations with the Chairman subsequent to this decision and that the Chairman advised him that other Councils were not interested in funding voting research. He said that these conversations took place at Council meetings.

The Councillor said that he later heard concerns expressed in the community that the \$3,000 was used by the Chairman for "other things". He investigated these concerns and discovered that there was "a mix up" about the fund into which the money was to be placed. He said that at some stage he had agreed that the

¹³⁵ This Councillor was later called to an investigative hearing in relation to this matter where his evidence became so confusing that the exercise was abandoned. See page 238.

Chairman could use the money for travelling expenses. He recalled that the \$3,000 was later repaid to Aboriginal Council B and that the Chairman was required to stand down as Chairman of the Council as a result of the incident.

"Off the hook"

A few months after these interviews with the Councillors, the Commission was contacted by a Council employee who said that two Councillors had told her that they had lied to Commission investigators to protect the Chairman. She said that one Councillor in particular had indicated to her that he had "got the Chairman off the hook". She said that since the Councillors had been interviewed by investigators, the Chairman had been trying to remove both of them from Council and, as a result, they were now willing to tell the truth about what happened.

After receiving this information, the Commission decided to call the two Councillors who had allegedly spoken to the Council employee to an investigative hearing at the Commission. The Councillors appeared at the hearing represented by a solicitor who had many years' experience acting for Aboriginal and Islander people.

The Councillor who had shown a very poor recall of events when interviewed by investigators was questioned about the meeting in June 1988 where a decision was made to contribute \$3,000 to another Aboriginal organisation for research:

- Q: Do you remember back around June of 1988, there was discussion about the Council contributing money to [an Aboriginal organisation] for some research?
- A: Yes I remember that.
- Q: And what was that all about, can you tell us?
- A: Just that we tried to help to, you know, to get along whatever, whichever way he used his money, that's his, that was his, not our doing, you know.

At this stage, the Councillor's solicitor suggested that Counsel assisting the Inquiry would do better to refrain from posing complex questions, as it was clear that the witness' answer was "totally unresponsive to the question".

The Councillor was then shown a copy of the minutes of the Council meeting on 7 June 1988. He agreed that Resolution 4.3 showed that the Council had agreed to contribute \$3,500 towards research on recent elections for communities. In relation to a suggestion that it had been intended that other Councils would donate similar amounts for the research on behalf of their communities, he was asked:

- Q: The other communities, were they keen on this research?

- A: I wouldn't answer that, for any other community I wouldn't answer it.
Q: Did any other communities give any money towards it?
A: I don't know.
Q: You don't, right. Did any research get done?
A: If they want to, it's up to them you know.
Q: Do you know if that \$3,000 was used to pay for research?
A: Whatever used on, that's up to him.
Q: Yes, I know it was up to him.
A: Yes.
A: Are we talking about [the Chairman]?
A: Mm.
Q: But do you know what the \$3,000 was used on?
A: I wouldn't know.
Q: Where did the \$3,000 cheque get sent? Who got it?
A: It was given to, well was given to [the Chairman] and whatever he done with it that's his.
...
Q: Right, what happened to the money he had? Where did it go?
A: I wouldn't know.
Q: Was it spent on research?
A: I still say I wouldn't know.
Q: You don't know. At any time did you tell [the Chairman] he could use the money ...
A: No sir.
Q: ... for anything other than research?
A: No, no sir.
Q: Were you present when any other person told [the Chairman] he could use the money for research?
A: No sir.
Q: In the beginning of last year, January of last year, did [the Council Clerk] bring up what happened to the \$3,000 at a meeting?
A: I wouldn't know on that. I have no answer on that.
...
Q: Do you know the \$3,000 ever came back to the Council?
A: Oh probably. I, probably, may be later, later on. I wouldn't know on that, whether money has been paid back or not.
Q: Well it was paid back. Do you know why it would be paid back?
A: Yes to replace what we had given to him. He said he would pay it back, I think, and that's just a motto.
Q: What had he used it for?
A: I'm, I said it earlier that I wouldn't know what he used it on, be his own problem.

"Nothing but the truth"

In relation to the information that he had provided earlier to Commission investigators, the Councillor was asked:

- Q: Did you tell him the truth when you spoke to him?

A: Yes, nothing but the truth.

Q: When you were talking to [the investigator] was your memory of this better?

A: Yes, I remember.

The Councillor's solicitor again objected to the complexity of the question, which he said had elicited a non-responsive answer.

The questioning moved on to the issue of whether or not there had been a subsequent Council meeting where the Chairman was authorised to use the \$3,000 for purposes other than electoral research:

Q: Was there a meeting to discuss what [the Chairman], or was there a meeting at which [the Chairman's] use of the money was discussed or talked about?

A: ... Council meeting?

Q: Yes.

A: Yes, we had a meeting, but not directing him what he should use that money on. That's up to him, you know whatever he used it on, it's up to him.

After a further objection from the Councillor's solicitor that the question had elicited a non-responsive answer, the Chairman of the Commission, who was presiding at the hearing, attempted to question the Councillor in relation to the matter:

Q: First, can I ask you, do you know - did [the Chairman] get this money?

A: [The Chairman]?

Q: Yes did he get the money?

A: Yes he got it yes.

Q: Well how do you know that?

A: Well he, well he the one that, through this, you can go by the ...

Q: Because of the cheque?

A: Yes, signature.

Q: Did you see him get the cheque?

A: Well that was up to the office workers.

Q: ... Now do you know what [the Chairman] did with the money?

A: I wouldn't know, sir.

Q: Did he say anything to you about what he did with?

A: No, sir.

Q: Did he say anything to [another Councillor] or to anyone else that you know of?

A: No, sir.

Q: Do you know anything about a television set?

A: No, I wouldn't know.

Q: ... Do you know anything about [the Chairman] spending the money on a television set?

A: No, sir. As I said, I wouldn't know what he spent that money on.

- Q: All right, and do you know whether the money was paid back to the Council?
A: I wouldn't know on that sir.

"This kind of charade"

At this stage, the Councillor's solicitor indicated that he would attempt to question the witness about the matter in order to elicit some more responsive answers:

[By the solicitor]

- Q: Remember we were talking - my office this morning, remember that?
A: Yes.
Q: Remember I told you that some people reckon that [the Chairman] used that money to buy a TV and he put it in his own house, you remember me telling you that?
A: Oh well, whatever he, as I said, whatever he used that money on, up to him.
Q: Yes but did you know that, did someone tell you that he'd used that money, some of that money to buy a TV, did you ever hear about that?
A: Never.
Q: Do you know why you're here?
A: Yes.
Q: Why?
A: Because of [the Chairman] you know.
Q: Yes, and what do you reckon that [the Chairman], when you say you're here because of [the Chairman], why?
A: Because of the \$3,000 we gave to him.
Q: Right, and what do you, what do you think he did with the \$3,000?
A: I wouldn't know.

[The solicitor]:

I'll desist for the moment and see where it goes.

After a further attempt at questioning by Counsel assisting elicited largely unresponsive answers, the Chairman said:

... I, frankly, don't have a lot of confidence in the utility of these proceedings ... and I mean, what concerns me is whether there's any point in pursuing in this forum this kind of charade, because that's really about all it is, I think.

The questioning of the witness was then discontinued.

A brief explanation

The second Councillor who had allegedly lied to protect the Chairman was then called as a witness. He said that he recalled the meeting on 7 June 1988 when the Council decided to donate \$3,000 to another Aboriginal organisation with which the Chairman of the Council was involved. He could not explain why the minute referred to an amount of \$3,500 while the cheque which was eventually drawn was for \$3,000. He said that he thought that the notation in the minutes was a typographical error, as the Council had only ever discussed donating \$3,000. In relation to what subsequently happened to the \$3,000 he was asked:

- Q: Do you know what happened to the \$3,000?
A: None of the \$3,000 went to [the Aboriginal organisation] for that research.
Q: Right.
A: Come back to that research.
Q: Were any of the other Councils putting in money towards research?
A: Well, down the track a little bit there weren't, there weren't, they never put their \$3,000 in there.
Q: ... Nobody came up with the funds but you?
A: Just our Council.

In relation to subsequent concerns about the use of the \$3,000:

- Q: Were you involved in any Council meetings where this \$3,000 was talked about after the cheque had gone to [the Aboriginal organisation]?
A: Yes, there was a, discussions from, was brought up by a man called [...], and he was quite concerned that the staff from the office [of the other Aboriginal organisation] had notified him that they may have used that money for other purposes.
Q: Can you recall what other purposes it was said he'd used them for?
A: As far as I can recall a TV set.
Q: TV set. And what about the rest of the money, where did it, it thought to have gone?
A: I don't know.
Q: Using the money for a TV set, did you know that it had been used that way?
A: Never any documentation shown to us, or invoice or things like that.
...
Q: Right, did you ever have a meeting to say [the Chairman] could use the money other than for the original purpose to do research?
A: I recall only the first meeting that we had was that money was supposed to be for the research.
Q: Yes?
A: And we never had any discussions after that about the, about the money.
Q: Did anybody else tell you that they might have told [the Chairman] he could use the money for something else?
A: No.

- Q: Did you ever go to a meeting and say something like [the Chairman] has done nothing wrong? He could use the money for travelling?
- A: Can you say that again, please?
- Q: Did you ever go to a meeting and say that [the Chairman] hadn't done anything wrong with the money. He was able to use it for travelling. It was all right for him to do it that way?
- A: Well in a discussion, we usually discuss it . . . within a Council so we can have a Council minute . . . on every meeting.
- Q: Well did that happen, or did you ever say something like that?
- A: There's one occasion when [the Chairman] came to Brisbane and I don't know if he was on a meeting . . . and he, I can't recall exactly what happened in that area, but I know that we had to pay for his accommodation.
- Q: . . . "We had to pay", you mean [the Council]?
- A: Yes.
- Q: Or the [other Aboriginal organisation]?
- A: [The] Council. It was on [the other Aboriginal organisation] business at that time.
- Q: And where did the money come from to pay that accommodation?
- A: I don't know.
- Q: Was it out of this \$3,000?
- A: I can't say.
- Q: After [the Council Clerk] brought up what happened to the \$3,000, what did [the Chairman] say?
- A: Well the Council got worried about the situation and called up a meeting straight away with [the Chairman] for his explanation, if there was any truth in it and things like that.
- Q: Why was the Council worried to start with?
- A: The Council was worried because the money was allocated to [the Aboriginal organisation] for a special purpose and it never served that purpose that it was allocated for.
- Q: And what was [the Chairman's] explanation?
- A: Well, he gave a brief explanation. He said that that money went into a type of fund that is used by [the Aboriginal organisation] for, he's got a house in [a town]. Now if there's any expenditures coming out of it, it would come out of that fund. He was telling us, that that \$3,000 went into that pool or whatever, and it got used out of that fund or within that fund.
- Q: For what sort of expenses?
- A: For a TV. That's all I know, a TV set.
- Q: And did the money get paid back to [the Aboriginal Council B]?
- A: I've seen a cheque after the big saga that went on. We - I don't know if we wrote a letter to [the Aboriginal organisation] to reimburse that money because there wasn't research taking place.

The big saga

The Councillor was questioned about the subsequent decision to stand the Chairman down from his position as Chairman of the Council:

- Q: You were going to stand down [the Chairman] from the seat of the, the Chairmanship of [Aboriginal Council B)?
- A: That's what the saga was all about
- Q: And what was the main cause of him being stood down . . . what did you think he had done wrong?
- A: The way that it was brought up by [a Council employee] how he explained it to us, was that [the Chairman] used that \$3,000 and we never had any documentation or anything to really say that he really took it. How would I put it? It needed to be investigated a little bit more, you know, to find out if that really happened. So in, it's a little bit hard to explain, sorry.
- Q: Take your time, there's no rush?
- A: Yes, it needed to be brought to the light, but through that period we wanted him to step down, probably.

The Councillor was asked whether the Chairman had ever been given permission to use the money for another purpose:

- Q: . . . Was there any time that [the Chairman] was told he could use the money for other purposes?
- A: Did he get told?
- Q: Yes, anything you know about that?
- A: No.
- ...
- Q: Have you ever heard of any mix ups in relation to that \$3,000, that [the Chairman] ended up thinking he could use the money for travel?
- A: Well, the only mix up that I've heard that was from him was that money was put in the pool, and got used that way.
- ...
- Q: Have you heard that from anyone else?
- A: No, just him, that was his explanation towards using that money, to the Council.
- Q: Were you satisfied with that explanation?
- A: Well, judging by our administration at home, we have three types of set ups. We've got State funds, CDEP funds and sometimes we pay Peter, to get Peter to pay Paul that type of situation.
- Q: Yes.
- A: Say from the CDEP funds to State funds, and things like that. So it was pretty natural to us that there could've been a bit of a mix up.
- Q: Right, so it wasn't a surprise.
- A: It wasn't a surprise, the way he explained it.

The big grapevine

Attempts were made to question the Councillor about whether or not he had told a community resident that he had lied to Commission investigators to protect the Chairman:

- Q: Have you ever talked about what you told [the investigator] with [a community member]?
- A: It is very, there is a big grapevine up in our community, and the thing could get misconstrued, or, you know that is how myths and legends were caused in the Aboriginal days, if somebody said a rock looked like something and they said, oh, that is something you know, that is how it all started.
- Q: Yes.
- A: So with talking to people on the phone I have kept that all to myself.
- Q: Yes.
- A: And what we have ever talked on the phone I never told anybody.

The Chairman:

- Q: You haven't talked to anybody about what you said on the telephone to the detective?
- A: No.
- Q: Right.
- A: Because it could incriminate me in the long run, they could make a story different.
- ...
- Q: And I want to just put this question to you: when you spoke to the detective by telephone, did you tell him the truth?
- A: We never went to a lot of detail, not as much as we went to details today.
- Q: No. Well, was what you told him true, or did you tell him lies to cover something up?
- A: I think I told him the truth, yes.
- Q: But you may not have told him the whole truth?
- A: No, not in detail.

The Councillor's solicitor then questioned him about his statement that "it could incriminate me in the long run":

- Q: And the answer you gave was "I haven't told anyone. It could incriminate me in the long run. They could make the story different". By that did you mean, I haven't told anyone what I spoke to [the investigators] about because my experience is the more people I tell, the more they bugger it up and turn it into something different?
- A: That's right.
- Q: Is that what you meant?
- A: Yes.

The Chairman's account

The Chairman was interviewed about this allegation by investigators, in the presence of his solicitor. He said that at the time this allegation arose in 1988 he was Chairman of Aboriginal Council B, and also Chairman of another Aboriginal organisation. He said that the other Aboriginal organisation had decided to ask

Aboriginal Councils to each contribute \$3,000 to fund a survey on election research:

- Q: And was there any specific sum of money nominated by the members of [the Aboriginal organisation] for this research?
- A: The only Council members that allocated that money was [Aboriginal Council B].

He said that he had raised the Councils' proposed contribution to the research project at a Council meeting. The issue was discussed and the Council resolved that \$3,000 should be paid towards the research. The Council Clerk later gave him a cheque to deliver to the other Aboriginal organisation. He agreed that he was given the cheque on about 20 June 1988:

- Q: Okay, now, you've got the cheque, what did you do with it then?
- A: Well, it was sitting in my drawer, in my briefcase for some weeks, which I sort of didn't get round to giving it to the office people here [at the Aboriginal organisation] to deposit it, but eventually I did, you know.

The Chairman agreed that he had subsequently handed the cheque to an employee of the Aboriginal organisation on 3 August 1988:

- A: Well, I told her that this is . . . a cheque towards that particular (ui) so if you could deposit that in a fund, that's well I guess that's what I just said, then so she went ahead and deposited it in whatever fund she thought would be appropriate at the time.
- Q: Well, she's alleged that you said when you handed her the cheque it was for your travel?
- A: No, no.
- Q: You didn't say that to her?
- A: No, I definitely told her this is the research money.

The Chairman was then shown an entry indicating that the Aboriginal organisation's employee had deposited the cheque under the heading "Chairman's Travel, [Aboriginal Council B] funding":

- A: No, that's no, that I never advised her to do that, that's certainly I've told her that that money is for that particular research.
- ...
- Q: Right, and what's happened after you gave her the cheque, what happened to that money?
- A: Well, it's been deposited here in the fund, and we waited for some time and waiting for (ui) and we reminded the other communities about it and they didn't get back to us, to the office here, advising them what what if ever they discussed.
- ...
- Q: So, no other communities?

- A: No (ui) sort of forwarded any, so then I took the matter back to the [Aboriginal Council B] and from that time on they said, look, you know, ah she used that for travels concerning only Council issues . . . , Council issues which a lot of things that we had to look into meetings . . . in Brisbane . . . which had nothing to do with [the Aboriginal organisation].
- Q: That was when you said you went back to the Council?
- A: Yeah, after sometime that we didn't get any response.

The Chairman said that as a result of the failure of other communities to donate money towards the research fund, the Council told him that he could use the money in question for his travel expenses connected with Council business:

- Q: Do you recall what date you told the Council that?
- A: Ah.
- Q: Was this after the 3rd of August?
- A: I couldn't give you the date, no.
- ...
- Q: Well, can you comment in regards to this? On the 3rd of August 1988, you had another conversation with [an employee of the Aboriginal organisation] and you purchased a colour TV . . . for the sum of \$399?
- A: Yeah, well that's followed after this discussions I had with my Council members at [Aboriginal Council B].
- Q: But this is on the 3rd of August, when you gave her the cheque, the same day you gave the cheque to her.
- A: No, no, I don't remember that.
- Q: Is it possible that sometime between when you received the cheque from [Aboriginal Council B] and at the time it was sitting in your drawer and was finally deposited here . . . could that conversation have occurred in between that time?
- A: Yeah, yeah.

"That's probably one reason . . ."

Asked which Councillors had authorised him to use the money for purposes other than electoral research, the Chairman named the three Councillors who were interviewed by Commission investigators. In relation to the television set purchased on 3 August 1988, the Chairman said that he had purchased it for the purpose of watching video-tapes about Aboriginal communities. He said that he had taken it to his home because he wanted to watch video-tapes, and there was no video recorder at the offices of the Aboriginal organisation. He said that he had kept the television at his home for about 4 or 5 weeks or more:

- Q: What made you return it here [to the offices of the Aboriginal organisation]?
- A: Well, it it's the property of [the Aboriginal organisation].

Q: Would it be that you returned the TV set to the [Aboriginal organisation] because the auditors were going to do a check, and you were told to bring the TV back?

A: Well, that's probably one reason, but, you know, I knew very well that that is the property of [the Aboriginal organisation].

The Chairman also agreed that on 11 August 1988, he drew \$350 out of the money provided by Aboriginal Council B for the purpose of travel to Brisbane:

Q: Yes, the initial intention, the \$3,000 was for election research?

A: Yes, yes.

Q: Right, and you firstly you've bought a TV set?

A: Mmm.

Q: And now you've drawn \$350 for travelling out of that \$3,000?

A: Mmm.

Q: Well, what does \$350 for travelling have to do with election research?

A: Well, after that, we didn't get any response of the communities then the Council advised me to use that on travelling.

Q: Yeah, but this is just, only 8 days after the cheque was delivered here, was receipted here. The cheque was received here on the 3rd of August on that first, on that day you purchased a TV, and then 8 days later you're drawing \$350 for travelling?

A: Well, at the time, if that's the case, well, at the time it was for that particular meeting in Brisbane.

Q: Well, did it have to do with election research?

A: No, it was after the Council told me that, use it for Council reasons only.

...

Q: Well in that 8-day period from the 3rd of August to the 11th of August had you had discussions with the Council?

A: Oh yes . . . yes, I've gotta, I mean, I can't tell you anything in detail because I'm not, I mean it's 2 years ago, I've sort of got to go back and talk with the rest of the colleagues . . . but I recall, I recall before those, before the trip to Brisbane I've told them the situation, and I strongly pointed out that I cannot use [the Aboriginal organisation's] travels for our own issues.

The television set

The Chairman was asked how the Council's approval for him to use some of the money for travel extended to the purchase of the television set:

Q: How does that cover the TV situation though, can you expand on that?

A: Well, mmm.

Q: Like, did the Council set a limit when they said that they changed instructions to say, to be used towards the travelling fund, did they say anything else as well?

A: Well they certainly said, look, ah, about the \$3,000, use it, use it for your travel ah and then the TV set, I've told them about the TV set, look, okay,

well, that's that's [the Aboriginal organisation's] property, I mean I could just tell you what I remember.

Q: So did the Council authorise purchase of the TV as well?

A: Oh yeah, yeah.

Q: Which members of the Council authorised that?

A: All the same members.

The Chairman was also asked about his subsequent direction that the balance of funds in the account after the purchase of the television set and the travel allowance disbursement should be placed into his personal account:

Q: Well, on the 17th of August 1988, you returned from Brisbane, and then you told [an employee] to deposit the balance of the \$3,000, which was \$2,251 into your personal account. And you have allegedly told her that it was for travel?

A: That's after the Council's direction (ui) they asked me to ah, if you . . . to use it for [the Aboriginal community] then they said, well, deposit that money in your account and use this, that for travelling.

Q: Well who told you that?

A: The Council members . . .

Q: The three?

A: . . . named before.

He was asked why the \$3,000 was subsequently refunded to Aboriginal Council B:

Q: And then it appeared on the 6th of January 89, you gave [an employee of the Aboriginal organisation] a . . . cheque in the amount of \$2,200?

A: Yeah that's that's (ui) in my account, its the account that I'm talking about.

Q: Well why did you give her \$2,200?

A: Well, the, well, it's got some politician (ui) and that we were at the time arguing about (ui) issues and all this sort of stuff, and then, you know, there were things in the papers about (ui), and blah, blah, blah. So we thought the right thing to do at that time because of the pressure . . .

Conclusion

The investigation conducted in this matter establishes that:

- Aboriginal Council B resolved in June 1988 to contribute \$3,000 towards electoral research by another Aboriginal organisation.
- At the time, the Chairman of Aboriginal Council B was also Chairman of the other Aboriginal organisation.

- On 20 June 1988 Aboriginal Council B gave the Chairman a cheque for \$3,000, which he was to provide to the other Aboriginal organisation for the purposes of electoral research.
- On 3 August 1988 the Chairman directed an employee of the other Aboriginal organisation to deposit the \$3,000 into a fund. The employee deposited the cheque into a fund under the heading, "Chairman's Travel, [Aboriginal Council B] Funding".
- On 3 August 1988 the Chairman obtained a cheque for \$399 from these funds to purchase a colour television set. This television set was kept at his home for some weeks and then placed in the office of the other Aboriginal organisation.
- On 11 August 1988 the Chairman requested a cheque from the fund in the sum of \$350 for his travelling expenses.
- On 17 August 1988 the Chairman requested a cheque for \$2,251 (the balance of the \$3,000), advised that it was to be used for his travel, and arranged for it to be deposited in his personal account.
- In January 1989 a cheque for \$3,000 was sent to Aboriginal Council B by the Aboriginal organisation, after concerns had been expressed in the community that the funds had been used for purposes other than those originally intended.

A successful criminal prosecution in this matter would require proof that the Chairman did not have the authority of Aboriginal Council B to deal with the funds in the way in which he did. He has claimed that his use of the funds was authorised by other Council members, in particular, three Council members who took part in the original decision to donate the \$3,000 to electoral research. One of those Councillors could not recall authorising the use of the money for anything other than electoral research, but said that he had missed a lot of meetings through illness. Another seemed to recall that, at some stage, he had agreed that the Chairman could use the money for travelling expenses. The third Councillor did not seem to have any clear recall of dates or details in relation to the matter.

The Council minutes in relation to this issue, as was found in many other cases, are unhelpful. At a special meeting held on 24 February 1989, the following appears in the minutes:

Council discussed the notice of intention pursuant to sub-Regulation (8) of Regulation 7 of Community Services (Aborigines) Regulation 1985 to remove the Chairman . . . and appointment of the incumbent Chairman . . .

After some reference in the minute to a discussion on the legality of the notice, the following appears:

It was decided that the motion as put, be resolved.

RESOLVED that the Council as a majority removes [. . .] as Chairman of [Aboriginal Council B].

There is no reference in the minutes to the substantive basis for this resolution.

The same minutes later referred to a discussion, which may relate to the reasons for the proposed dismissal, in the following terms:

Discussions took place after [the new Chairman] had given a report on his findings regarding the \$3,000. His finding leads him to believe that [the former Chairman] has not misappropriated money. He spoke to [an employee of the Aboriginal organisation] and other . . . staff [of the Aboriginal organisation].

Whilst the meaning of this minute is not entirely clear, it would certainly make any prosecution of the Chairman difficult, in view of the fact that the Council to whom the funds belonged seems to have accepted that he has done no wrong in relation to his use of the \$3,000.

The conflicting, and sometimes incomprehensible, statements of witnesses interviewed in relation to this matter would also make the prospect of a successful prosecution remote.

The investigation illustrates how the Commission's investigative powers can be frustrated by poor records and unreliable testimony. Notices to Produce were ineffective when Council records did not properly record the basis upon which decisions were made and could not be relied upon as generally accurate documents. The power to summons witnesses to hearings were futile when witnesses provided a confusing variety of statements about important issues.

CHAPTER 6

Aboriginal Council C

A brief history

Prior to contact with Europeans, the region in which Aboriginal Community C is located was one of the most densely populated areas of Australia. It supported, by some accounts, over forty clans that lived in relatively circumscribed areas and enjoyed a considerable variety of lifestyles, depending on available food, location, population size and the immediate physical environment.

Contact with Europeans was far from uniform across this region. While communities and townships grew haphazardly in one area under the influence of gold mining and the pastoral industry, other areas remained virtually intact until exposed to the work of European missionaries.

The missionaries

Missionaries first appeared in the vicinity of the present day Aboriginal Community C in the early part of the 20th century, apparently intent on forging autonomous self-sufficient Aboriginal townships living under the newly proffered way of life. By the late 1930s the missionaries had established a settlement near the present site of the community, and within ten years the settlement was reputed to have had a population of approximately 230. By the 1950s village residents played a largely passive role in day-to-day organisation of their activities, and, to one writer, it was clear that the community could have remained self-sufficient only by renouncing the possibility of living in conditions equal to those enjoyed by the Australian community at large.

A government community

The church's dominant role came to an abrupt end during the 1960s. After a natural disaster almost destroyed the community, the State government stepped in with money and labour to rebuild the community's infrastructure, and the church handed over administrative control to the Queensland Department of Aboriginal and Island Affairs. The DAIA was guided by its policy of assimilation, through which towns would become undifferentiated parts of Queensland society and community members could eventually assume management and ownership.

DAIA invested heavily in capital development---schools, a hospital, water, electricity---and sustained the local economy by providing employment. In fact, the DAIA was the chief employer in the area, by virtue of community work and the fledgling pastoral industry established under its auspices. In the early 1970s its efforts were complemented by the Federal government. But wage levels were generally below that obtainable elsewhere.

The DAIA's presence may have been no more keenly felt than in the styles of housing it brought to the community. Where dwellings had previously been built with indigenous bush materials, DAIA reconstructed the town with permanent, self-contained European-style houses which some residents claimed were ill-suited to both climate and lifestyle. In the process, it forged permanent neighbourhoods along streets and tracks, and confirmed the bipartisan nature of the population.

Divisions

The original inhabitants had in fact been drawn from three clans living in the general area, one of which comprised the traditional owners of the land on which the community is now situated. *Members of one of those clans had gradually drifted away, and the town plan on which the community was reconstructed incorporated the divisions that characterised residential arrangements before the natural disaster: two halves separated by a central area where the administrative and social facilities were located. The influence of the two groups did not stop at housing. Work gangs were apparently drawn from one side or the other. Each side maintained its own gambling ground. The division was maintained at public meetings, the picture theatre, the church and even in the order in which people did their shopping.

Some authors maintain that with the development of the community's infrastructure over time residents increasingly identified with the wider group (for example, use of the local dialects declined with the adoption of a common lingua franca). However, a brochure produced in the late 1970s presented pictures of residences clearly identified as belonging to one or the other clans. In 1992, some residents interviewed by Commission investigators referred to the division, particularly one Council officer:

Q: Someone said, since we've been up there, that um, in terms of hiring people for the Council, sometimes you've got to hire one from this lot and one from that lot and---

A: That's right, yeah.

Q: Does that happen a lot?

- A: It does, yeah. Now, say, for instance . . . I've got, you know, two, two people that'll do bookwork and I (ui) get two people to assist with filling, in, helping old people and people that can't read and write, in filling out the form
- Q: Hmmn.
- A: Right, so filling out the, the member form, you know, the voting form. So, I've got to get someone from this other side, (ui) from that side, and then I've got to get someone from this side . . . and then I, I sort of oversee the whole thing.

He later suggested that some Council functions showed concentrations of residents from one side or the other.

The community Council

The community's infrastructure developed in the context of maximum staff supervision and little opportunity for initiative and decision-making on the part of the Aboriginal residents. One of the few means by which residents could exercise some influence over community affairs was through the community council.

The first councils were comprised of five residents. Initially, three were elected annually by the community and two appointed by the DAIA Director.

Councillors assisted white management's efforts to promote discipline and good order in the community by administering the community's by-laws. Councillors comprised the Aboriginal Court, which had the power to, among other things, administer the law regarding the sale and consumption of alcohol, levy fines, impose gaol sentences, and revoke permits to reside on community. However, its jurisdiction did not extend to non-residents. The Council was also concerned with the welfare of the community (for example, operating the canteen) and functioned as a communication link between the white administration and the community. Unlike the local government authorities on which it was modelled, the Council initially had no real power in the disposition of the community's resources other than to approve the administrator's plans.

Self-government

Like many other Queensland Aboriginal communities, during the 1980s Aboriginal community C achieved a form of self-government with the passage of the Community Services (Aborigines) Act. Department employees working in essential functions were transferred to the control of the Council, and Council assumed responsibility for functions such as hygiene, water, roads, parks, workshop and equipment maintenance, fuel, freight, sanitation, and housing.

The Department placed a Departmental officer on secondment to the Council to provide direct advice and guidance for the Council's administrative office management and agreed to "continue to encourage and provide intensive and continuing training programs for Council".

Under the 1984 legislation, members of the Aboriginal Council were to be elected for terms of three years, with elections held on the same date as elections for mainstream local authorities under the Local Government Act.

Full responsibility

By most accounts, Aboriginal Council C has faced some severe problems since handover, though these problems may not have been unique to this community.

A few months after local government handover, a Departmental officer seconded to work with the Council wrote about difficulties he was experiencing in his work. Noting that the CDEP Scheme¹³⁶ had always had "substantial problems", including lack of adequate control and absenteeism, he said his attempts to intervene in the management of the program had been rebuffed by the Council Clerk. However, in the company of the new CDEP overseer he had confronted the timekeeper and found the "records of hours kept were in gross error". He said his offer to assist the Council Clerk in compiling account balances was also turned down. He felt that the Clerk was a "pleasant young chap" whose difficulties arose from having no previous experience in office management or administration.

Shortly thereafter, the Council Chairman signed a letter to the Department to request assistance from the Department's Transition Team in sorting out some financial problems which had come to light, for example: ATO penalties for late tax remittances; the possibility that tax accumulated on behalf of employees of the Council did not coincide with tax remitted; discrepancies in payroll records regarding the totals deducted from employees; large discrepancies in tax deducted from CDEP employees and overstatements in individuals' gross earnings; notices for late and non-payment of invoices; missing or indecipherable vouchers. He advised the Department that in his view the Council was not being fully appraised of the financial situation since no fund balances were available and reconciliations were not up to date.

Referring to the Chairman's letter, a few days later a member of the Department's Transition Team, wrote: "Largely, these problems are a result of a lazy and

¹³⁶ For a discussion of the CDEP Scheme see page 37, footnote 60.

ineffective Council Clerk who not only fails to carry out his functions with any degree of industry, but interferes with and frustrates the efforts made by the secondee to assist". He went on to note how the relationship between the two had deteriorated over time and that the Council Clerk appeared to have sabotaged the efforts of the secondee on a number of occasions. He advised that the Council Clerk should be sacked, but noted that the Council would have difficulty replacing him, particularly from within the community. He suggested that consultants visit the community to sort out the roles of the Clerk and secondee, develop roles and duty statements for staff and inform Council of the extent of the problems, with a view to having the Clerk's wages reduced to a level commensurate with effort.

Some six months later, the Regional Director wrote to the Under Secretary:

My assessment of the situation at [the community] is that neither the community residents nor the Community Council are committed to accepting the full responsibility for Local Government functions. Neither do they have the human resources available within their community to carry out the work required.

A new Clerk, appointed early in February 1989, held the position for approximately 10 months.

Taking over the place

In April 1990 Aboriginal Council C hired another Council Clerk, who came to the Council on leave from a similar position with another Aboriginal Council. He later told the Commission that he had been approached about the position by the Chairman of another Aboriginal organisation who said that Aboriginal Council C was having problems with its white administration, or the white people in the community, and the Council felt that the Aboriginal self-management aims or objectives for that particular community were not being met, in fact were being hindered by these people in the community. The Chairman of the other Aboriginal organisation, according to the Clerk, said that "white people up there had too much control over the Council administration". The Clerk said that when he went to the community, the then Council Clerk who was due to resign was the only European employed by the Council's administration, although there may have been others employed in other parts of the Council's operations.

The new Clerk made an immediate impact on the both the community and the Council. He apparently initiated the Council's purchase of a mini-computer system that one user described as large enough to run a small city. The Council hired the Clerk's niece and her husband to work in Council administration, and within a short time many others had come from the community he left to work at

Aboriginal Community C. As another Council administration employee noted at the time, this engendered a lot of ill-feeling against people from the other Aboriginal community: "... they were virtually coming and taking over the place ..."

The Clerk remained in this position for only a short time, before moving to the position of Project Officer, a position he held for several months until he left the community early the following year.¹³⁷ At the time he moved to assume the position of Project Officer, the Council hired another Clerk, and shortly thereafter a financial controller.

The Clerk remained in the position for approximately 18 months before he left the community. Another Clerk then worked with the Council for eight months, before the Council sacked him and in 1992 re-hired the previous Clerk, not long before Commission investigators visited the community for the first time. The financial controller remained with the Council for 19 months before the Council sacked him.

Staffing

Continuity among senior staff was apparently not the only staffing problem the community faced. One of the Council Clerks interviewed by Commission investigators said that retaining and training staff had been a major problem for the Council. He said that the Council would face pressure to hire certain people for certain jobs, along the lines of an unwritten quota to hire from one or the other

¹³⁷ In addition to commenting unfavourably on the state of the Council's financial administration in general, the Auditor-General's report for the period of the Clerk/Project Officer's employment made several adverse comments on his actions and decisions. The report noted that he was flying regularly from the community where he was employed to his "home" community at Council expense. Advised by the Clerk/Project Officer that he was entitled to the travel under the terms of his contract, Audit staff examined his contract but could find no such provision. Nor could they find approval for these flights in Council minutes. The report also commented on apparent conflicts of interest in purchases that the Clerk had made on behalf of the Council while he was Clerk and noted that he was signing cheques after he ceased to hold the position of Council Clerk. The Department referred to the Auditor-General's report to the Commission.

Upon leaving Aboriginal Council C, the Clerk/Project Officer returned to the Aboriginal community whence he came and, according to his wife, resumed his position as Council Clerk in that community. He was elected to the Council in that community and eventually became Chairman.

side of the community. He said he would argue against the quota when decisions came to hiring:

Well, if they selected—I mean, it depends on it, it depends on who talks the (ui) you know. I mean if one person, I mean, say for instance, just giving you an example, say of [a particular Councillor]. . . the most outspoken out of the Councillors, I mean, that includes the Chairman . . . now say there was a position, right, and there was four applicants and the daughter was one of them, but she wasn't necessarily the best for the job, I'd have to argue that she's not necessarily the best person for the job and give her an opportunity for something like that (ui) hasn't taken up that opportunity, so then I'd go over it again, get her trained . . . and all of a sudden she leaves . . . but she's, that daughter has been here two times and stayed two to three months and then never comes back.

He thought that people do not stick at jobs "mainly, you know, the pressure starts, starts to appear . . . from their local residents, you know, from locals pressuring one another . . . ah, say, for early pays for instance". He estimated that since the transition period began, the Council had employed fifty or sixty regular clerks in the office, six project officers, seven accountants and at least three senior administration officers. The problem had not been so severe in the area of non-administration staff, but there had still been three or four works supervisors.

Throughout the transition period, only one senior Council position had been held by a local community resident.

An organisation chart prepared by a training group looked fine on paper but "in actual fact, in reality, it [didn't] work. I mean, they, they've based their training on theory and it doesn't, a lot of theory doesn't work". Many of the positions in the chart had never been filled.

"A complete lack of internal control"

Visiting the community in April 1990, shortly after the appointment of the Clerk from the other Aboriginal community, departmental transition officers observed the errors being made by the Council indicated "a complete lack of internal control", an assessment supported to a large degree by the Auditor-General's comments for the period.

Comments made by staff serving in the period immediately following the appointment of the Clerk give some indication of the problems they faced. For example, at the time the new computer system had been installed, apart from the Council Clerk who had switched to Project Officer, there was no-one on staff who knew how to operate the system. With the hiring of a new accountant the number

of staff who knew how to operate the system increased to two. The Accountant said he took two people to a nearby city to undergo training on the system, but "they didn't do any training because they didn't turn up and we went back home. It was a total waste of time." In any case, the computer system did not function well because of the community's fluctuating power supply. The Council's accountant said he used to take discs to a nearby city once a month and do his reconciliations there. If he did them on the computer system, he was likely to corrupt the data.

Wages and payroll were also areas of difficulty. The Auditor-General noted that some employees were being overpaid, others had their hourly rates inexplicably increased for short periods, and still others, in particular some who had come to the community from the same community as the erstwhile Council Clerk, were being paid under overly generous conditions that did not seem appropriate to the nature of their work. As one Council employee said: "... wages were out of control and nobody in the place would take any financial direction from that point alone ... every time we mention change it [was] stamped on the head ... " He said that hourly rates were "overboard", but the Council wouldn't entertain wage cuts.

Council employees also faced daily pressure to provide early pays:

... they want their pays [every day of the week]. And so you argue. And I say argue, because that's what you do. You don't want to give it to 'em, they want it. Then come payday as you're attempting to load on 200 people for CDEP payroll they all want their money now. And I think the problem more so than the computer system was the lack of control. No-one wanted to do anything to their cousin-brother, let him just go on like a raving lunatic.

One employee estimated that at one stage the Council was doing 15-20 pay runs every week.

The Council also experienced trouble keeping control of ordering. According to two Council employees, order books were spread all over the community. One said: "... it was mayhem, it was mayhem. People didn't want things taken from them, they didn't want control moved from there and then all of a sudden things were breaking down ... " One accountant claimed to have been sacked three weeks after he tried to consolidate the order books into one central location within the Council office.

According to some observers, the Council's decision-making processes also affected the efficiency of the administration:

... everybody was allowed to talk to the councillors, and therefore, you'd have six Councillors telling the Council Clerk what to do. And I probably had 30 trying to tell me what to do. They couldn't let the Council Clerk run the Council. Everybody was involved in the day-to-day running of the Council.

Another employee gave the problem a slightly different perspective:

... the Chairman and the Councillors are so accessible, they're so accessible by local residents, and that's why I can't understand that they aren't operating as they should ... I mean, there's no talking. The only talking that's done is when they're drunk, is when the alcohol induced ... either the Councillors themselves or the Chairman put themselves on a pedestal, or someone else puts them on a pedestal, and then they become inaccessible ... to the community residents. Now, there's some problem there, because I mean, those people those six Councillors are here every day and they go home to these same people ...

The training that the Council had received also came under fire. One Council employee said he'd seen "heaps and heaps of people come through to give training to people":

- Q: ... what do they leave behind them in terms of expertise or in terms of new knowledge?
- A: Not, not, not very much.
- Q: Why?
- A: I don't know, it seems to be a breakdown on the way that they're delivering it, on the delivery of the training program.

Asked about the control that the Council administration was able to exercise over the Council's finances, one senior employee said:

- ... I think it's probably the most important aspect on the community, and I don't think it's ever been given much consideration.
- Q: By who?
- A: By Councils. By the Council Clerks, by people within the Council. Um, to a certain extent, the community residents, I mean, they've never taken responsibility for the financial control of Council finance matters. There has never been a really, I mean there's never been anything done about controlling, sort of internal control mechanisms, I mean Council minutes, ratifying Council decisions relating to financial expenditure, um, keeping within budgets, um, all everything to do with expenditure, there just never hasn't been an interest taken and no one has been accountable for any expenditure ...

The state of affairs

When Commission investigators visited the community in 1992, they found terminal wires hanging out of walls and seven-nine computer stations stacked against a wall in a spare room. Apparently the system had not been used since the financial controller's departure. They also found a room stacked with boxes and loosely piled documents. Departmental Transition Officers visiting the community evidently had tried to simplify the workspace of the people working for the Council and taken all the paperwork lying around desks and workspaces and consolidated it into one room. They said that there had been so much paper spread around them that employees were unsure exactly what they were supposed to be doing. Some documents that analysts found in the storeroom, for example, Deed of Grant in Trust documents, should have been kept in the Council's safe.

Investigators could not locate all the documents they needed for the investigation. Some documents referred to in the Auditor-General's report had inexplicably disappeared.

Over several trips to the community, investigators were able to interview certain present and former members of the Council's administration and some Councillors and former Councillors. Some Councillors declined to be interviewed. One in particular, the subject of one of the allegations, said he would only speak to investigators only on the subject of Aboriginal Deaths in Custody. Some former Council employees could not be located, despite, in one instance, trips to three different country centres where the former employee was said to be living.

In contrast to other Aboriginal communities, where the extended presence of investigators seemed to encourage residents to come forward to discuss the Council, in general the residents and Councillors in Aboriginal community C appeared reluctant to have any contact at all with investigators.

Aboriginal Council C: Auditor-General's reports

Several reports prepared by the Auditor-General were made available to the Commission. The Auditor-General's report for 1989/90 contained matters that the Department referred to the Commission for investigation.

7 March 1991---The Auditor-General wrote to the Minister, advising her that the accounts for the Council for 1989/90 disclosed an unacceptable position in the Council's financial administration. A 17-page attachment referred certain matters for the Council's attention, including the following:

- Lack of control over many Council functions, including training, housing, collection of fines, vehicle fleet, etc.
- Council meetings: unsigned minutes; duplicate minutes.
- Budget: approved budget for financial year not sighted.
- Shortages in cash collections.
- Bankings: unidentified credits and unsigned bank reconciliation statements.
- Overdrawn account funds.
- Payroll: unadvertised positions; missing payroll reports; lack of information on wage rates, leave, and benefits; inappropriately administered wage preparation; unauthorised deletions and amendments to payroll; payment of additional unauthorised wages; inappropriate payment of allowances and overtime.
- Canteen: cash shortages; improper maintenance of records.
- Expenditures: unauthorised expenditures; poor control over ordering procedures; poorly prepared or incomplete vouchers; overly generous and unsatisfactorily administered travel policy; payment for goods prior to receipt.
- Wages: overpayment of allowances.

The report noted that the circumstances of three shortages in Council funds had already been referred to State police. In one matter, a person who had altered a Council cheque was fined \$200 and ordered to pay restitution. Shortages in the beer canteen and air agency collections were investigated by police who indicated that "there were insufficient grounds for charges to be laid". A shortage in cash-take revealed that the safe had not been locked at all times. Police concluded that "no charges would be forthcoming" on this matter either.

The report contained many recommendations for changes in Council procedures, as well as recommendations that certain matters be referred to the Criminal Justice Commission.

20 February 1992---Writing to the Council Chairman with respect to accounts for the period ending June 1991, the Auditor-General noted that annual financial statements had been certified. However, several matters were referred for the Council's attention and remedial action, including the following:

- Canteen: selling price control shortage in excess of \$32,000, of which approximately \$25,000 occurred when the canteen manager was on leave.
- Expenditures: unsigned purchase orders; inconsistently authorised and checked vouchers; excessive representation at conferences and meetings outside the community.
- Council meetings: unsigned, incomplete, and unsatisfactory minutes.
- Payroll: payment of unapproved over-time; unauthorised amendments to payroll files; absence of time-sheets for some employees; overpayments; incorrect payment of allowances.
- Budget: no record of the Council having adopted a budget for the financial year.
- Housing: rent-owed balance at \$80,000; no system for charging, recording, and collecting rents.
- Court fines: uncollected fines in excess of \$18,000.
- Lack of control over motor vehicles after hours.
- Assets Register: failure to properly maintain.
- Bankings/collections: under-bankings and cheque alterations that were unsuccessfully investigated by State police; unsigned bank reconciliation statements.

Again, the auditors made numerous recommendations concerning Council practices and procedures.

18 March 93---Writing to the Minister with respect to the audit for 1991-92, the Auditor-General noted that Aboriginal Council C's financial accounts had disclosed an unacceptable position in the Council's financial administration. The audit certificate included a disclaimer pertaining to many aspects of Council administration and operation, including:

- Canteen: lack of records.
- Assets register: failure to maintain for eight months.
- Council meetings: lack of minutes for 6-month period.
- Vouchers/disbursements: numerous payments improperly authorised; inadequate documentation; Council's failure to ratify disbursements.
- Payroll: lack of timesheets and other records.
- Bankings/collections: deficient controls over receipting and banking resulting in unaccounted for receipts.

- Budgets: failure to adopt budgets.
- Tenders: failure to follow correct procedures.

The Auditor-General noted that in general the Council had failed to maintain Council records.

February 1994---The Auditor-General issued a qualified report for Aboriginal Council C for the period ending June 1993. Among the matters referred for the Council's attention were the following:

- Budgets: failure to adopt budgets.
- Council meetings: failure to consistently produce minutes.
- Vouchers/disbursements: inadequate documentation and inadequate control over purchase orders.
- Bankings/receipting: deficient control over banking and receipting.
- Payroll: improperly authorised timesheets and other records.
- Assets register: failure to maintain register for 20 months.
- Sundry debtors: inadequate systems and no evidence of follow-up.
- Canteen: lack of records to substantiate transactions.

Allegation 1 **That the former Council Clerk had an undisclosed pecuniary interest in the sale of personal video equipment through his company to the Council; and that the former Council Clerk sold the video equipment to the Council at an inflated price**

Background

This allegation was referred to the Commission in May 1991 by the Director-General of the DFSAIA. In his report on Aboriginal Council C's 1989/1990 accounts, the Auditor-General had raised several matters that, in his view, warranted referral to the Commission.

According to the Auditor-General's report, on 24 May 1990 the Council had paid a company \$3,750 for video equipment, including a camera, batteries, a battery recharger, and blank video cassettes. Auditors' inquiries during the audit revealed that the Council Clerk at the time of the purchase was a director of the company from which the Council had purchased the video equipment. Further inquiries made through a well-known retail store specialising in electrical goods showed that the camera sold to the Council was out-of-date and that a newer model of the same make (including batteries and battery charger) could have been purchased tax exempt for \$1,825.

At the time of the audit, the Council Clerk in question had left that position and assumed the position of Council Project Officer. When auditors suggested to the former Clerk/Project Officer that his company did not usually sell video cameras, the former Clerk said that he had sold his personal camera to the Council. In the Auditor-General's view, it appeared that the former Clerk had used his company to sell an out-of-date camera to the Council at an inflated price. Furthermore, according to the Auditor-General, the Council was aware that it had previously purchased a video camera of another make but seemed unaware of the purchase from the former clerk's company.

Documentation

When investigators visited the Council in October 1992, they were able to locate a few documentary records pertaining to the purchase of the video equipment: two

invoices from the former Clerk's company, a Council payment voucher, and a copy of the cheque that the Council used to pay for the video equipment.

Two invoices totalling \$3,750, which appeared to have been produced on a dot-matrix printer, billed the Council's "BRACs Association"¹³⁸ for the video camera, blank cassettes and attachments (\$2,900); and batteries and battery charger (\$850). The invoices were dated 11 May 1990.

The payment voucher appeared to have been completed by the same person who signed the verification certification.¹³⁹ The signature, which was dated 24 May 1990, appeared to belong to a Council Administration Officer who, according to one witness, was also the former Clerk's niece. The "Approved for Payment" section of the payment voucher bore the undated signature of the Council Chairman. The cheque number in the top right hand corner appeared to have been written in a different hand to both the Administration Officer's and the Chairman's.

A cheque in the amount of \$3,750 drawn on the Council's Trust Account and dated 24 May 1990, appeared to have been written by the Administration Officer. The cheque appeared to bear the signatures of the then Council Chairman and the former Council Clerk.

Investigators examined Council minutes to see if the Council purchase of the video equipment had been authorised during a Council meeting. They located two sets of minutes purporting to refer to five "Special Meetings" held during April 1990. Although the minutes themselves were identical, they had been collated in different orders. Some were signed by the former Clerk. None was signed by the Council Chairman.

Despite setting out Council decisions in some detail, no minute referred to anything remotely like the purchase of video equipment. However, under a section entitled "Council Clerks' Report" in the minutes for a Special Meeting held on 18 April 1990, minute 26:1 states:

¹³⁸ BRAC: Broadcasting for Remote Aboriginal Communities.

¹³⁹ Verification that the invoice cost and order cost agreed, that the quantity ordered and supplied agreed; that the goods had been received; that the invoice had not previously been paid, etc.

PURCHASE ORDERS "that pursuant to section 3.6 of the ministerial directions the Council Clerk will be the authorised officer for the placement of purchase orders"

Moved: [...]

Seconded: [...]

Motion: Carried

In his report on the 1989/90 audit, the Auditor-General noted that Council minutes had not been signed by the Chairman for the period April - June 1990 and that "[d]uring this period, audit could not be confident that these Minutes (signed by the Project Officer) were an official representation of matters discussed by Council". The authenticity of the minutes also became the subject of a Commission investigation. (See Allegation 2.)

Interviews

Investigators conducted numerous interviews in relation to this allegations. They interviewed the Council Clerk [hereafter the "new Clerk"] who had assumed the position when the former Clerk took the position of the Project Officer [hereinafter "the former Clerk/Project Officer"], a Council accountant, the Chairman of the Council at the time the purchase had been made, and one of the then Council's Councillors. Several attempts to locate the Administration Officer who had apparently signed the verification certification section of the payment voucher and written the Council's cheque were unsuccessful.

Investigators later re-interviewed the Clerk, the accountant, the Chairman and the Councillor. Attempts to interview other Councillors were unsuccessful. Investigators also spoke to the auditors who had conducted the 1989/90 audit.

The former Council Clerk and his wife, directors of the company that sold the video equipment to the Council, later gave evidence to the Commission in a hearing held at the Commission's offices in Brisbane.

Breakdowns in internal control

In his 1991 report on the Council's 1989/90 financial accounts, the Auditor-General noted that the Council's purchase of the video equipment demonstrated a

number of "breakdowns in internal control".¹⁴⁰ The Commission's investigation arrived at similar conclusions.

At the time the Council purchased the video equipment, the regulatory framework governing Councils' financial control comprised the Ministerial Directions, the Community Services (Aborigines) Regulations 1985, and the Community Services (Aborigines) Act. In the context of this regulatory and legislative framework, the Commission's investigation into the purchase of the video equipment raised several issues:

1. The former Clerk may not have advised the Council that the video equipment was his personal equipment. The Council's purchase of the equipment from a company owned by the former Clerk and his wife raised the strong possibility of an undeclared pecuniary interest.
2. No quotes for newer or equivalent equipment could be sighted.
3. The purchase may not have been approved by the Council.
4. No Council order for the equipment could be located.
5. The video equipment had not been obtained at the best possible price.
6. The payment voucher may not have been properly approved. No goods-received signature was evident on the invoices, although auditors apparently inspected the camera in question.
7. The payment may not have been ratified by the Council.

¹⁴⁰ Some of the Auditor-General's findings and observations on other matters are closely related to the circumstances of the present allegation:

- Although a system of financial delegation was partly operational, "very little control over the custody and issue of Purchase Order Books existed throughout the audit period". Apparently not all purchase orders had been signed by the Clerk (or Acting Clerk) and the Chairman (or Acting Chairman).
- In general, vouchers were not being properly prepared: some did not contain sufficient detail to validate the correctness of the payment; some purchase orders were not attached to vouchers but left in the book unsigned; not all documents were cancelled with the "paid-date" stamp; a goods received signature was not present on all invoices; a large proportion of early CDEP pay vouchers were signed only by the preparing officer, and there were no signatures of the Council Clerk or Chairman on these vouchers to indicate approval of these expenditures; in some instances, the officer who prepare the order signed the invoice as goods received and signed the voucher as checking officer (this was "a fundamental breakdown" of a system of internal checking and control); there were instances of double payments.
- Several expenditures had been made without Council approval: e.g., consultancy fees, relocation expenses, air fares (including fares incurred by the former Clerk/Project Officer), Councillors' allowances.
- The former Clerk/Project Officer was signing cheques after he ceased holding the position of Clerk.

8. One of the signatures on the Council cheque paying for the equipment was the former Clerk's.

The following sections examine the evidence the Commission obtained on each of these issues.

1. Did the former Clerk declare his pecuniary interest in the video equipment sold to the Council?

The auditors who had conducted Aboriginal Council C's 1989/90 audit were interviewed by Commission investigators in 1993. One of those auditors, who had taken the lead in examining the Council's vouchers and payments, spoke at some length about how the purchase of the video equipment came to his notice.

He said he first became aware of the former Clerk's company when he examined another set of purchases that the Council had made from the same company. After finding those vouchers, he searched the Council's computer system (which was functional at the time) and found another payment to the same company, this time for video equipment. He thought that the price paid was "a little expensive". He suggested that both the Chairman and one of the then Councillors seemed to have been unaware of the purchase. He said that he approached the "new" Clerk and accountant about the matter, but they were not sure what kind of camera the Council owned. When he showed them the voucher, they told him to speak to the former Clerk.

He suggested that upon approaching the former Clerk about the matter, the former Clerk admitted to owning the camera for "something like two years, I can't be sure" before selling it to the Council through his company. The auditor said that when he later raised the issue of conflict of interest, the former Clerk did not respond.

During his first interview with Commission investigators, the Council Chairman said that he had not heard of the former Clerk's company. When interviewed almost a year later, he told investigators that he had heard that the former Clerk owned a store "before this happened". The Council Chairman said he could remember the purchase of video equipment being raised at a Council meeting and the Council buying a video for the BRACs association, but the Council personnel he associated with that discussion and purchase clearly placed the events some time before the former Clerk in question began working for Aboriginal Council C. It seemed likely he was referring to the earlier video purchase cited by the Auditor-General. He said he was unaware that the former Clerk had purchased a second lot

of video equipment for the Council. If the Council needed another, he said, he would have asked the "BRACs fellow" for advice on what to buy.

Asked if he had known that the former Clerk was ordering things from himself would he have agreed with the practice, he said: "No, I don't. I don't, really know, I didn't know that he was ordering things from, from this shop (ui) really didn't know (ui)".

Investigators also interviewed another person who was a member of the Council at the time the purchase was made. In a 1992 interview he could offer no information regarding the purchase of the video equipment. In 1993, during a second interview, he said he could remember Council authorising an entirely different set of video equipment for BRACs, but could not recall the Council authorising the purchase of a second set.

The "new" Clerk was interviewed twice by investigators, once in 1992 and almost a year later in 1993. He had served as the DFSAIA Executive Officer for almost a year prior to assuming the position of Council Clerk in July 1992. In that capacity, he seems to have attended at least some Council meetings and have been aware of some of the Council's activities.

The first time he was interviewed, the Clerk told investigators that he had learned about the former Clerk's company through the auditors. A year later, he told investigators that although he had not been aware of the actual sale of the video to the Council, there had been some discussion of the matter after the sale had taken place:

... not prior to the actual sale. The sale was brought up, there was some talk, you know----it happened so quickly, and I say a lot of things were going on around the place, and, um, but [the former Clerk] spoke to me about it, about the need for the BRACs to have a video and that's all, that's all it was, and then, when I, 'cause I recall that, you know, conversation about a video or something because there was a BRACs conference on the community at that stage, and then a couple of weeks down the track, then when the auditors had come in down in October, November, that's when I first found out that [the former Clerk] had actually sold his video to, to the [. . .] Council when in fact the Council could have got it for 15, 14 hundred dollars cheaper.

This discussion allegedly took place before he became Council Clerk.

Investigators also twice interviewed the person who had served as accountant with the Council during the time the 1989/90 audit was being conducted. He had joined the Council staff after the purchase of the video equipment, only a month or two

before the audit. He told investigators that he knew nothing about the matter until the auditors raised it with him.

During an investigative hearing at the Commission, the former Clerk would later claim that he had "obtained approval from the Chairman and the Deputy Chairman and [had] provided the relevant facts in regards to [his] interests".

There was no documentary evidence to support the former Clerk's statement. Investigators could find no mention of the purchase in Council minutes, let alone a reference to the former Clerk's ownership of the video equipment. Even those minutes that the former Clerk seems to have produced in preparation for the auditors' visit do not refer to the purchase. Furthermore, both the Chairman's and the Councillor's statements would seem to contradict the former Clerk's statement. Putting aside questions as to why they appeared to be unwilling to talk freely about the matter the first time they were interviewed, their later statements are consistent with the auditor's recollection of the Council's awareness of the matter. In fact, the evidence on other aspects of the purchase seems to indicate that the only persons who may have been aware of transaction were the Council's Administration Officer and BRACs officer, both of whom could not be located for interviews.

Whether or not the former Clerk made his interest in the video equipment known to the Council, at the time the Council purchased the video equipment from the former Clerk's company there was no provision in the Community Service (Aborigines) Act or Regulations pertaining to conflicts of interest on the part of Councillors or Council employees. Under amendments to the Act made in December 1990, Councillors who have a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council are required to disclose the nature of the interest at a Council meeting. Unlike the Local Government Act, which governs mainstream local authorities, there is no equivalent provision requiring Council employees to declare pecuniary interests.

2. Was the purchase subject to written quotations?

S. 3.3 of the Ministerial Directions stated that plant and equipment and special projects between \$3,000 and \$20,000 shall be subject to written quotations. No written quotations for the video equipment could be located.

Although the total cost of the purchase exceeded \$3,000, the former Clerk had billed the Council in two invoices, neither of which exceeded \$3,000. There is some suggestion that the former Clerk may have itemised the equipment on two invoices in order to charge the Council more. However, the two invoices may

equally suggest "invoice-splitting" to bring the total cost of the equipment under the \$3,000 threshold.¹⁴¹

3. Did the Council approve the purchase of the video equipment?

S. 3.5 of the Ministerial Directions stated that all purchases of plant and equipment and/or special projects over \$3,000 should be approved by Council before orders were issued.

The "new" Clerk said that the former Clerk had spoken to him about the need for the video, but he did not say that the matter had been discussed by the Council. As noted above in relation to issue 1, the auditor's recollection that the Council had been unaware of the purchase of the video equipment from the former Clerk was eventually supported by the then Council Chairman and one of the Councillors. The minutes, whose provenance was suspect, made no mention of the purchase during the period in question.

At one stage during the hearing he attended, the former Clerk claimed that the Chairman, or Deputy Chairman, had in the company of the BRACs officer approached him about buying the equipment. Towards the end of the hearing, the former Clerk said that he had "obtained approval from the Chairman and the Deputy Chairman". The Commission was unable to interview the Deputy Chairman on this matter. However, other evidence provided to the Commission places the former Clerk's statements in some doubt.

In any case, the Council received two invoices for the equipment, neither of which exceeded \$3,000. If this were a legitimate splitting of the purchase, under the terms of the Ministerial Directions Council approval would not have been necessary.

4. Was the purchase made the subject of an order form?

S. 3.6 of the Ministerial Directions stated that orders should be signed only by Council employees delegated by Council. S. 3.7 stated that all orders should be placed on the Council's official order form.

¹⁴¹ Inquiries made by other Council staff indicated that the items billed separately to the Council--batteries and battery charger--were usually included with the purchase of a video camera.

Neither the auditors nor Commission investigators were able to locate an order for the video equipment purchased from the former Clerk.

There is some evidence to suggest that if the purchase had been the subject of an order form, the former Clerk would have been authorised to sign the form. In the minutes of a Special Meeting of 18 April 1990, investigators located a Council resolution that appeared to delegate that authority to the former Clerk.¹⁴²

Under the terms of the Ministerial Directions, the former Clerk would have been entitled to sign the order form despite his pecuniary interest in the purchase.

5. Did the Council purchase the video equipment at the best possible price?

Under S. 3.8 of the Ministerial Directions, the following admonishment appears:

GENERAL POINTS TO KEEP IN MIND WHEN ORDERING

Ensure that -

- (a) Monies are available in particular Fund to cover cost of purchase.
- (b) Goods are obtained at the best price.
- (c) Delivery time is acceptable.

In his report on the 1989/90 accounts, the Auditor-General concluded that the video equipment had not been obtained at the best price.

According to the auditor who had approached the former Clerk about the purchase, the former Clerk told him that he had owned the camera for "something like two years, I can't be too sure". The auditor said that when he asked the former Clerk if he thought the community would have been better off buying a camera sales tax exempt, the former clerk did not respond.

The auditor went on to say that the former Clerk could not tell him where the camera the subject of the purchase could be found. But the auditor paid a visit to the Council's BRACs office, where he found a camera corresponding to the information on the invoices. It looked "quite bulky" and used. According to the auditor, the Council's accountant offered to call an electrical goods retailer to find out how much the camera would be worth. This was how the auditors had learned about the prices of new, current models of the same equipment. The accountant

¹⁴² See page 298.

confirmed the auditor's recollection that he had made the calls to the retailer to find out the cost of a new camera.

The reasoning that the former Clerk used to set the price for the equipment remains enigmatic. When questioned during the hearing, the former Clerk admitted that he had not made any inquiries to ascertain a fair price for the video equipment. Of the camera itself, he said he had "just assumed that there was \$2,900 for it". He claimed that the price included an unstated charge for rental of the equipment prior to sale: "... I added them also for the use of it, for the free use of it. But that wasn't shown on the invoice". He claimed that the Council had enjoyed "free use" of the equipment for "almost a couple of months" or, again at another point, for "so many months". The former Clerk had begun working for the Council in April 1990. He invoiced the Council for the equipment on 11 May. It is difficult to see in those circumstances how the Council could have had "many months" of "free use" of the equipment.

The former Clerk could give no reason for billing the Council separately for the batteries and battery charger other than

I see that is fair enough . . . It was my equipment. They used it for so many months and that was the price I put. If they wanted to buy it, that's the price of the thing.

The former Clerk told the hearing that he never thought to inquire at any time whether or not the Council could have got a better deal buying a new camera. He said that if he had known that a newer model could have been purchased for \$1,825, he would have charged the appropriate rate, or purchased a new camera for the Council. As it stands, it seems highly likely that the total cost of the two-year-old video equipment to the Council exceeded even the price that was paid when it was new.

When the Commission summonsed the former Clerk and his wife to appear at the hearings, it ordered them to produce documents associated with the sale of the video equipment to the Council, including invoices for the purchase of the goods. However, the former Clerk and his wife were unable to produce documentation showing the price they had paid for the equipment. The former Clerk's wife said that she had paid for the equipment with a cash cheque and the only documentation she would have had for the sale would be her cheque butt. She said that the cheque book containing that butt had been sent to the accountants for tax purposes some two months after the end of the 1992 financial year. On the other hand, her husband, the former Clerk, said that the equipment was two years old when it was sold to the Council in 1990. If both of these statements were correct, the former Clerk's wife must have used her cheque book sparingly.

In the absence of documentation pertaining to the purchase of the video equipment by the former Clerk and his wife, both were asked during the hearing how much the video equipment had been originally purchased for. The former Clerk's wife at first said that the camera had cost \$3,000 and she did not know how much she had paid for the other items. Later, when asked if when she purchased the camera, the batteries and the charger were part of the purchase price, she said: "I don't recall". The former Clerk at first said that he did not know how much his wife had paid for the equipment. Under questioning, however, he agreed that it was "around about \$3,000, yes". Both the former Clerk and his wife agreed that they had not discussed the price prior to the sale of the equipment to the Council.

The former Clerk agreed that he had received a good deal from selling the camera to the Council. He said he had never thought to inquire whether the Council might have got a better deal by buying new equipment.

6. Was the payment voucher properly approved?

S. 4.5 of the Ministerial Directions stated that a voucher should be approved by the Chairman or Deputy Chairman (as of June 1989). The voucher used to approve payment for the video equipment was "verified" by the Council's Administration Officer. The voucher in question bears the undated signature of the then Chairman as having been approved for payment.

There was some question as to whether the signature on the voucher was in fact the Chairman's. The Council Chairman was shown copies of the payment voucher twice. On both occasions he identified the signature as his own. However, he had no recollection of the Council making the purchase and could not remember who had brought the voucher (nor the cheque) to him for his signature.

Shown a copy of the payment voucher, the former Councillor said that he thought that neither of the signatures purporting to be the Council Chairman's had in fact been made by the Chairman: "Yeah, I'm pretty certain of [the Chairman's] signature, but that's not his . . ."

7. Was the payment ratified by the Council?

S. 4.6 of the Ministerial Directions stated that all approved vouchers should be ratified by the Council and entered in the Council minutes. The vouchers in question did not appear in the minutes for any of the five Council meetings held during April 1990. In any case, as noted earlier, there is some question about the authenticity of the minutes.

8. Who signed the Council's cheque?

Under the Community Services (Aborigines) Regulations 1985, Council cheques must be signed by two of the following: the Clerk, the Council Chairman, or the Deputy Chairman. The particulars on the cheque used to pay the former Clerk's company seems to have been written by the former Administration Officer. It bore the signature of the then Council Chairman and underneath it, the former Clerk's.

There was some question regarding the authenticity of the Council Chairman's signature on the cheque. The first time he was interviewed on the matter, the Chairman recognised and identified his own signature on the cheque. Shown the same signature almost a year later, the Chairman said that the signature was not his: "That looks like somebody couldn't write my name there properly or (ui) double [a letter] in the middle, write double [a letter] anyway." He said that he had never told anyone that they could sign his signature for him.

A Councillor during the period the cheque was signed said that he was "pretty certain of [the Chairman's] signature, but that's not his . . . "

By some accounts, the signing of cheques at Aboriginal Council C was accomplished with some difficulty. During his first interview, the Chairman told investigators that he said he signed many cheques. He would come to town once a month and sign 50-60 cheques at a time. He said he was not told what the cheques were for---he just signed them.

Interviewed a year later, he made a similar statement concerning his visits to the Council office:

. . . every month I come in and there, cheques there, about hundred cheques or something, y'know, and before I go back out I sign all the cheques, right, like, for pays, ah, pays and all that sort of, y'know, for the working men's pays, like work here in the community, I sign the cheques out to them and for bills, I sign the cheques for bills, every cheque, y'know, go back out in the station and stay for another month, see . . .

He went on to suggest that he would leave signed cheques because he would be away for month and the Council had to have cheques for wages, etc.

The statement of one of the auditors and the accountant confirmed that some of the cheques that the Chairman signed were blanks. The auditor told investigators that the Council books would often have blank cheques bearing one of the required signatures:

- Q: Ah, are you aware of any problem with cheques being left part signed in the sense to cover the eventuality that cheque signatories couldn't be found?
- A: Yep.
- Q: Okay.
- A: It tended to happen.
- Q: Right, so you knew that had some, that had been something that had occurred?
- A: Ah, probably what they would do is they might have one signatory, I'm not too sure about it, but, ah, about this community, or, or, or, ah, or it was common or not, but they might have one signature signed but not the other one, because I've known many instances where there was one signature and they have had to, to send someone out, to go and see [a Councillor] who is quite away from the community, ah, but I don't think there's ever been a case where both the signatures have ever been sort of signed and left.
- Q: Right, okay. Right, and that signature would normally, I guess appear on the top line of the cheque rather than the bottom line?
- A: Possibly . . .

Asked if anyone in the Council administration had tried to stop that practice, he said that he thought that the accountant had tried to streamline some of the practices and in fact

we did inform them that if they foresee sort of certain types of expenses to try and work around the movement of the relevant signatories as such , but anything definite as such, I'm really--- can't remember.

The auditor's observations were supported by the accountant:

- Q: . . . from the audit reports though, there's some talk there about difficulty in finding cheque signatures. What was your experience when you got [to the community] first off? Did you have to hunt around and find people to sign things?
- A: Absolutely. All the time.
- Q: Was there, you know?
- A: Was there cheques signed when it was still in the book, Kalamazoo book?
- Q: Mmm.
- A: Yes, there were.
- Q: Right.
- A: Yeah, you know and I stopped that as much as possible by trying to get [the former Clerk] off the list.

The accountant said he tended to get hold of another Councillor for the cheques he needed signed. He said he would make "creditor runs out to the bush, driving five hours in the crazy country" to ask the other Councillor to sign cheques:

We've done some wild things just to get cheques signed . . . but, yeah, in some situations, when I was first there, the Kalamazoo books all mostly had ten books . . . cheques in there with one of the Councillor's signatures on them.

The auditor's, accountant's, and Council Chairman's statements raised the possibility that the former Clerk could have signed a cheque that already bore the Council Chairman's signature. However, the former Clerk would later deny that the Chairman, or any Councillor, ever signed blank cheques. In fact he told the hearing that the Chairman "occupied an office next door to me and would regularly come in each day for at least the morning sessions . . . and attend business". However, he also told the Commission that the reason another document had not been signed was that "it's unfortunately common practice for---we have difficulties in the administration locating Councillors . . . "

The Public Finance Standards provide a good example of the options faced by the Council in implementing good internal control over the processing of payments.¹⁴³ The Council does not employ sufficient support staff to delegate duties amongst officers. Claims for payment should be considered by the Council members and approval for payment should be effected by an appropriate resolution to be recorded in the minutes. Where sufficient staff are employed, duties should be segregated and the officer who authorised the purchase should not approve the payment or sign the cheque particularly where that officer will benefit from the payment. The Ministerial Directions clearly favour the former scheme, where payments are ratified by Council only after having been signed by the Chairman or Deputy Chairman on behalf of the Council. The former Clerk played a significant but inappropriate role in this transaction from the production of the invoices, the processing of the voucher for payment, and the drawing of the cheque in a transaction from which he clearly benefited personally.

In the present case, it seems quite likely that the Clerk in fact both "placed" the order and signed the cheque corresponding to the order. No part of the process of the ordering, approval, or payment was noted in Council minutes. Regardless of whether the former Clerk signed a cheque that had been blank when signed by the Council Chairman, the former Clerk's signing the cheque represented a clear conflict of interest on his part. However, it did not contravene the Ministerial Directions, the Regulations, or the Act.

¹⁴³ Practice Statement/Payments (Part 2, Division 3, Assets, Public Finance Standard) 622 states that the level of segregation of duties applies only where the duties in a statutory body can be reasonably delegated amongst different officers. If this level of segregation were not possible, the purchase should be noted in the Council minutes.

A "cash sale purchase"

During her evidence before the Commission, the former Clerk's wife said that she did not have any of the documents relating to the purchase and re-sale to the Council of the video equipment in her possession or control. She said that the video equipment had been purchased by a cheque drawn on her business account. The cheque butt, however, would have been sent to her accountants for tax purposes at the end of the 1992 financial year. She said that the purchase of the camera was recorded in the cheque book as a "cash sale purchase". The amount of the purchase was \$3,000.

The former Clerk's wife confirmed that she and her husband were directors of the company that sold the video equipment to Aboriginal Council C. Their business had two shops: one sold mens wear, ladies wear, jewellery, gift lines, and toys; the second sold fresh produce, meat, grocery lines, milk-bar lines such as drinks, lollies, and chips, as well as gifts and toys. She said that her husband did not play any role in the day-to-day running of the shops.

The first thing she knew about the sale was when her husband telephoned her to say that he had sold the camera to the Council. She had not been surprised to hear of the sale. At first, she said that the camera was brand new when her husband took it to Aboriginal community C, but when asked if she was certain of that, she said "I'm not sure, I'm really not sure". She could not say why he took it to Aboriginal community C.

She said that she had paid \$3,000 for the camera. That price did not include all the other items, she said, but she did not know how much she had paid for the other items. Later, when asked if when she purchased the camera, the batteries and the charger were part of the purchase price, she said: "I don't recall".

She said that her husband had sold the camera to Aboriginal Council C's BRACs association, "because they were using it".

The former Clerk's wife recognised her husband's signature on the cheque with which Aboriginal Council C paid for the video equipment, though she could not remember the cheque itself.

Who got the best deal?

At the same hearing, the former Clerk gave his account of how he came to sell the camera:

- Q: ... Now, in May 1990, you sold your own video camera to the Council at [...]. Is that correct?
- A: That's right.
- Q: Can you tell us the circumstances of that?
- A: On arriving at [the Council], I brought in my video camera and there was a, an officer working in the local radio unit there, radio and TV unit for the community, Aboriginal bloke, and two trainees. They, I visited them at their, at their unit there. They were part of the Council workforce. They were using my video camera to go around taking shots for the community. And they, had used—for quite some time they had access to this thing. In fact, I never, I hardly ever seen it. It was—with—in the administration building there where they were. They had access to it, used it. And there came a time when he approached me and said, "Look, I'd, we'd like to buy this for, for the Council." And I told him to go speak to the Chairman, Deputy Chairman or to the Chairman, [...], who he lived with, to get his approval. They both came and spoke to me about it and I said, "Fine. This is the price. I'm going to—they've had use for it. I need to recoup that use". And I sold it. They took delivery. Well, they had the things since I had arrived.
- ...
- Q: What was the name of that person who was using it?
- A: [...].
- Q: And he and the Chairman came to see you did they, to put their proposition to you?
- A: Yes.
- Q: How old was the video camera at that time?
- A: Two years.

He said that the camera was his wife's and he did not recall how much she had paid for it. Asked by the presiding officer at the hearings if the price was around \$3,000, he replied that he thought it was "around about \$3,000, yes". Asked if he could recall how much the Council paid, he said, "\$3,000 something, I think, or thereabouts".

The former Clerk was shown the invoices his company had issued for the equipment and the Council's payment voucher and cheque. He agreed that he had written the cheque number on the payment voucher and had countersigned the cheque. He said that the Chairman had also signed the cheque. He said he had typed the invoices himself on a computer.

Counsel Assisting then questioned the former Clerk about how he had determined the price for the equipment:

- Q: ... How did you arrive at that figure of \$3,750? First of all, \$2,900 for the video itself?
- A: Yes. I just assumed that there was \$2,900 for it. And batteries and so---
- Q: Yes?

- A: And I added them also for the use of it, for the free use of it. But that wasn't shown on the invoice.
- Q: What? You charged them also for the fact that they had used it for, how long?
- A: Almost a couple of months.
- Q: A machine which was two years old. And did you make any inquiries before you sold it of [a well-known electrical retail chain] to find out how much a new machine was?
- A: Not at all.
- Q: Was the Council able to purchase items such as electrical equipment, video equipment, sales tax free?
- A: Yes.
- Q: Now, he has charged a separate amount for the batteries and charger of \$850. Did that seem to be normal thing to you? When you buy a video camera, does not it include those amounts?
- A: I see that is fair enough.
- Q: Did you?
- A: It was my equipment. They used it for so many months and that was the price I put. If they wanted to buy it, that's the price of the thing.
- Q: The Commission has information that a new machine at that time, for a newer model including batteries and charger, was \$1,825.
- A: I wasn't aware of that.
- Q: Had you been aware of that, would you have sold it to the Council, your own machine to the Council?
- A: Of that price?
- Q: At the price you charged?
- A: If I was aware of it, yes.
- Q: You still would have charged——?
- A: No, I would have, would have charged the appropriate rate. I would have purchased a new camera for the council.

[Presiding officer]:

- Q: Did you think it was a good deal that you got from selling your video camera to the Council?
- A: Yes.
- Q: You never thought to inquire at any time whether or not the Council could have got a better deal by buying a new camera?
- A: No.

Nothing improper?

The former Clerk was asked by Counsel Assisting about the procedures for signing cheques while he was Clerk with Aboriginal Council C:

- Q: At the time when you were the Clerk at [Aboriginal Council C], who had to be the second signatories to Council cheques? Was it the Chairman?
- A: Deputy, myself, the Clerk, and probably another person or members of the Council.

- Q: Well, were there two signatories for each cheque?
A: Yes.
Q: Is that how it worked?
A: That's right, yes.
Q: ---could be signatories for a cheque? Did any of the Councillors ever sign blank cheques for use----?
A: ---no.
Q: ---by administration?
A: Not that I'm aware of, no.
Q: Did [the Council Chairman], in particular, did he ever sign any blank cheques and leave them with you or with anyone else in administration?
A: No.

When it was later put to him that the Council Chairman denied any knowledge of the purchase of the video camera and that the Chairman's practice used to be to come in periodically to the Council to sign blank payment vouchers and to sign blank cheques for his use, the former Clerk said, "He occupied an office next door to me and would regularly come in each day for at least the morning sessions . . . and attend business". He denied that the Chairman used to sign blank payment vouchers and blank cheques for the Council's use: "Not that I, not that I would allow, no".

The former Clerk's assertion that the Chairman was readily available to sign cheques and other documents seems inconsistent with his earlier evidence. Asked earlier in the hearing why minutes he had prepared were not signed by the Council Chairman, the former Clerk said

The, it's unfortunately common practice for---we have difficulties in the administration locating Councillors, administration staff, and that I'd requested these minutes to be signed by the Council Clerk and the Chairman, but that wasn't the case.

The former clerk was asked by Counsel Assisting about the propriety of the transaction:

- Q: Did you think at the time that there was anything improper about these purchases by Council of the video camera and [other material] as a result of which you directly benefited?
A: I had obtained approval from the Chairman and the Deputy Chairman and have provided the relevant facts in regards to my interests.
Q: So you thought there was nothing improper with you as the Clerk obtaining---?
A: ---no.
Q: ---these benefits?
A: ---no.

The force of the directions

Leaving aside issues such as why the former Clerk wrote two invoices for the equipment and the authenticity of the Chairman's signature, the purchase of the video equipment contravened the Ministerial Directions in several ways.

By some accounts the Ministerial Directions were largely ignored in Aboriginal Community C. The copy that investigators found among the boxes of documents tossed in the Council's storage room was in pristine condition. The accountant who began working at the Council shortly after the Council purchased the video equipment told investigators that the "new" Clerk had told him to ignore the Ministerial Directions because the Council was in the process of setting up its own financial reporting requirements. He claimed that the auditors had told him much the same thing: "... don't pay too much attention to that, because over the next couple of years, with your auditors, you will---these are only directions".

One of the auditors who conducted the 1989/90 audit of Aboriginal Council C's financial accounts also spoke to Commission investigators about his understanding of the Ministerial Directions. Asked what regulatory framework he used when he was auditing, he said that it was an area that

wasn't very well defined. They did have Ministerial Directions, but, ah, no one really knew, you know, the level of legal backing this Ministerial Directions had ... the Ministerial Directions tended to be more in terms of good accounting management practices ...

Q: So they were a guide rather than a prescription?

A: That's, yep, that, because you did find at these communities, ah, it was never possible to have the, the level of internal control, segregation of duties that you would like to see. There was always a sense of passiveness around the place, so you had to do a lot more work ...

Q: So would it be fair to say that what you're saying to me there is that, ah, not that, perhaps the, the procedures or some of the procedures in the Ministerial Directions were impractical, but they were a little bit unrealistic in an expectation of what could be achieved at the communities?

A: Yes.

Conclusion

Evidence presented to the Commission clearly shows that the purchase of the video equipment did not conform to any understanding of "good management practices" and that, in the Commission's view, the former Clerk set aside his responsibility to the Council and acted entirely in his own interest. He used his company to sell a

personal second-hand video camera and related equipment for more twice the cost of current model equipment. The price the Council paid was quite likely more than his wife had originally paid for the equipment two years prior to its re-sale to the Council.

Whether the video equipment was represented as new equipment is difficult to say. No-one other than the Department's then Executive Officer could recollect any discussion of the purchase before the auditors raised the matter. The invoices prepared by the former Clerk made no mention of the equipment's age or state of repair.

Some aspects of the purchase of the video equipment contravened Ministerial Directions. This would not have been unusual. According to the Auditor-General's report, much of the Council's administration left a great deal to be desired and would possibly have also been in contravention to the Ministerial Directions. But the failure to follow the Ministerial Directions attracts no sanction or penalty. Under the legislative framework at the time, neither would the former Clerk's actions in selling the camera to the Council, in particular, signing the cheque that paid for the equipment.

In the Commission's view, there is good reason to believe that the Council was unaware of the entire transaction until the auditors raised it during their visit to the Council. Certainly, there is no evidence other than the former Clerk's statements to suggest that the Council had been informed of the transaction in any conventional way. Although it was suggested that the Chairman's signature on the cheque which paid for the camera may not have been genuine, the circumstances in which the cheque was signed, like other aspects of the evidence, pit one witness's recollection against another, and no positive conclusion could be reached.

Despite incontrovertible evidence to show that the Clerk directly benefited by involving the Council in a transaction in which it paid significantly more for equipment than it might have needed to pay, the Community Services legislation does not require Council employees to declare pecuniary interests in matters before Council. Given this fact and the state of the evidence, the Commission was forced to conclude that no criminal or disciplinary proceedings could be recommended in this matter.

Postscript: recouping the Council's money

Commenting on the matter in his report on the 1989/90 accounts, the Auditor General stated that if the Council considered that it had been misled in believing it was purchasing a new video camera when in fact a "used" camera was delivered, it

should make representations to the former Clerk's company for a refund of the purchase price and return the camera, or keep the camera and seek a refund of the difference between the amount of \$3,750 which was paid and the estimated value of the "obsolete secondhand equipment which would be valued at less than \$1,825".

One of the auditors recalled proposing as much to the Chairman and another Councillor and thinking that "... somehow they seemed disinterested".

In 1992 the Council Clerk at the time of the audit and at the time the Auditor-General's report was forwarded to the Council was asked if the Council had considered taking any action to recover the difference between the price charged by the former Clerk's company and a reasonable price for a new one:

Q: ... Has the Council considered taking any action on that regard?

A: No, none at all. I don't think it was, um, I'm just trying to think whether the audit report was ever talked about in a Council meeting?

Q: Right.

A: I mean, especially *that* Audit Report.

Q: Is there any reason for that, just an interest thing, or---?

A: Um, well, I think, I think the problem is that someone has to deal with it, and I mean it would have to be the Council Clerk, and, um, relationships were stretched anyway, so I don't see that, I wouldn't see that as part of my job as Council Clerk. I mean I would get someone independently in to do it.

He gave much the same kind of response to a similar line of questioning in 1993.

Allegation 2 That the former Clerk had manufactured inaccurate sets of minutes for meetings held by Aboriginal Council C

Background

The Director-General of DFSAIA referred this allegation to the Commission in May 1991. In his report on Aboriginal Council C's 1989/1990 accounts, the Auditor-General had raised several matters that, in his view, warranted referral to the Commission. One of those matters concerned the authenticity of Council minutes.

The Auditor-General's report

Writing about the Council's minutes during the period in question, the Auditor-General noted that

Council Minutes were not signed by the Chairman for period April to June 1990. During this period, audit could not be confident that these minutes (signed by Project Officer) were an official representation of matters discussed by Council. In addition, there were two sets of minutes for the meeting of 7 August 1990 - one prepared by the Project Officer [. . .] and the other prepared by Council Clerk [. . .].

Council met on 20 November and disclaimed the Minutes of 7 August 1990 prepared by Project Officer as they contained data which could not be recalled by the Chairman and the Council Clerk.

The Auditor-General stressed that the official Minutes should be prepared by the Council Clerk and signed by the Chairman. He noted that the Council would need to pass resolutions on points raised in the disclaimed Minutes for 7 August 1990. Among the matters so named were:

- acceptance of a quote to lay concrete from an individual that the Commission later learned was the then Administration Officer's brother and former Clerk/Project Officer's nephew or cousin. This individual had come from the former Clerk's community to work at Aboriginal community C.
- appointment of another relation from the former Clerk's community. This individual was to operate a concrete transit mixer and supervise a batching plant.

- acceptance of a quote for unspecified services from a contractor also connected with the former Clerk's community. The minutes recorded a resolution awarding the contract to this person but left a blank space for the price of his winning quotation. The Council was unable to make the contractor's quotation available for inspection.

Confusing statements

Investigators first visited Aboriginal Council C in October 1990. During that visit they took possession of all available Council minutes for 1990 and 1991. They interviewed the person who had assumed the position of Council Clerk when the former Clerk switched jobs to Project Officer (the "new" Clerk). They also tried to interview various persons serving as Councillors during 1990. Over the succeeding months, they interviewed the Council's accountant three times, re-interviewed the Chairman, a Councillor, and the new Clerk. Further contact was made with witnesses by telephone to clarify inconsistencies in their accounts of events. The investigators also interviewed the auditors who had conducted the 1989/90 audit three times. Several attempts to locate and interview other key persons who had held administrative positions with the Council during 1990 failed. The former Clerk/Project Officer was questioned regarding the minutes during hearings conducted at the Commission in 1993.

Investigators were forced to conclude that some, and possibly much, of the information given to them by various witnesses was unreliable. For example, the new Clerk claimed not to remember the Council passing resolutions that appeared in handwritten minutes that he himself prepared. One Councillor claimed that a particular resolution that appeared in two different sets of minutes (including one handwritten set) was not discussed during a Council meeting at all. The accountant's recollection of the sequence of events was in some respects at odds with both his own, the auditors', and the new Clerk's. Some aspects of the auditors' recollections were, with the passage of time, inconsistent. Rather than clarifying events or resolving inconsistencies, re-interviewing certain witnesses only further confused the issues.

The following description of events relies on a consensus of statements given by various witnesses and available documentation.

An appropriately trained clerk

In March 1990 the Acting Auditor-General had completed and forwarded his report on the Council's 1988/89 accounts. The audit had revealed an "unacceptable

position" in the financial administration of the Council. The standard of books of accounts had "worsened" over the previous 12 months, and in the auditors' view, the situation would deteriorate further unless "some urgent remedial action" was taken by the Council and the DFSAIA, including employing "additional appropriately trained clerical staff". The Auditor-General included a qualification in the audit certificate. The report itself raised more than 20 matters for remedial action by the Council.

The former Clerk/Project Officer assumed his position at Aboriginal Council C in early April. Prior to this time, he had served as Clerk at another Aboriginal Council. Evidently Aboriginal Council C believed that he would be able to correct a lot of the Council's administrative woes. Certainly, he appeared to have had the training and skills to do so. The person who subsequently succeeded him as Clerk at Aboriginal Council C (the "new" Clerk) was at the time serving on the community as DFSAIA Executive Officer.

No-one was able to provide any information regarding how frequently the Council met during the period April - July. The new Clerk seems to have attended at least some of those meetings in his capacity as Executive Officer and may have kept handwritten notes of the business conducted during them. Judging from documents the Commission found, the former Clerk may have also made handwritten minutes which may have been typed verbatim shortly after each meeting. However, there is no way of knowing how consistently the former Clerk did so.

The "new" clerk

Some time in July, the former Clerk left this position and assumed the position of Projects Officer. At the same time, the DFSAIA Executive Officer was hired as the Council's Clerk. Both the former Clerk and new Clerk seem to have attended Council meetings in their new capacities. The new Clerk seems to have adopted the practice of taking handwritten minutes at Council meetings, minutes that may have been typed verbatim shortly thereafter. Although he could not verify that he was at all the Council meetings that occurred after he became Clerk, he was certain that he took handwritten minutes on a writing pad at all the meetings that he did attend. He strongly defended their accuracy:

... I mean, I've always stated that the minutes that I took were accurate, I mean, they weren't bona fide by Council, but they were the ones that I take and they were the ones that I stood by. I mean, there was no employment discussed (ui), and that sort of stuff.

Again, to his recollection,

most of the time all they [the Council] ever talked about was canteen and more canteen, or the police officer or custody or raw deal or there was nothing else, there was no talk about [. . .] housing.

According to the auditors, when a question concerning the authenticity of certain minutes arose during the 1989/90 audit, the Council decided to adopt the minutes that matched handwritten minutes prepared by the new Clerk. In the Commission's view, the new Clerk's handwritten minutes remain the most reliable available account of Council meetings during the period.

A new computer system at the Council

In May 1990, the Council had decided to purchase a mini-computer system. The former Clerk/Project Officer, who seems to have been the driving force behind the decision to purchase the computer system, had used the same hardware and software at the Aboriginal Council at which he worked prior to coming to Aboriginal community C.

A good deal of preparatory work was required---for example, setting up file structures, accounting codes, etc.---before it could be installed at the Council. Most of that work relied on information provided by the former Clerk.

The hardware arrived at the community on 13 August in the company of two consultants, who had been charged with installing the hardware and loading up the programs and files. According to the Accountant, the former Clerk directed that the system's motherboard and the laser printer be installed in his office. Three other VDUs and keyboards, and a tractor printer, were placed elsewhere in the Council offices.

The system began to operate on 14 August. The word processing function was perhaps the first to be made available to users. The former Clerk was using the word processing function very soon after the system was installed and, for quite some time, he was the only person on staff who had sufficient training or experience to use the system.

However, other aspects of the installation did not proceed smoothly. Apparently, the information the former Clerk had been provided to prepare the system was not compatible with the current accounting procedures. Financial accounts and statements were in such poor shape that historical data could not be entered into the new system without considerable remedial work.

At some point in August the Council decided to offer one of the consultants who had come to the community to install the system the position of accountant with the Council administration. Negotiations between the Council and the Accountant took place around 30-31 August, and the Accountant's wife came to visit the community on 31 August. Having decided to accept the offer, the Accountant began working for the Council on 3 September. His first task was to attend a five-day land conference at another Aboriginal community in the region.

During the last week of September, the Accountant travelled to Cairns in the company of two senior Council administration officers who were to undergo training on the computer system. Neither seemed to have had much if any prior experience as computer users. The two officers attended the Monday morning training session, but failed to return for any others that week. They returned to the community having received at the most three hours training on the system.

An Impending Visit

The auditors were originally scheduled to begin their 1989/90 audit on or around 22 or 23 of October. Auditors told the Commission that it was usual practice to notify Councils of their visit five-six weeks in advance both as a matter of courtesy and to ensure that accommodation would be available at the community. As events transpired, they arrived at Aboriginal community C a week behind schedule on 31 October and began work the following day.

Audit received a copy of the Council's response to the 1988/89 audit by fax on 2 October 1990. According to documentation examined by the Commission, the letter had been completed as early as July 1990. In the Commission's view it seems likely that notification of the auditors' November visit prompted the Council to forward the letter to the Auditor-General. This may not have been the only reaction to the auditor's visit. The accountant suggested that the announcement of the auditors' impending visit prompted a concerted effort on his part to get the Council's books in order. He identified several major issues that had to be addressed in preparation for the visit.

The computer system purchased by the Council operated in a mini-computer rather than PC environment. According to a time-log recording user access to the computer system, which begins in mid-August when the system began running at the Council, perhaps five people were given user access to the computer system. To regulate access to the system, each user had his or own user ID which allowed him or her to access certain files. However, it appears that these IDs may not have secured access as intended, since various user IDs were generally known. According to the time-log, whose data begins on 14 August, it was not until

October 1990 that the computer system began to be extensively used by Council staff.

According to the time-log examined by the Commission, one of the file codes used on the system was "Minutes", and the first time that anyone accessed files under the Minutes file code was 18 September. The time-log records 7 hours 51 minutes of user time in the "Minutes" file over two days in September. Table 2 shows the dates, number of hours elapsed under the Minutes file code, and number of entries into the Minutes file during October-November.

Table 2

Date	Oct 2	Oct 5	Oct 8	Oct 9	Oct 10	Oct 12	Oct 15	Oct 17
Hours/mins	4:54	1:14	4:43	3:56	10:59	3:13	0:11	6:49
No. of Connections	2	2	10	3	2	2	1	8

Date	Oct 18	Oct 19	Oct 22	Oct 23	Oct 29	Oct 30	Nov 5	Nov 6
Hours/mins	3:32	3:02	6:18	0:00	3:16	6:00	1:16	3:11
No. of Connections	4	3	16	1	5	8	1	1

The time-log records five persons accessing files under the Minutes file code. The users accessing the file most frequently and for the greatest amount of time were the two administration officers who failed to attend more than the first morning of the week-long training session scheduled for them. Between them, they account for over 73% of the time used in the Minutes file. Curiously, the person whose user name appears least frequently was the former Clerk/Project Officer, who apart from the Accountant, was the person on staff most familiar with the computer system's word processing capabilities.

Although the time-log may not be a reliable source of information concerning users and their access, it does show that there was sustained use of the Minutes file during October, right up until the auditors arrived at the community on 31 October.

Some explanation for the flurry of activity in the Minutes file during October may be found in the statements made by the new Clerk, the former Clerk, and the accountant.

A "big heap of minutes"

The "new" Clerk told investigators that one morning, not long before the auditors arrived, the former Clerk had come to his home with a "big heap" of minutes and asked him to sign them. Among the minutes investigators found at the Council were several sets of minutes collated by month and stapled together under covers printed on Council letterhead (hereafter referred to as "collated" minutes). Shown a set of "collated" minutes investigators found among the boxes in the Council's storage room, the "new" Clerk recognised them as the minutes that the former Clerk had asked him to sign. He identified the April, May and June sets as minutes that the Auditor-General had unfavourably identified in his report.

The "new" Clerk said that he had not refused to sign the minutes immediately, but took them away and spent "all weekend" working on them. He said that he found that the minutes contained "a lot of things" that had not been discussed by the Council. A short time later, he said, "You know, I just saw a couple of things that I didn't like . . . I think at that time all I thought as though I was being used . . ."

The "new" Clerk said that he had discussed the status of the minutes with the former Clerk:

. . . I said I was keeping minutes, and he said, "No, you don't have to worry about keeping minutes. There's a way around it".

Q: What was he suggesting? That you sit down and construct some minutes of what you would have liked to have happened at a meeting, or, ah, is that what you are suggesting to us?

A: Well, he'd just said that, I mean, (ui) cause, he was alright on the [computer system], he was always at it, he was always at the computer. He knew how to operate a computer, but I still kept a few minutes now and again, and (ui)

Q: Were you going to all the Council meetings at that point?

A: Um, yeah, yeah, I was, there was a couple of things that (ui) that were brought to my attention, but I was, yeah, I was trying to.

He went on to say that this period on the community had been marked by a lot of ill-feeling toward people from the Aboriginal community from which the former Clerk had come, "because of what was happening, they were virtually coming and taking over the place . . .". He said that the rates of pay and conditions of employment given to some were questionable, for example:

... one guy [from the former Clerk's community] was getting \$7.50 metre for carting a truck, driving a (ui) tank truck around. So it's \$15 every time it moves and then \$15 dollars an hour on top of that, and that's \$30 an hour, and he said, oh, he's training someone and by the time he would training someone the job, all the [...] were finished and then the money was spent. He'd taken it and gone ... [another man] was getting, you know, time and a half for every hour he worked so he was getting 80 hours by, with, so he's getting 120 hours for 80 hours. And he came from [the former Clerk's community] ... I talked to [the former Clerk] about that and asked him why this (ui) and he said I'm not, gees, you know, it's a mistake, like that.

The subject of Council employees from the former Clerk's community was raised during an interview the following day:

- Q: ... How did it come about that there were so many [...] people here?
A: Well, when [the former Clerk] came across---
Q: He brought his people in?
A: He brought his people across, and that was why I didn't sign those minutes, because never one of those [...] people were ever asked to come here except for [the administration officer].

The thrust, if not always the detail, of the "new" Clerk's statements were supported by the accountant. He told investigators that the "new" Clerk had refused to let the Council sign the minutes prepared by the former Clerk.

He confirmed the "new" Clerk's observations about the influx of people from the former Clerk's community:

---we had so many people from [the former Clerk's community] at [Aboriginal community C] it was ridiculous ... they were coming in and going like no fashion. They were everywhere.

He added his own illustrations of the kinds of wages and deals they were getting through Aboriginal Council C, for example, one of the former-Clerk's "cousin-brothers" who was

making about a grand a week, getting \$12-13/hour to deliver sand from the Council compound to, to building sites and the Council was paying \$15 a load on top of his wage. He was using the Council vehicle. [The former Clerk] worked the arrangement out.

Shown the "collated" minutes that were found at Aboriginal Council C. He said that they appeared to have been produced through the Council's computer system:

... These were done in a big hurry for the auditors ... then all of it led into the rest of the matters about things that were (ui) that were already paid for 10 months ago, etc. Then [the "new" Clerk] brought these to me and said, "Well, have a go at these" ... and [the former Clerk] said to me in all honesty, what should I tell the

Council to do? He said, "You know, these are probably going to support half the things that have been happening", and I said, "Yeah, well, do you support them, because there's probably things in there that happen solely and exclusively on the authority of [the former Clerk] who was a project officer . . ." So that's why I — that was my—I didn't read them, I didn't want to read them. All I knew was that there was two sets of minutes floating around that little Council building. For such a little Council there was something amiss . . . In all honesty, [. . .], since I was there—these were the only formal minutes I'd ever seen and no-one wanted to sign them.

The accountant claimed to have seen the former Clerk spending a lot of time working at the computer in the period prior to the auditors' arrival. He told investigators that one reason why he could recognise the "collated" minutes was that he had actually helped the former Clerk to print the covers by putting letterhead into the laser printer. He later said that he had actually helped the former Clerk format the first page of the minutes so that it would print correctly on the Council's letterhead.

Author, author

During hearings conducted in Brisbane, the former Clerk spoke about a Council meeting during which he recommended that the Council appoint him Project Officer and in his place appoint the then DFSAIA Executive Officer as Council Clerk. He said the recommendation was approved by the Council. Shown the set of "collated" minutes bearing the cover page "Minutes of the [. . .] Aboriginal Community Council for the month of July 1990", he was referred to minutes of a meeting on 3 July 1990 and to the Council resolution regarding the appointment of the new Clerk and his own appointment to the position of Project Officer. Asked if he had prepared these minutes, he said "yes".

Q: I notice that they are unsigned. Can you explain that?

A: The, it's unfortunately common practice for---we have difficulties in the administration locating Councillors, administration staff, and that I'd requested these minutes to be signed by the Council Clerk and the Chairman, but that wasn't the case.

Later, during the hearing he was questioned about the same set of minutes:

Q: All right. In relation to those Council minutes at which you were appointed, was that at a special Council meeting or was that the usual Council meeting for July?

A: Could have been the usual Council meeting.

Q: All right. What do you say to the suggestion that those minutes do not accurately record what went on at that meeting?

A: I---that would not be right.

- Q: You were the person who took those Council minutes, were you?
A: That's right.
Q: And can you just explain, were you still performing the Clerk's job at that time that Council meeting took place?
A: Yes.
Q: Was it the case that in November you took a bundle of minutes to [the "new" Clerk] and asked him to sign them and he refused?
A: Yes. He didn't refuse at the time.
Q: He what?
A: He didn't refuse—I took a bundle of minutes to him.
Q: Yes. What month were they for?
A: They were representing minutes for the period I was there.
Q: Including the July minutes?
A: Including the July minutes.
Q: And August?
A: Yes.
Q: Even though you were not the Clerk in August?
A: That's right.
Q: So you prepared those minutes did you and took them to him?
A: Yes, they were minutes taken by, the minute taker would have been [the new Clerk] at the time and I'd prepared them in the computer, in the new computer.
Q: What? Based on minutes he had taken?
A: Based on minutes that he had taken.
Q: What do you say to the suggestion that you told him that you would keep the minutes and he did not need to?
A: I don't recall saying that.

What the auditors found

The auditors who conducted the 1989/90 audit for the Auditor-General were interviewed three times. Asked about the state of the minutes that they were looking at, one auditor said they were "dreadful . . . very, very patchy collection".

Exactly how the auditors acquired the minutes they viewed during the audit remains somewhat unclear. Some of the minutes may have been stored in a thick manila folder, some may have been given to them directly by the former Clerk, some directly by the new Clerk. But they also may have found other minutes scattered around the Council, some in the Clerk's office, some in other rooms. Intent on establishing a complete flow of minutes for the 1989/90 financial year as well as the succeeding months up to the visit in November 1990, they apparently checked with various Council staff to locate all the available minutes and establish "a complete flow". As one auditor said, the whole process was extremely difficult:

. . . Because there were certain things sort of stapled in a, in an order which, like, if you didn't follow the, the sequence you might think, well, I've got everything and then you find another one which has another series of numbers introduced to it . . .

it was just that the, the word processor, the person using it at times would type something in and just get a printout and they were all filed as well. So, so they will have, like they'll have progressive copies, and then they will have a final copy . . . they never seemed to destroy anything that was printed out.

In fact, he said it was very difficult to ascertain the number of meetings the Council actually had and to try to work out the completeness of the data. No-one, even the new Clerk, was able to provide that information.

The auditors recalled that the minutes for the period July 89 - March 1990 contained the bare essentials. They were "fairly flimsy . . . they just seemed to be almost one page-type thing, but they were signed". The minutes for April 1990 forward were "very well word processed". They had a different structure, almost a different language, and were "a lot more refined". The auditors assumed that these latter minutes had been typed and printed using the Council's new computer system. Some minutes were collated by month with a cover attached. Some were "loose", i.e. minutes for individual meetings. Some were also handwritten. The new Clerk apparently had a set of handwritten minutes for certain meetings that he referred to when the auditors questioned certain matters they found in various sets of minutes.

Some minutes were apparently signed by the former Clerk/Project Officer, some---perhaps the handwritten minutes---signed by the new Clerk and Chairman. Again, the auditors also recalled many of the minutes being just duplicates, but these were difficult to assess because in many cases "nothing was sort of signed to indicate which was the official set".

One auditor recalled becoming so frustrated that he got a general user access to the computer system and tried to call up minutes to see when they were last amended. He said in one case he found five copies of the same document, but he did not spend much time scanning through them. Many documents he could not access because they were protected at the user level. He said:

It was a fruitless search . . . the procedures were so bad you couldn't work out whether it was done purposely or whether it was poor management . . . I'm coming from a point where I had been there one year before and, like, I'm used to a certain lack of, let's say, preciseness or whatever when it comes to bookkeeping and handling of documentation . . . the previous year . . . I probably spent three days sitting on the ground just collating all the vouchers in a particular order before I do the vouching . . . so I'm used to, to finding a lot of, ah, what I would considered to be haphazard procedures, bookkeeping activities, in Aboriginal Councils.

He had concerns about whether they had systems to handle the word processing side, proper file handling procedures, etc. But he said he failed to work out

anything from the computer system other than that most of the documents he was able to access had save dates very close to the period of the audit: "it gave the impression that someone had been working on the minutes just prior to auditors' arrival". However, he noted that because he was unfamiliar with the computer system, he could not be confident that this meant they had been recently printed or amended or both.

Of the minutes from April to June 1990, one auditor referred to notes taken during the audit which said:

the minutes from April to June 1990 can't be determined as they are unsigned and the Chairman at the time was loath to sign them.

The second auditor recalled the new Clerk being "uncomfortable" with a lot of the matters that were in there: "... from to time, when we went and sort of asked [the new Clerk] about a few things, he would say 'That's news to me', or whatever."

According to one auditor, they found several sets of minutes covering the same period and in some or many cases, multiple copies of identical unsigned minutes for the same meeting. His notes referred to them finding two similar sets of minutes for the period July - August, one set signed by the new Clerk and Chairman, the other by the former Clerk/Project Officer. He recalled that both appeared to have been produced on the word processor. An unofficial (i.e., unsigned) set of minutes for a meeting on 7 August, apparently prepared by the former Clerk/Project Officer, contained matters which Council members and the new Clerk could not recall being discussed. These same matters were not included in handwritten minutes that the new Clerk had taken during the same meeting. Before they left the community, the auditors raised this matter with Councillors and Clerk and advised them that the Council should decide which set of minutes to officially adopt. This issue was included in the Auditor-General's report.

The auditors could not be certain that they made a specific comparison of all the minutes they found. Given the confusion of the Council's accounts, at some point they had to cut losses and concentrate on other seemingly more important issues discovered during the audit: "you can't pursue it to the nth degree". According to one auditor, having reached the point where he would have had to meticulously try to work out what had happened, "they decided the only way we could get the audit done was just to concentrate on the areas that we were looking for to see whether they were covered [in the minutes]". The issue with the 7 August was one of the more obvious matters raised by their examination of their minutes. One auditor recalled thinking that the 7 August meeting was the only one where information on duplicates did not correspond.

The auditors could not recall scheduling or holding an exit interview as such. They said they tended to take up issues as they came across them. During these meetings, the new Clerk may have taken notes on all the points they had raised. The former Clerk was not present on the community for most of the audit. However, the auditors said that most of the major points from the audit concerned the former Clerk and during the short period he did appear at the Council they canvassed those issues that concerned him.

They said that they did not separate minutes into piles that may have represented those they thought bona fide and those not. They destroyed nothing. One auditor said that all the documents he examined were marked with a green tick. However, he later said that he would not have marked all the minutes he examined with a tick, only particular resolutions that addressed matters of concern to the audit. He added that he would not have ticked all the copies where a particular resolution might have appeared. At the conclusion of the audit, they gave everything back to the Council.

What the Commission found

Commission officers first visited the Council in 1992. The computer system had been dismantled; its hardware was stacked in a storage room and its files could not be accessed. Investigators had great difficulty in locating Council records until DFSAIA officers referred them to a spare room in the Council offices stacked high with boxes of roughly sorted paperwork and records. Among these papers, they found two lots of minutes. Shortly before they left the community, the "new" Council Clerk gave them a third set of minutes.

Investigators could find no minutes for the period prior to April 1990. They found various word processed and handwritten minutes for 1990 and 1991. Taken as a whole, at first glance available minutes for 1990 presented an extremely confusing picture of Council meetings.

In some cases, the minutes were "collated" by month and stapled behind cover pages to indicate the month they pertained to. These "collated" sets of minutes---for April, May, June, July, and August 1990---were in a consistent, almost elegant, format. They appeared to be photocopies of pages produced on a word processor. Each concluded with the statement "These minutes represent a true and fair account of the discussions which took place on the [date]". Some bore the photocopied signature of the former Clerk/Project Officer. None bore the signature of the Council Chairman. There were two or three identical copies of some of these collated sets of minutes, although the chronological order in which the

minutes were collated sometimes differed between sets. Investigators also found covers in the style of the "collated" minutes, but no minutes to match with them.

These were similar to the minutes that the new Clerk claimed the former Clerk/Project Officer brought to him for his signature. They appeared to be replicas of or very similar to the "bundle" of minutes that the former Clerk/Project Officer admitted to taking to the new Clerk. Their highly individual style, language, and format was reproduced in 1991 minutes from the Council that the former Clerk returned to after leaving the employ of Aboriginal Council C in late 1990 or early 1991.

Shown these "collated" minutes during interviews with Commission investigators, the auditors could remember seeing sets of minutes in the same format, collated together with similar covers, during the time they were conducting the audit. They had no doubt that the minutes had been produced on a word processor. These minutes were in the same style as those for the 7 August that were associated with the former Clerk/Project Officer. The Council's former Accountant had admitted to assisting the former Clerk/Project Officer format and print covers like these. According to one auditor, the only person with the knowledge to prepare minutes in this format would have been the former Clerk/Project Officer.

Other minutes Commission officers found were either handwritten or typed or perhaps produced on a word processor. They were not photocopies. They were not grouped or collated by month. Some were in a similar format to the collated minutes and appeared to have been produced on the same printer or at least using the same font as the collated minutes. Others were in a quite different style and used a completely different font. Unlike the collated minutes, these "loose" minutes appeared to consist of original copies from word processors or typewriters. However, none were signed by either the Clerk or the Council Chairman. Some, however, identified the minute-taker, usually the new Clerk. The auditors also recalled seeing similar kinds of minutes among those they saw. The style and format of these minutes was quite different from the "collated" minutes. The language tended to be more conversational and idiomatic.

Like those examined by the auditors, the minutes examined by the Commission contained duplicate sets for several meetings. Close examination revealed certain anomalies and curiosities. Some minutes recorded the same resolutions being carried at meetings on different dates. Some minutes contained resolutions that were inconsistent with the resolutions in other meetings. In some "duplicates", the same business was covered but the language used was quite different.

The Auditor-General's report implied that minutes for April - June examined by the auditors were signed by the former Clerk/Project Officer. Not all the minutes

for this period that the Commission found were signed by the former Clerk/Project Officer. Moreover, those that were signed did not bear the original signature. Investigators could find only one set of minutes for 7 August, the set of minutes apparently prepared by the former Clerk. Unlike the set examined by the auditors, it was unsigned. None of the minutes the Commission found bore the "green tick" of the auditors. This was not surprising, given the way the auditors claimed to have used the tick with respect to the minutes. But its absence from *any* minutes, added to other possible discrepancies between minutes the auditors had viewed and those the Commission found, raised the question that the minutes found by the Commission may not have been included amongst the minutes examined by the auditors.

Anomalies and inconsistencies

Investigators subsequently examined the minutes taken from the Council during interviews with both auditors and the Council's accountant.¹⁴⁴ These interviews led to some intriguing observations concerning both the content and authenticity of various minutes. The following discussion, while not an exhaustive account of those observations, highlights some of the more noteworthy anomalies and inconsistencies in the minutes located by the Commission, in the following areas:

- minutes containing significant items which the auditors could not recall seeing;
- minutes containing highly technical financial management terminology;
- minutes confusing the sequence of meetings and events;
- minutes containing resolutions favourable to the former Clerk/Project Officer or those allegedly associated with him; and
- minutes covering issues which have been the subject of adverse audit comment.

¹⁴⁴ Although the accountant did not take up his appointment with the Council until late August - early September, he had been working with the Council as a consultant for 6-8 weeks prior to that period. During that period he had installed the Council's new computer system and subsequently attempted to prepare end of year financial statements.

Appointment of consultants/ changing bank signatories

4 April Some items in the minutes which were unfamiliar to the auditors included the appointment of consultants for a housing project and the approval of signatories to the Council's bank accounts to include the Deputy Chairman and former Clerk/Project Officer, as signatories to the Council's accounts.

Among the "loose" minutes that the Commission viewed was a single sheet, unsigned, showing minutes for the same meeting. It gave a different starting time for the meeting. It did not include the resolution regarding the signatories to the accounts.

Citing authority of Ministerial Directions - authorised purchasers

18 April The "collated" minutes for this date includes a 9-page set of minutes (signed by the former Clerk/Project Officer on 1/5/90) for a meeting this date.

It includes a resolution listed as "26:1 PURCHASE ORDERS" that "pursuant to section 3.6 of the Ministerial Directions the Council Clerk will be the authorised officer for the placement of purchase orders".

The subject of or procedure for purchase orders had been a matter raised in the Auditor-General's 1989/90 report: that Council "should review the purchase order issue with a view to proper custody, issue, and accountability for orders issued. In addition, all Purchase Orders should be signed by the Council Clerk (or Acting Council Clerk) and the Chairman (or Acting Chairman)".

One auditor could not recall seeing a resolution like 26:1. Moreover, he could not recall any staff at Aboriginal Council C giving any particular credence to the Ministerial Directions. The second auditor could also not recall seeing this resolution, although he admitted that he would not have gone looking for a minute like this.

Tendering procedures

18 April Resolution 27:7 deals with concerns raised about the lack of attention shown regarding the Council's tendering procedures. The minute notes that "Following this stern advise from the EO to uphold proper procedures for tendering, the Council Clerk advised that proper procedures will always be followed".

In his 1989/90 report, the Auditor-General commented adversely at some length regarding the procedures the Council had followed in a particular tender. According to one auditor, this minute "looked like an afterthought" and its inclusion was "almost a reaction to what came up in the audit report eight months down the track".

Accounts of items for 18 April included in minutes of 12 April 1990

12 April The second item in "collated" minutes for a meeting on this date (signed by the former Clerk/Project Officer on 1/5/90) notes, among other things, that a certain resident "would not be able to sell canned beer pursuant to Council decision No: 24:1 of 18/04/90", which was six days hence.

The fifth item in the same minutes notes that the Clerk advised the Council that "in relation to the decision 14:1 of 18/04/90 council must be careful it was not ultra vires . . . "

When were the Council Meetings in April 1990?

1 May The first five resolutions in the "collated" minutes for a meeting on this date deal with the confirmation of minutes from meetings on 4, 6, 9, 20 and 23 April. The "collated" minutes for April contained minutes for meetings on 4, 6, 9, 12 and 18 April.

This was not the only discrepancy in information concerning these dates. Investigators also located a set of minutes for a meeting on 30 May handwritten by the former Clerk/Project Officer. These minutes note that the minutes of meetings held on 6, 9, 20 and 23 April be read and confirmed. The actual dates had been written using a different pen, perhaps after the text proper had been written. The information in these handwritten minutes was

duplicated in a set of "loose" minutes that appeared to have been typed (as opposed to word processed) the day after, i.e., 31 May.

Shown these contradictory documents, one auditor said that he would have noticed this kind of discrepancy because "we did try, ah, to see whether we could get some sort of sequence" The second auditor said that he would have remembered this minute because he did not usually see approval of so many sets of minutes "in one hit". He concluded that the dates had been wrongly transposed or some of the meetings did not occur in the first place.

Was there a meeting on 7 July 1990?

7 August The first resolution in these minutes documents confirmation of minutes of a meeting on 7 July. No minutes for a meeting on 7 July could be found.

Words "emergent expenditure"

18 April Resolutions 26:8 deals with "emergent expenditure". It deals with a Council resolution to order and meet the cost of house furniture, fittings, white goods and electrical equipment for the former Clerk/Project Officer's house and "that this expenditure be declared emergent and be approved".

According to one Auditor, the term "emergent" came from Treasurer's Instructions. He said the Council should have been monitoring expenditure on a monthly basis: "the only time you're looking at emergent is at the end of year". He suggested that this kind of terminology relates to financial controllers' functions at a very high level. The Accountant claimed that he had never heard anyone at Aboriginal Council C use terminology like this.

The term "emergent" was used in the 1988/89 Auditor-General's report, in which the Auditor-General noted that expenditure not provided for in the budget had not been "declared emergent" by the Council. The Council Clerk of the time apparently informed audit that the Council would do so in the future. The Council acknowledged audit's comments in its response to the audit, which was faxed to the Auditor-General on 2 October 1990.

Words "remitted"

18 April Resolution 26:9 documents a motion "that travel allowance be remitted to the following persons" It named several employees/residents and the purpose of the travel.

In his 1989/90 report, the Auditor-General commented on the lack of documentation for the approval of travel allowances/out-of-pocket expenses.¹⁴⁵ The report notes that staff or Councillors selected to represent Council should be recorded in the official Minutes of the Council.

Although he could recall a resolution approving travel for three staff members to go to a meeting in Cairns, one auditor could not recall seeing this kind of lengthy, detailed resolution in the minutes he examined.

When shown this minute, the Council's accountant suggested that when he was working for the Council travel was rarely if ever approved by the Council in advance. He also questioned the use of the word "remitted". "It's a technical term", he said, "out of place, because staff were paid travel allowances in advance of their travelling". In other words, the allowance was not remitted.

Just words "debtors' reports", "warrants of accounts"

1 May Under resolutions 7:0, 7:1, and 7:2, the financial statement of accounts, the warrant of accounts for the month of April 1990, and the debtors' report, respectively, for the month of April 1990 were received and confirmed.

¹⁴⁵ The Auditor-General noted that the Council had approved a motion that "out of pocket expenses of \$80 per day be paid to officers attending meetings or performing duties on behalf of the Council outside the community. This was in addition to the cost of accommodation Perusal of vouchers indicated extensive attendance at meetings. Instances were noted where six or eight staff or Councillors attended meetings, etc., and were paid wages, accommodation and out of pocket expenses". The report noted that "these costs are a strain on the funds of the Council, particularly when accommodation included Room Service, Meals, Minibar and Telephone, in addition to the \$80/day".

- 5 June Among the first resolutions are two documenting the receipt and confirmation of "warrant of accounts" and the "debtors' report" for May 1990.
- 3 July Among the first resolutions in the "collated" minutes for the 3 July meeting are two in which the financial statements and debtors' report for June were received and confirmed.
- 7 August The second and third resolutions document the receipt and confirmation of financial statements for the Council and the receipt and approval of all expenditures in the "warrant of accounts" for July 1990.

One auditor thought that the term "warrant of accounts", as with the term "emergent", referred to Departmental financial management and may have come from old Treasury Instructions. To his knowledge, the term had never been used in Aboriginal Councils because they were funded quite differently. All that would have been required was a motion that "expenditures be ratified". He considered that the person who had written this minute had an "arcane knowledge" of government accounts and was operating under a misconception about what the requirements were.

The Council's accountant, who had been employed as a consultant to install the Council's new computer system and subsequently to prepare financial statements for 1989/90 before he became a Council employee, strongly doubted that any debtors' report had been made. He said that when he began preparing financial statements he had to delve into old Council financial records to "find a starting base". He claimed to have had to start from scratch using payment vouchers to prepare financial accounts. He could not understand why the Council would have hired him on a \$10,000 consultancy to prepare financial accounts if financial accounts for the period already existed.

His statement was supported by the auditors. They could not recall seeing monthly financial accounts that had been prepared prior to the Accountant's consultancy or employment. They could not recall seeing debtors' reports.

As far as Aboriginal Council C was concerned, the Council's debtors primarily comprised people owing back rent for housing

and court fines. A debtors' report would include information on who owed money, how long the debt had been outstanding, and what action the Council was taking. Council inaction on court fines had been cited in the 1988/89 audit. In its response fax on 2 October, the Council said this problem had been "rectified". The Auditor-General's 1989/90 report noted that this was not so.

Ratifying CDEP employees in detail

- 1 May Resolution 8:3 in the "collated" minutes documents a resolution ratifying the employment of 24 persons through Aboriginal Council C's CDEP Scheme. It gives their individual rates and starting dates during May.
- 3 July Resolution 5:4 again records Council ratification for the employment of 28 persons, plus their rates and starting dates, through the Council's CDEP Scheme.
- 7 August The fourth resolution deals with employment ratification. It uses the same introductory language as resolutions in previous minutes that listed numerous persons who were to begin working on the CDEP. However, this resolution, despite the fact that it was moved and seconded by two Councillors, includes no names. A later resolution uses the same language, same mover and seconder, and lists one person's name.

In his report on the Council's 1988/89 accounts, the Auditor-General noted that CDEP employees were not approved or ratified by Council prior to their employment. Responding to that report in the letter faxed on 2 October 1990, the Council said that it was ensuring that CDEP employees and new appointments were approved and ratified at their monthly meetings.

The new Clerk had claimed that during Council meetings, "there was no employment discussed (ui), and that sort of stuff". The Accountant agreed. Shown this resolution, the accountant said that in his experience the Council never considered this kind of information. Any such ratification would have been done verbally with the Clerk. He suggested that this resolution was nonsensical. He said that residents' circumstances, and therefore rates, changed so regularly that compiling the information would have been a full-time job, because it was not readily available from any

records. He thought that the inclusion of this resolution was "a showcase for the auditors".

But the auditors could not recall seeing a resolution like this in the minutes. Shown resolution 8:3 (1 May), one auditor, who recalled searching through various documents to confirm a pay rate for a particular individual, could not recall seeing any minute containing this kind of lengthy schedule in the minutes he examined during the 1989/90 audit. The second auditor also could not recall seeing this kind of resolution. "Something that big would have stood out". Such information, he said, would have been useful had it been available.

The Auditor-General's 1989/90 report confirms their recollection. Commenting on the Council's response to the 1988/89 audit, and in particular, the Council's claim that it was ensuring that CDEP employees and new appointments were approved and ratified at monthly meetings, auditors examining accounts during the 1989/90 audit found this to be incorrect.

Travel allowances to Council staff

5 June	Resolution 3:1 in the "collated" minutes for 5 June documents Council approval for out-of-pocket expenses being paid to nine Council staff. It states the purpose of their travel and the number of days' allowance they are to receive.
3 July	Resolution 5:3 records Council approval for 13 Councillors or employees to receive out-of-pocket expenses. It itemises the number of days' expenses they are to be paid and the purpose of their travel.
7 August	Resolution 4:4 lists 17 persons who were to receive out-of-pocket travel allowance while they attended to Council business outside the community. The resolution nominates the Council business they would be attending to and the number of days' allowance these persons were to receive.

The 1989/90 Auditor-General's report noted that "staff or Councillors selected to represent Council should be recorded in the official Minutes of the Council". References to the unreliability of minutes for the period April - June indicate that the minutes

examined by the auditors may have contained some resolutions approving the payment of travel allowances. However, one auditor, who said that he would have looked through the minutes to find approvals for travel, said he could recall seeing some resolutions but none with this much detail. Shown another 17-line minute, one auditor said he would definitely have looked for minutes approving travel but could not recall any paragraph so lengthy. Those he recalled seeing were only a few lines long. The Accountant strongly doubted that such matters were ever discussed at Council meetings.

Clerk's entitlement to air travel to home community

- 4 April The first item in "collated" minutes for a meeting this date (signed by the former Clerk only and dated 1/5/90) deals with a resolution that the contract of employment between the Clerk and the Council "be formalised", that return airfares be paid to and from the former Clerk/Project Officer's home community for a period referred to in the contract, and that all telephone calls at the former Clerk's residence be met by the Council.

In his 1989/90 report, the Auditor-General raised a concern that the former Clerk/Project Officer was flying regularly from Aboriginal community C to his home community at Council expense. The report said that, when queried about this, the former Clerk advised that, as part of his contract, he was entitled to a return trip to his home community every three weeks. The report noted that perusal of his contract did not support the above claim and that, furthermore, "audit reviewed the Minutes for approval for these flights but was unable to locate any approval". The report recommended that the Council determine whether any flight expenses are to be recovered from the Project Officer.

The auditors could not recall seeing a resolution which affirmed the former Clerk/Project Officer's special travel entitlement. Their notes taken at the time and comments for the Auditor-General's report support their recollections.

The Council was unable to locate a copy of the former Clerk's contract for investigators.

Appointment of the accountant

7 August Resolution 4:10 confirmed the appointment of the Council's Accountant. It indicates his starting date of 3 September and salary level and other benefits. A similar resolution, that gives only the Accountant's first name, appears in minutes for a meeting on 27 August handwritten by the new Clerk. It states that the Council will employ the accountant "depending on his reaction to community life when his wife will visit on weekend of 31/08/90".

As noted earlier, the Accountant did not come to the community until 13 August. It is highly unlikely that anyone connected with the Council had met him or knew of his existence on 7 August. According to the Accountant, the handwritten minute of 27 August more accurately reflects actual events.

Suspect resolutions about concreters

7 August Resolutions 5:1 and 5:2 document Council's acceptance of quotes relating to aspects of a new building project. Resolution 5:3 ratifies the appointment of a person to operate the concrete transit mixer that would be used on the project. All three persons named in these resolutions were connected with the former Clerk's home community. At least two were related to him. According to the minutes, one of these persons had submitted the lowest quote to undertake concreting, a quote which could not be produced for the audit. A second person was to receive \$15/hour to operate the concrete transit mixer, plus \$7 per cubic metre for poured concrete. According to the accountant, the second person was included on the first person's quote and both persons were to use Council-owned equipment in providing their services. These items, which the auditors recognised in the minutes investigators showed to them, became the subject of specific comment in the Auditor-General's report.

If the auditors' memory is correct, they originally found two similar sets of minutes for a meeting of 7 August; both seemed to have been prepared on the word-processor, and at least one followed the format characteristic of the "collated" minutes. Auditors could remember finding several sets of minutes for other meetings, but these stood out because one contained more information (including the minutes concerning the concreters) than the other. Although

their memory of how they came into possession of these minutes is vague, they were clear at the time that the minutes containing the references to the concreters had been prepared and perhaps signed by the former Clerk/Project Officer. According to notes one auditor took during the audit, one set was signed by the Chairman and new Clerk, one set by the former Clerk.

At some point the auditors seem to have approached the new Clerk about these conflicting minutes. He was able to produce a set of handwritten minutes he had taken for the same meeting. These did not contain the three resolutions pertaining to the concreters.

At a meeting on 19 November, shortly before they left the community, the auditors advised the Council Chairman, another councillor, and the new Clerk of the discrepancy between the two sets of minutes. Neither the Councillors nor the Clerk could remember discussions pertaining to the appointment of the concreters or acceptance of the contracts. Auditors advised the Clerk and Chairman that the Council should officially adopt one set of minutes. The Clerk called a meeting for the following day.

Investigators were unable to locate either the second set of disputed minutes for 7 August or the new Clerk's handwritten minutes for the same meeting. However, during the investigative hearing, the former Clerk agreed that he had prepared the 7 August minutes in the Commission's possession.

Barbecue or hand over of Departmental functions

24 July The "collated" minutes for this date contain the minutes of a special council meeting attended by the Chairman, Deputy Chairman, another Councillor, the new Clerk, and the former Clerk/Project Officer. The meeting opened at 8:30 am. The only business conducted during the meeting concerned a request and approval for Council assistance for a barbecue being conducted by the Rangers from Aboriginal Council C and the former Clerk's Aboriginal community.

Investigators also found a set of "loose" minutes for another special Council meeting on 24 July beginning at 9:35 am. These minutes, also unsigned, identify the new Clerk as the minute-taker. Five members of the Council, the new Clerk, the former Clerk/Project

Officer, and a DFSAIA representative are recorded as present. According to these minutes, the meeting "was called [to discuss] 'handover' of Departmental function to [. . .] Community Council with [. . .] (Director Community Service) Cairns".

Conclusion

The question of the authenticity of Aboriginal Council C's minutes was one of the most protracted and potentially confusing matters investigated by the Commission's ATSI Task Force. Among the many complicating factors, two stand out: the unreliability of certain witnesses' recollections, including those of the Council's professional administrative staff; the Council's poor record-keeping, filing, and administration, which failed to provide adequate minutes for the auditors in 1990 and, furthermore, failed to safeguard the minutes that the auditors did examine, leading to less than satisfactory documentation on which to base the investigation.

The Council's poor administration was not unexpected. The Auditor-General had issued a highly critical report on its financial administration in early 1990. Under pressure to improve its performance, the Council went outside the community to find a suitably qualified and experienced Aboriginal Clerk. The conclusions drawn from both this and the previous allegation reflect the manner in which he carried out his duties and responsibilities.

The investigation indicates that, like other aspects of its administration, minute-taking on Aboriginal Council C was inconsistent and haphazard. It failed to provide the appropriate "official" minutes on which any organisation, private or public, must inevitably rely.

Faced with a new audit by the Auditor-General and the possibility of again receiving an unfavourable report, the former Clerk made a concerted effort to prepare sets of minutes that would not incur unfavourable audit comment. They addressed matters raised in the 1988/89 report. They were consistently and elegantly formatted. Where previous minutes had been skimpy, containing the bare essentials, the ones he prepared were rich in detail and expansive. Unfortunately, their accuracy was questionable according to almost every witness interviewed.

Of all the staff at the Council at the time, the former Clerk was perhaps most familiar with the word processing system in the Council's new mini-computer. Various persons recall him putting in long hours on the computer in the period prior to the auditors' visit. Despite the fact that the computer's time-log does not record his accessing the system with any frequency, other evidence indicates that during September/October he was a frequent system user and in all likelihood used

the computer system's word processor to prepare the minutes covering the period after he became Clerk in April 1990.

Some minutes that he signed bear the hand-written date of 1 May 1990. If these minutes were produced on Aboriginal Community C's system, the date they were signed is incorrect. The computer system was not operating until August 1990.

By itself, the backdating of the signature, if it occurred, might have been excusable. Like some of the language used in the minutes, it could be understood as merely symptomatic of the lengths which the former Clerk was willing to go to impress previously unimpressed auditors. But this does not appear to be the case. On the strength of evidence given to or examined by the Commission, the minutes he prepared were not accurate. They are at times inconsistent with themselves and with other typed and handwritten minutes. They are in part illogical. Some minutes, like the resolutions pertaining to CDEP ratification, approval of out-of-pocket expenses, or acceptance and confirmation of debtors reports, warrants of account, and financial statements, seem to have been produced to impress the auditors. But others, for example, the references to the concreters/contractors and to the Council agreeing to pay for the former Clerk's airfares to and from his home community, could reasonably be construed as an attempt to give the semblance of Council approval to activities that directly benefited either himself or his relatives. However, in view of the conflicting evidence it was not possible to reach a positive conclusion of this issue.

Considerable time has passed since the minutes in question were written and witnesses' memories of incidents that led up to the auditors' visit have already begun to fail. In the Commission's view, there is very little doubt that the minutes prepared by the former Clerk were inaccurate and did not reflect the meetings which they purported to record. However, given the problems with both witnesses and available documentation, the Commission could not recommend any criminal or disciplinary action against any person in relation to the preparation of these inaccurate minutes.

Allegation 3 That the Deputy Chairman chartered a flight at Council expense to attend a funeral in a private capacity

Background

This allegation was referred to the Commission in May 1991 by the Director-General of the DFSAIA. In his report on Aboriginal Council C's 1989/1990 accounts, the Auditor-General had raised several matters that, in his view, warranted referral to the Commission. One of those matters concerned a charter flight that the then Deputy Chairman of Aboriginal Council C had used for a trip to another Aboriginal community.

Writing about the matter in his report, the Auditor-General noted that

On 2 November 1990 Deputy Chairman [. . .] chartered a flight to attend a private funeral at [another Aboriginal community]. The booking was with [an airline company] at a cost of \$4,691.00 covering the period 3 November 1990 to 7 November 1990.

[The Deputy Chairman] obtained the order by advising the air agency operator that the Council Clerk had approved this expenditure. The air agency operator prepared the order with the Deputy Chairman signing for the Chairman whilst the section of the order requiring the Council Clerk's signature remained blank.

The Council Clerk advised audit that the Deputy Chairman had previously approached him seeking approval for the raising of the order. The Council Clerk had advised the Deputy Chairman that this would constitute personal expenditure and further that he would not approve that personal expenditure be paid by the issue of a Council Order.

The misrepresentation by the Deputy Chairman to the air agency operator that this expenditure had been approved by the Council Clerk is a gross abuse of his position and constitutes illegal expenditure as

- (a) Deputy Chairman cannot approve expenditure personally
- (b) expenditure was not approved by Council resolution
- (c) expenditure was of a personal nature

The Auditor-General went on to say that the Chairman and another Councillor had been advised by audit at a meeting on 19 November 1990 "of all details relating to this charter".

The Deputy Chairman's charter flight was not the only unfavourable mention of airfares and travel in the Auditor-General's report. Control of travel by staff and Councillors had evidently proven to be a thorny managerial issue.¹⁴⁶

Disappearing records

Although auditors had seen documentation relating to the charter flight during the audit, they had not brought any copies of the records away from the community. They said they expected the Council to preserve the documents.

Exactly what documentation the auditors saw assumed some significance during the investigation. On the statements made by the auditors, and later, Council staff, there should have been at least a purchase order for the charter flight. By the time Commission investigators visited the community, the Council had evidently paid for the flight, albeit under dubious circumstances. This would indicate that the Council should also have had a payment voucher and a copy of the cheque used to make payment.

But during their visit to the Council almost a year after the audit, Commission investigators could not find an order, a voucher, or a cheque pertaining to the charter among the Council's extremely disorganised filing systems and boxed records. Nor was there mention of the charter flight among extant minutes for October, November, or December 1990. The lack of hard copy records was complemented by a lack of automated data: by the time Commission investigators

¹⁴⁶ The Auditor-General's report noted that the Council needed to closely monitor the purpose of air travel as some officers of the Council had been travelling by air to meetings which did not appear to benefit the Council. Due to the lack of records, audit was not able to determine whether any employee incurred air travel in excess of entitlement. Elsewhere, the report noted that perusal of vouchers indicated that sometimes as many as 6-8 staff or Councillors at a time had been receiving travel allowances to attend meetings outside the community. The Council had paid in excess of \$56,000 for travel expenses during a six-month period.

The Auditor-General also observed that although a system of financial delegation was partly operational, very little control over the custody and issue of Purchase Order Books existed throughout the audit period. He wrote:

Council should review the system of Purchase Order issue with a view to proper control over the custody, issue and accountability for orders issued. In addition, all Purchase Orders should be signed by the Council Clerk (or Acting Council Clerk) and the Chairman (or Acting Chairman).

visited the community, the computer system was inoperable and the network disbanded.

Inquiries with the airline company that supplied the plane were also largely unsuccessful. Its representatives were unable to locate an order, an invoice, or a receipt showing payment. The only documentary evidence that the airline agency held was an entry in a diary/day book showing the date the charter had been booked, an outline of the airplane's intended itinerary, and the surname of the Deputy Chairman. It contained no reference to the order number or any other identifying information that might have been provided by the air agency operator when he made the booking.

The Auditor-General's report raised several issues for the investigation:

1. Was the purpose of the trip in fact personal?
2. What procedures should have been followed in making the booking?
3. Had the booking been made following those procedures?
4. If the trip was of a personal nature and the charter had not been authorised by the Council, had the Council paid for the charter?
5. If the Council had paid for charter used for personal business, had it tried to recoup the monies from the Deputy Chairman?

Faced with a dearth of documentary evidence, the investigation had to rely on statements made by the auditors, Councillors, and Council staff. As noted earlier, unlike other Aboriginal communities that Commission investigators visited, residents (and Councillors) on Aboriginal community C appeared, on the whole, reluctant to speak to Commission officers. Some of those who did speak to investigators about the matter varied their accounts of events over two or three interviews. In fact, this particular incident is one of the few matters about which, over time, some witnesses' recollections seem to have improved rather than dissipated.

The problem with the witnesses' accounts was compounded by the Deputy Chairman's stance, which was that he declined to speak to investigators on any subject other than the Royal Commission into Aboriginal Deaths in Custody.¹⁴⁷

¹⁴⁷ The Deputy Chairman could have been compelled to answer questions in relation to this matter by summoning him to a Commission hearing. As the investigation progressed, however, it became clear that lack of documentary evidence and conflicting accounts by witnesses were going to preclude recommending charges in the matter and, in the circumstances, calling the Deputy Chairman to a hearing would have served no useful purpose.

1. Private or public: was the purpose of the trip personal?

During interviews with Commission investigators, auditors who conducted the 1989/90 review of the Council's accounts confirmed the Auditor-General's finding that the purpose of the charter flight was of a personal nature.

One of the auditors said that the Council "told us that [the charter] was a personal matter and that it was a family member of some relative of [the Deputy Chairman's] on [another Aboriginal community]".

The second auditor could recall discussing the charter flight with the then Chairman and the second Councillor named in the Auditor-General's report. He told investigators that he had been aware that Councillors may sometimes have been expected to represent the Council at "these type of funerals" and at first he tried to find out if the Deputy Chairman may have attended the funeral in an official capacity. However, he said:

I'm not too sure whether it was [the Chairman] or [a Councillor], but they did say something to the extent that, ah, it was personal. They did know the party or something like that.

Both the Chairman and the Councillor were later interviewed twice by Commission investigators.

The first time the Chairman was interviewed, he claimed to know nothing about the Deputy Chairman's plane trip and to have not discussed the matter with him.

His recollection of the matter was much better when interviewed a second time almost a year later. He claimed that the Deputy Chairman had asked him to attend the funeral with him. However, he had not gone on the trip with the Deputy Chairman because he could not afford the fare. The Chairman said that two of his sons and his sister-in-law's son had gone with the Deputy Chairman.

He said that if he had gone on the charter he would have paid his own fare because:

... well, it's, it's only fair, if I use the Council money, that's not our money, that's the community money, it's the Council money, the Council's money, looking after things and that's why I didn't go.

He seems to have thought that the Deputy Chairman was going to pay his own fare.

Contrary to his claim later during the same interview, that the Deputy Chairman had invited him to go on the trip, the Chairman told investigators that the first he

heard about the trip was when the Deputy Chairman returned to Aboriginal community C from the other Aboriginal community: "... everyone come and told me about it, you know, I didn't know". Perhaps, he was referring to the fact that the charter flight had been booked as a Council expenditure.

The Councillor identified in the Auditor-General's report was also interviewed twice by investigators. During the first interview, he told investigators that he had approached the Deputy Chairman and told him the air charter was a private matter and that he would have to re-pay the money fortnightly. Asked during the second interview if he knew why the Deputy Chairman had made the trip, he said:

Attend the funeral there. That, with that case, he should have, for something like that, he could have used his own money instead of, you know, the Coun—the Council's money.

The first time they interviewed the Council Clerk, Commission investigators read to him sections of the Auditor-General's report addressing how the Deputy Chairman had made the booking. The Clerk agreed that he had told the Deputy Chairman that he would not sign the order because it was personal expenditure.

The Council's Accountant, who had also played a role in the charter flight incident, believed that the trip was of a personal nature. He claimed to have said as much to the Deputy Chairman when the Deputy Chairman at some point approached him to approve the charter:

I told him it was private.

Q: Private?

A: It had nothing to do with the Council ... ah, I told him the same thing that I told him on another hundred other requests ... "We're the Council, we operate here for [over 500] other people ... not just you".

2. What procedures should have been followed in making the booking for the charter flight?

The Auditor-General's report made some specific references to the procedure used to book the charter. During interviews with the auditors, Councillors, and Council employees, the subject of procedure was raised several times. Establishing a firm view of the procedure that should have been followed was an important aspect of the investigation.

The Ministerial Directions held by Aboriginal Council C did not contain any specific references to travel by Councillors or Council staff. Travel could have been considered under the following general directions regarding purchasing:

- S. 3.1 Purchases shall be subject to an approved budget.
- S. 3.3 Plant and equipment and special projects between \$3,000 and \$20,000 shall be subject to written quotations.
- S. 3.5 All purchases of plant and equipment and/or special projects over \$3,000 shall be approved by Council before orders can be issued.
- S. 3.6 Orders shall only be signed by Council employees delegated by Council.
- S. 3.7 All orders shall be placed on the Council's official order form.
- S. 3.8 All order books shall be held in a secure place and be accessible only to authorised employee/s.

In practice, however, both auditors suggested that the application of these Directions to air travel was unclear and in any case the legal force of the Directions overall remained doubtful.

In the absence of specific reference in the Ministerial Directions to Council expenditure in this area, the procedure the Council followed with respect to travel was a matter of some confusion. For example, the application of the State Code of Tendering was dubious, likewise State Purchasing Policy. However, the Council could have established some kind of internal policy or framework to govern expenditures in this area. There were several ways to achieve this, the most direct being a minuted resolution authorising particular Councillors or Council staff to approve travel up to a certain amount. The extent to which this applied to charters and especially charters costing above a certain amount would have been a matter for the Council. The auditors did not sight any such policy at Aboriginal Council C.

In the absence of specific direction on the correct procedure, rather than concentrating on whether or not a particular procedure had been followed, the auditors checked to see that someone had approved the expenditure. In this respect they seemed to have relied in part on the purchase order form used by Aboriginal Council C, which asked for signatures from the Council Chairman and the Council Clerk.

Speaking with investigators some time after the audit, one auditor thought that the Council Clerk, having determined a particular expenditure was reasonable, should fill out a purchase order, authorise it, perhaps with another signature as well, and with the one or two authorisations, the purchase order would be taken to the airline agency operator, who would write the tickets or book the charter. The second auditor suggested that as Aboriginal Council C did not use requisitions, he would have expected travel/airline tickets to be the subject of a purchase order that would be approved by someone given sufficient financial delegation to do so, probably the Clerk, with the payment ratified through Council minutes. They agreed that

some ceiling limit should have been placed on the amount of the expenditure that could be so approved.

The auditors' understanding of usual accounting practice at Aboriginal Council C seemed to have derived largely from information provided by the Council's accountant. The Council's accountant told investigators that the usual practice at Aboriginal Council C was that a request to travel at Council expense was made the subject of a purchase order which would be approved by the Council Clerk, and provided to the airline agency operator. A copy of the order would be returned to the accountant, in preparation for payment. The accountant said that plane trips were not normally documented in Council minutes; even a charter of this size would not usually have been the subject of a Council resolution.

In the final analysis, the Auditor-General's understanding seems to have been based on accepted systems of internal control, notions of best practice, the Ministerial Directions, and auditors' observations regarding usual practice at this and other Aboriginal Councils: in order for the charter to be a valid Council expenditure, it should have been approved by Council resolution or subject to a purchase order signed by someone to whom the Council had delegated such authority, or both.

Whether the Auditor-General believed that *all* air travel and charters should have been approved by Council resolution remains unclear. It is possible that the Auditor-General believed that the Deputy Chairman's charter flight should have been approved by Council resolution because the expenditure amounted to more than \$3,000. Just who had that authority at Aboriginal Council C is a matter of some conjecture. The auditors conducting the audit seem to have concluded that this responsibility lay with the Council Clerk.¹⁴⁸ According to the Auditor-General, the Deputy Chairman did not have this authority.

If the auditors were confused about the procedures that the Council should have followed, so were Councillors and Council staff. According to the then Chairman, if the Deputy Chairman wanted to go somewhere "then that have to come through a full meeting (ui) full Council meeting".

¹⁴⁸ As noted earlier, the minutes for a meeting of 18 April bear a Council resolution delegating that authority to approve purchase orders to the Clerk. However, there is some question as to whether these are genuine Council minutes. Neither auditor could recall seeing any such resolution in the minutes they examined. In any case, one auditor noted that the lack of a ceiling on the amounts the Clerk could approve represented potentially dangerous accounting practice.

Like the Chairman, a second Councillor believed that when he travelled for Council-related meetings, the travel was authorised at a Council meeting. He said that the Chairman should sign the order for the ticket and the Deputy Chairman was supposed to be the second signatory. The Clerk was supposed to sign it "overall".

During his second interview with Commission investigators, the Council Clerk told investigators that when he became Council Clerk it was his belief that he had authority to sign cheques but not purchase orders. The Council Clerk also said that it was during the audit that he realised that

... the actual responsibility of the orders being signed, and, um, either sat with the Council Clerk or the Chairman.

Q: Are you saying that's the first time you actually learned the, er, position of authority that you were in—or perhaps I should say position of responsibility?

A: Well, that's right ...

Asked who could sign purchase orders for the Council, the Clerk said:

... see the Community Services Act is very vague on, on, and also, um, you know, the whole, the whole process of the responsible person in Councils, whether it's the Chairman, or whether it's the Council Clerk, or in some cases, if the Chairman's not there, it's the Deputy Chairman, and these sort of things that have been, that are really unclear, you know, and, um, you know, it's been grappled with and people have tried to sort it out but there's never, never been any clear, clear direction given on who is the responsible person within the Council ...

Q: All right. The situation as it currently stands is that you don't believe [the Deputy Chairman] had the authority to sign them.

A: No, he didn't, he didn't have the authority, not as, not as a Deputy, not as Deputy Chairman, but also, I mean, he did, he has the authority to sign it, or he had the authority to sign, sign the cheques. I mean you could look at it that way but, um, in my opinion, I don't think he had the authority to sign. Not expenditure as such, I mean that was a, that was a virtual order, and even the Chairman very rarely—even the Chairman very rarely, um, signed, um, signed those orders ...

The Clerk went on to describe his role in Council affairs in more detail:

... you know, the Council Clerk's position felt like it was a lame duck position, because it was, it, you know, was, people were overriding the Council Clerk, I mean, Councillors were coming in and demanding things, um, the air fare's a good case.

And then on top of that, people were talking to Councillors outside, outside the meeting room. Decisions were made outside, outside the meeting room ... and the

Council Clerk, then, just has to follow what, you know, sort of, I mean, it's, say, for instance, two Councillors or a Councillor and someone was talking---if someone came in and saw the Chairman and that was his brother or his uncle or some relation of his, and the Chairman had said, "Yes", without even checking with the Council Clerk, then as far as that goes that becomes, you know, you deal with that---you have to accept that is, that's a decision that's made by the Chairman, regardless of whether it's a right decision or a wrong decision.

3. How did the Deputy Chairman secure the booking of the charter flight?

According to the Auditor-General's report, the Deputy Chairman obtained the booking for the charter by advising the air agency operator that the Council Clerk had approved the expenditure. The air agency operator then prepared the order with the Deputy Chairman signing for the Chairman, whilst the section of the order requiring the Council Clerk's signature remained blank.

This account was based on information the auditors gathered while they were at the Council conducting the 1989/90 audit. The Deputy Chairman booked the charter and departed from the community only a few days after the auditors arrived at the community.

The Commission has no reason to doubt that this represents an accurate account of information available at the time to the auditors. However, although the investigation supported the broad outline of these events, witnesses' versions of events directly and indirectly related to the booking of the charter often failed to coincide and in some cases were in direct conflict. In some instances, this may be attributed to the natural fading of memory over time. In others, the variation is more difficult to explain, especially since some witnesses were able to provide more detail about the incident with progressive interviews.

The auditors who were visiting Aboriginal community C when the charter flight incident occurred told the Commission that the expenditure had not been approved by Council resolution. They were also clear that the Clerk had said that he had not authorised the flight and had not signed the order form. The order form bore only one signature: the Deputy Chairman's. One auditor could remember speaking to the air agency operator and the Council Clerk regarding the purchase order. The air agency operator told him that the Deputy Chairman had said that the Council Clerk had approved the charter. However, the Clerk denied having given verbal approval to the charter. The auditor recalled the Clerk saying, "Oh, the Council will get [the Deputy Chairman] to pay it".

Exactly how the matter came to the auditors' attention remains unclear. One auditor, who admitted his memory was vague, said that he thought that the Council Clerk may have brought the matter to audit's attention, by asking whether the Deputy Chairman had the power override the Clerk's authority to sign purchase orders.

The second auditor could not remember who brought the matter to his attention. However, he said that he thought that "someone fed us the information with the hope that something would be done . . . it was one of those things . . . that wouldn't have been picked up by this particular audit". He was referring to the fact that the charter flight fell outside the period covered by the audit.

If this auditor's recollection is correct, it provides a key to understanding the various statements of witnesses concerning these events. From all accounts, the Deputy Chairman appears to have made several attempts to secure the booking for the charter. The Commission was told that he first made an approach to the Clerk, who refused him, despite being threatened with the sack. He also appears to have made an approach to the Accountant, who said that this

was one of the only times I've ever had enough guts to stand up to the bloke and say, "No . . . We are not a benevolent institution" . . .

The Accountant also said that this incident represented one of the few times that the Clerk had denied the Deputy Chairman's demands. In fact, one of the consistent aspects of the Accountant's various versions of events was the abusive and threatening manner in which the Deputy Chairman made the approaches to the Clerk and the Accountant. The Accountant suggested that failing to get the desired approval from either the Clerk or himself, the Deputy Chairman may have resorted to applying pressure to the air agency operator.

The air agency operator, however, said that he could not remember the incident. He claimed that he would have done no more than make a phone call to the airline company and make the booking.

Although the investigation failed to provide a satisfactory account of what actually did occur with respect to the booking of the charter, witnesses' statements largely agreed on what did *not* occur. Both the Clerk and the Accountant agreed that the Clerk had not given his approval to the charter. Both the Chairman and another Councillor confirmed the Auditor-General's comment that the expenditure had not been approved by Council resolution.

The Councillor told investigators that the Deputy Chairman had not spoken to him prior to going on the trip to ask if he could use Council money. Although his

version of how the Deputy Chairman secured the booking was at odds with the Clerk's and Accountant's, his description of the Deputy Chairman's manner and methods bears close resemblance:

I think [the Deputy Chairman] went straight in the office and asked—did a bargain with [the Clerk]. Because he's Councillor, he can do what he likes, he can use the Council money.

. . . Well, first, as I said, you know, that goes with everybody, doesn't matter what job you take, you know, you just can't go into the office and ask somebody that, run, run the aircraft, things like that, you know, you can't say it to em, like, "Hey, listen, I'm, I'm in charge, of this, I want to use that money". Can't do that. Well, you know, like yourself, you know, you, you, in Justice Commission, I think. Would you ask anyone for money like that, while you on the job?

Q: No.

A: Well, that's the same thing, you really shouldn't do that.

During the course of its inquiries, the Commission learned that the Aboriginal Council C had in the past given financial assistance in the form of airfares to residents who were required to attend to emergencies outside the community but might not have been able to afford the fare at the time.

The Chairman said that the Council sometimes helped people travel if they had no money and needed to travel urgently, but that they had to pay the money back when they returned from their trips. He told investigators that this practice stopped in 1992 because residents who received this assistance often failed to repay the Council.

The Clerk supported the Chairman's statement on this issue. He said, however, that the Council had never before spent over \$4,000 to help residents who needed to travel.

The accountant was asked if in fact the Council had paid for the Deputy Chairman's trip on the basis of a reimburseable advance, and said:

. . . the discussion up front of it was a discussion that was terribly one-sided, and that was [the Deputy Chairman] saying or stating that the Council were going to pay it and that was his right as, as being who he is on [Aboriginal Community C].

4. Did the Council pay for the charter?

The Auditor-General's report noted that both the Chairman and a Councillor, having been advised by the auditors of the details of the charter, recommended that

the Deputy Chairman reimburse the Council for the cost of the charter. It is unclear whether this comment assumed that the Council had already paid for the charter or whether it acknowledges that the charter, having been ordered as a Council purchase, would be paid for by the Council and reimbursed by the Deputy Chairman. Neither of the auditors could remember with any confidence whether the Council had received and paid the airline's invoice by the time they left the community. However, one auditor did recall the Clerk saying that the Council would arrange for the Deputy Chairman to pay the cost of the charter.

But the Deputy Chairman apparently did not pay the airline company. By all accounts, the Council paid for the charter. However, investigators could find no voucher or cheque to verify the payment. Nor could they establish with any certainty when or under what circumstances the Council had made the payment.

The second time he was interviewed, the Clerk told investigators that the Council

... didn't have to pay [for the charter], no. But, I, well, I mean, it's arguable, but, er, debatable, but I'd say that they would not, they wouldn't have been under any obligation at all.

But he also said that

... [t]here was a bit of discussion about whether we should pay it or not, but the order was signed and we had to pay on the order being signed.

Interviewed the first time, the Accountant told investigators that when the Council received the airline company's invoice he put it in the Deputy Chairman's box. He said that the Deputy Chairman picked it up, but some time after that the invoice came back again to his own desk. He said that the cheque payment was eventually authorised by the Clerk. He thought the signature on the cheque was the Deputy Chairman's and, that the other signatory had been the former Clerk/Project Officer.

Interviewed a year later, the Accountant gave a slightly different account of how the invoice was paid. He claimed that the account from the airline company would have been matched up to an order and placed on his desk. In fact, he remembered it being placed on his own desk. He said he moved it to the Clerk's desk. At that point, he understood, the airline company reminded the Deputy Chairman of the outstanding invoice. The account was put back on his own desk. He put it on the Clerk's desk again and told the Clerk that he would not pay it.

However, he said that the Council had eventually paid the bill:

Q: ... Was it a, was it an uncertain position or was it the fact that, ah, that in discussions with [the Clerk], for instance, that, ah, you admitted that

because there was a, an official order there was the Council had to pay it, but you know, internally, you, you weren't admitting that it was a Council expense, or---?

A: Yes, yeah, I totally agree with that, that's probably the end result . . . of the week or so that it would have passed both of our desks . . . that was the end result, well, listen, we really had to pay this.

He thought it had been paid out of the Enterprise Fund "[b]ecause that's not governable".

Recouping the money

Despite the lack of documentation, investigators were satisfied that the Council rather than the Deputy Chairman, had paid for the charter. The investigation then tried to establish whether the Council had made any attempt to recoup the money from the Deputy Chairman. One of the auditors, recalling the meeting with the Chairman and the Councillor, said that the Council "seemed fairly well informed, and, you know, they were quite happy about recovering the money . . . "

The Clerk, however, recalled that

. . . people had talked about it, the Council had talked about it after he'd signed it and he'd gone [i.e., the Deputy Chairman]. I mean, that was all that was taken place so they all talked about it but no action was, I mean they didn't seem to take any action at all.

The Accountant told investigators that once the invoice arrived, he and the Clerk "tossed the idea around about trying to get it back out of him [the Deputy Chairman] but . . . what a joke that was . . . " He said that he was aware of a bank that had been trying to reclaim money from the Deputy Chairman for four years and of other audit reports prior to the 1990 report which named the same Deputy Chairman as owing the Council money. He said that in this light, there was very little chance of the Council ever being repaid.

During his two interviews, the Clerk gave two different accounts of the Council's attempts to recoup the money for the charter. In October 1992, almost two years after the charter flight, the Clerk was asked if he knew if the Deputy Chairman had been asked to reimburse the Council. He replied:

No, it hasn't. See, what, what it was all, um, I mean, the Deputy Chairman at that time was a law unto himself.

He said that the Council was now in a better position than it was at the time of the incident to try to recoup the money. However, he also said that the matter was an

ongoing issue and was basically up to the Council: "The Council have never made any moves to make any criminal charges or reported the matter to the police or anything".

Almost a year later again, by which time the Clerk had left the employ of the Council, he told investigators that the Council had begun taking the money out of the Deputy Chairman's wages in August 1992. He said that at a rate of \$100 every fortnight, he thought that almost \$2,500 had been paid back.

Conclusion

This investigation highlights the difficulty of investigating matters when related documentation is either incomplete or missing and the investigation must rely on the statements of witnesses. In the present case, the memories of many of the witnesses seemed to improve, rather than deteriorate, with time. One witness who was closely associated with the booking of the charter gave three slightly different accounts of the sequence of events.

On the strength of statements made to the Commission, there is very little doubt that the Deputy Chairman did indeed make a return trip on a charter flight to another Aboriginal community in order to pay his respects at a relative's funeral. There was general agreement that he attended the funeral in a private capacity, not as a representative of the Council.

The Commission is satisfied that neither the Clerk, the Accountant, the Chairman, nor the Council gave any approval, either written or verbal, for the charter to be booked as a Council expenditure. However, the investigation failed to find conclusive evidence to verify or support the Auditor-General's statement concerning the manner in which the Deputy Chairman effected the booking of the charter.

The charter seems to have been the subject of an order form. How the Deputy Chairman secured a blank order form---the Accountant claims to have retrieved the Council's various order books and secured them with himself and the Clerk---remains unclear. Likewise, the identity of the person who completed the order form remains unclear. Statements by the auditors, who could recall seeing the order form, supported the fact that the order form bore only one signature. Both the Clerk's and Accountant's statements on this matter were unreliable.

The Auditor-General's report stated that the Deputy Chairman had misrepresented a verbal approval by the Clerk with the air agency operator in order to secure the booking. No witness interviewed in relation to this matter made a similar

assertion. The air agency operator, who would have had first hand knowledge of the exchange between him and the Deputy Chairman, claimed he could not remember anything about the matter. In the Commission's view, the suggestion that the Deputy Chairman may have "stood over" the air agency operator in order to effect the booking must remain conjecture. The operator remembers nothing of the transaction, and the Deputy Chairman refused to be interviewed.

This investigation generally confirmed the Auditor-General's conclusions concerning the personal nature of the charter flight, the lack of Council approval for the charter and the Deputy Chairman's personal authorisation of the order form. If the investigation had been able to show that the Deputy Chairman had misrepresented the Clerk's approval to the air agency operator, there may have been grounds for a criminal prosecution. Similarly, if the investigation had been able to show with certainty that the Deputy Chairman had "stood over" the air agency operator to effect the booking, this may also have been grounds for prosecution.

But given the conflicting statements on this issue, and the complete lack of documentary evidence about the circumstances surrounding the charter, there was insufficient evidence to recommend prosecution.

This investigation led to some unsettling observations on Council administration and community life. The first concerned the state of the Council's financial administration. Its inefficiency was perhaps well-illustrated by the disappearance of all records concerning the charter flight (unless, of course, someone deliberately effected their "disappearance").

The second concerned the Council's policies and procedures. Relevant rules, directions, and guidelines appeared to mandate no particular policy or procedure for the booking of airline tickets and charters at Council expense. The Council seems to have developed an ad hoc approach to the matter: the investigation failed to establish exactly what procedure should have been followed for booking the charter, a problem that the auditors had earlier faced themselves. The lack of Council policy on this matter would have further complicated any attempt to mount a successful prosecution.

During the course of interviews, the Clerk claimed that until the audit he did not understand precisely what his responsibilities were under the applicable legislation and guidelines. In any case, he seemed to suggest that his authority was constantly undermined or ignored in the community, if not deliberately by the Deputy Chairman then inadvertently by other Councillors. In the Commission's experience with this and other Councils, he was not alone. The process of ordering owed more to personalities, lack of security on order books, and whim, than guidelines,

and the circumstances of this particular transaction may not have been much different from many other purchases that the Council made.

CHAPTER 7

Aboriginal Council D

A brief history

The community served by Aboriginal Council D has a population of between 1400-1600. It is located about 2 hours' drive from a large provincial town. Like many Aboriginal communities, the community was formed largely by involuntary re-settlement of Aborigines in accordance with the then Government's policy. As a result, very few of the present community members have direct tribal/clan links to the area in which they now live.

The old reserve and the missionaries

The ancestors of many of the present residents originally lived on a reserve about 150 kilometres south of the present community. That reserve was established in the early 1900s and served as an internment camp for Aborigines from many parts of Queensland. Its population comprised Aborigines removed from camp situations because of "concern about their health and welfare", and others who had been employed on stations as drovers, station hands or domestics. Those who had had some contact with the European way of life were housed in barrack style huts, whilst those who had had little previous contact with Europeans were allowed to live in gunyahs.

The reserve operated under the control of the Chief Protector of Aborigines, and more directly under the control of a Superintendent and Deputy Superintendent.

As in many such Aboriginal reserves, religious observance was fostered by missionaries, in particular by the Aboriginal Inland Mission (AIM), whose members regularly attended the reserve to conduct services.

"The new country"

In the late 1920s, the government decided to move the inhabitants of the reserve to a new area in order to make way for an "important development", a project which would require the use of the land upon which the reserve was then sited.

The reserve's annual report spoke of the proposed move in optimistic terms, and described the new area to which the Aborigines were to be relocated:

The new country, being of larger area and free of prickly pear, should enable cattle breeding and farming operations to be carried on with a greater possibility of success.

Those arriving at the new settlement found that all work had to be done by hand using local resources---there were no roads, transport or machinery. The first Superintendent of the new settlement had attended agricultural colleges and worked in pastoral enterprises, experience that led him to encourage community members to develop agricultural and stock undertakings. These efforts met with some success.

The missionaries continued their work of conversion at the new settlement and within five years of the move had built a new AIM church at the settlement. The journey to and from the settlement was a trial for the missionaries. Even as late as the 1950s, it involved a bicycle journey of over 200 kilometres. Despite this frustration, the missionaries were happy to report in the early 1950s:

After months of indifference, godlessness, backsliding, we have been on an average of 100 gather for eight successive nights of meetings. Many wept throughout the meetings, many backsliders attended, many came to the church for the first time . . .

"Remnants of Aboriginal culture"

During the 1930s and 1940s, the population of the community increased through the gradual relocation of inhabitants of the old reserve area and workers from stations throughout Queensland. Some family groups migrated voluntarily from surrounding districts. Writing in 1980, one author suggested that the residents still tended to classify themselves in terms of their places of origin. A study of the area in 1986 identified 60 different birth locations amongst the present residents.

Despite the fact that some former residents of the community have spoken nostalgically of the "good times" growing up in the community, life for the residents of the area under the *Aboriginals Preservation and Protection Acts 1939* was strongly institutionalised. Twenty-one days in solitary confinement, on bread and water was the standard punishment for a number of offences including: speaking in Aboriginal language instead of English, being late for morning roll call, being rude to the Overseer, and waving to young women in the dormitory. Like some other Aboriginal communities in Queensland, this community acted, in effect, as a penal settlement for Aborigines who caused problems or committed minor offences elsewhere in the State.

Community residents were not encouraged to continue any of their traditional tribal ceremonies. A pamphlet prepared to celebrate an anniversary of the settlement noted, fittingly enough under the heading "Remnants of Aboriginal Culture", that no Aboriginal ceremonies were still held in the community. The author said that the last traditional dance was held in the community in 1964 but that, as late as the

1970s, some of the older men still tended to discuss matters of importance in their own language. According to Department of Community Services (DCS) files, tribal marriages continued in the settlement until the late 1930s.

The Aboriginal Councils

Throughout the 1950s and 1960s many residents of the area worked in the increasing number of local pastoral enterprises managed by the government. In the 1970s, the government introduced a system of community Councils consisting of five representatives. But it was not until the mid 1980s that the present form of Aboriginal Council was created. Under the Community Services (Aborigines) Act 1984, Aboriginal Council D now carries out local government functions for the community it serves. In addition to the usual local government functions, the Council controls the allocation and maintenance of housing, the maintenance of roads, and the provision of essential services including health and sanitation services. When local government functions were handed over to Aboriginal Council D in 1987, the Department wrote to the Council advising, amongst other things, that "the Department will continue to encourage and provide intensive and continuing training programs for the Council, its agents and servants".

Under the Community Services (Aborigines) Act, the Council manages the Community's Aboriginal police and can make by-laws specifying the powers that Aboriginal police exercise in the area. The Council is one of the few Aboriginal Councils that, to date, has introduced its own by-laws. One of its by-laws specifies that guests must not remain in the area under its control for more than four weeks without the Council's written consent and that visitors or persons doing business within the area must not remain for more than seven days.

"The leader of the community"

The position of Chairman of the Council has developed into a position of considerable power within the Council structure. The by-laws set out in some detail the Chairman's right to control Council meetings and determine who may be heard. Unlike mainstream local authorities where a person stands for and is elected to the position of Chairman, the Chairman of an Aboriginal Council is appointed from among the five councillors elected by the voters. He is appointed by majority vote at the first meeting of the Council after the election.

A submission made by Aboriginal Council D to a review committee examining the legislation governing Aboriginal Councils expressed the Council's view of the important role of Chairman:

The Chairman of the Council should be recognised not only as the head of the Council but also as the leader of the community. At the moment, the Chairman is but the first amongst equals. Although this has not caused a problem for the Council, it is not inconceivable that the situation may change. It is possible that under the existing system the Chairmanship could be the prize to be won by successful bartering and compromise between the various family groupings in each community, so that the position of Chairman could go to the best politician rather than the best leader of the community.

The Council submission went on to suggest that the Chairman should be directly elected by separate ballot, rather than being chosen from among the elected Councillors.

The submission also spoke about the Council's efforts to restrict certain persons' access to the community, noting that it had instituted such a system to control the in-flow of "itinerant vendors" into the community. According to the submission, another major area of concern to the Council was the access to the community by some public servants:

Admittedly these people are a minority but the old vestiges of paternalism are evident and the Council finds this extremely offensive to its rights of self-determination and incompatible with its dignity.

Some of the problems facing the modern community which Aboriginal Council D serves are common to most Aboriginal communities:

- Housing---Lack of housing has caused overcrowding. A plan prepared by the Council to address these problems recognised that to satisfy community members housing needed to be allocated on an even-handed basis. The plan noted that there was a long waiting list for housing within the community and stated that the Council needed to operate a fair and well-documented system of housing allocations.
- Schooling---The report noted that the percentage of children proceeding from primary school to secondary school was "low, but improving".
- Unemployment---The report said that high unemployment and lack of skills training were problems which, since the late 1980s, the Council had addressed by participation in the CDEP Scheme.¹⁴⁹

¹⁴⁹ The CDEP (Community Development Employment Projects) Scheme is a Commonwealth Government scheme designed to be a positive alternative to Social Security (including unemployment) benefits. The program allows the community to channel its members Social Security entitlements into "productive employment" in and for their community. What

Background to the allegations

On 20 February 1990 the Commission received a complaint by telephone from a support organisation for Council employees. Council employees had told the organisation that the Deputy Chairman of Aboriginal Council D had been charging local residents a fee to be driven around in a Council owned vehicle and that the Council was guilty of favouritism in awarding contracts and nepotism in the employment of staff. The complainant said that three Council employees, including the Council Clerk, had travelled to Brisbane to see the Minister for Family Services and Aboriginal and Islander Affairs in relation to their concerns about these matters. According to the complainant, the Council Clerk was now concerned that she would be dismissed because she had complained about the Council and taken time off from work to travel to Brisbane to see the Minister.

On 21 February 1990 the Commission received a letter from the support organisation referring to two enclosed letters from residents of Aboriginal Community D. The first of these letters was written on 14 February 1989 and signed by five community members, setting out allegations against Aboriginal Council D. The letter stated in part:

About 4 weeks ago 6 senior persons has resigned from the Council and the Council workforce, because we didn't like what is happen within the Council.

The letter went on to state that the six people who had resigned were the Deputy Chairman of the Council, another Councillor, and four senior staff. Authors of the letter alleged that:

- the Council showed favouritism towards certain Councillors by, for example, not collecting arrears of rent;
- a Council vehicle was used to taxi people around the community at a charge of \$50 per head;
- a consultant engaged by the Council received holiday pay to which he was not entitled;
- the consultant's father used Council property in the construction of a building which he owned.

The second letter forwarded by the support organisation had been signed by the Council Clerk. This letter, dated 31 January 1990, alleged, amongst other things, that the consultant engaged by the Council was exerting undue influence on Council decisions, that the consultant's car was serviced and fuelled at Council expense, and that there was "too much nepotism" in the operation of the Council.

The silent majority

On the same day that the Commission received these complaints, the Chairman of Aboriginal Council D forwarded a letter to the Commission. He enclosed copies of a letter which had been written by a "community representative" to the support organisation for the Council staff and to the Honourable Minister for Family Services and Aboriginal and Islander Affairs. The letter expressed support for the Council and stated:

... the silent majority of ... residents have been stirred into action to address the persistent unsupportable criticism of our Council. This criticism stems from a minority group of disaffected assembly, who have a real vested interest in seeing a responsible administration overtaken by a small number of people pushing their own barrow.

The Chairman's letter to the Commission indicated that he was aware of allegations which had been placed before the Commission and was providing the letters supporting the Council in order to "enlighten [the Commission] on matters at hand". He also wrote:

As you would understand this Council is gravely concerned by these actions as we are a predominantly government funded Council, subject to audit by both State and Federal bodies.

Council has always received good audits. The audit covering the period July 88 to June 89 was received by the Council on 15 January 1990 and is available for public perusal.

This Council takes exception to the allegations of corruption particularly as they are the work of a small group of people disenchanted with Council members and staff.

"So many . . . get little or nothing"

The Council Clerk, who by this time had been dismissed from her position, wrote to the Commission directly on 26 March 1990, and repeated some of the allegations which she had made in the letter referred to the Commission in the previous month. She made further allegations in relation to the Council's relationship with its consultant, including an allegation that the Council paid the wages of the consultant's personal secretary and that the consultant may have been receiving commissions from contractors who worked for the Council. She also alleged that the Chairman of the Council had twice received unauthorised advances on his holiday pay.

On 4 April 1990 a local political identity wrote to the Commission about the Council Clerk's allegations. She stated that the Council Clerk had raised her concerns with the present Minister's secretary, and "a number of Ministers in the previous government". Her letter ended:

The concerned citizens of [Aboriginal Community D] now trust that your Commission will at least investigate the allegations, which all previously-informed Government officials so far have failed to do.

The Council Clerk wrote to the Commission on 20 April 1990 to clarify some of the statements in her previous letter. She wrote:

It is most urgent that you start investigations soon, there is a great waste of Aboriginal money by those who have the power in Council, as well as the white people who are also taking advantage of it. So many of our people get little or nothing. Those who speak up either get the sack (like me) or get evicted from their homes.

The consultant

Many of the complaints made to the Commission expressed concerns about the Council's relationship with a consultant who had worked for many years for the Council as a Project Manager. The consultant had been retained by the Council originally in his own right, and subsequently under a company name. As the services which he provided to the Council remained substantially the same during both periods, he will be identified throughout this report simply as "the consultant".

From 1986 to 1993 the consultant acted as adviser and project manager to the Council in relation to major infrastructure and capital works undertaken in the community. After the Department handed over local government responsibility for the area to the Council in 1987, the Council initiated construction, renovation, and

essential services projects, all of which were supervised by the consultant. In a letter of commendation to the consultant in 1993, the Council stated that the value of the projects and work programs undertaken during the period of the consultant's project management had exceeded \$55M. The letter commended the consultant for the quality of the work which he and his assistant had provided to the community.¹⁵⁰

The Chairman of the Council, who provided this commendation, had, and continues to have, a high regard for the consultant and was largely responsible for his being retained by the Council in 1986. Other Councillors and community residents clearly found the consultant's relationship with the Council disturbing, and the Council's continued relationship with the consultant was largely responsible for the resignation of two Councillors whose complaints were referred to the Commission.¹⁵¹ The consultant's relationship with the Council formed the basis of many of the complaints already referred to, and his relationship with certain contractors was to form the basis of the remainder of the complaints made to the Commission.

"Mismanagement and corruption"

On 11 March 1992 the Director-General of the DFSAIA referred a complaint to the Commission, enclosing two letters which she had received containing allegations against Aboriginal Council D. The first was a letter from a contractor [Contractor 1] who had dealt with Aboriginal Council D through its consultant. The contractor said that he wished to draw the Minister's attention to "the mismanagement and corruption of the government appointed so-called consultants [to Aboriginal Council D]". The contractor said that he was owed \$200,000 as a result of a construction project supervised by the consultant and his assistant on behalf of the Council. He also said that he knew of a contractor who had paid a \$20,000 bribe to the consultant's assistant. He stated in his letter:

It has been alleged that . . . the Council Chairman [of Aboriginal Council D] has accepted land and other favours from [the consultant] in return for signing anything that is put before him. The Council is being pillaged by unscrupulous white administrators.

¹⁵⁰ After the consultant had been retained by the Council for a number of years, he hired another person to provide most of the on-site supervision of projects, whilst he continued to work for the Council but did not spend as much time in the community. The person he hired to assist him will be referred to throughout this report as the consultant's "assistant".

¹⁵¹ See page 330.

The complaint also enclosed a letter to the Minister dated 18 February 1992 from the local political identity who had previously written to the Commission supporting the Council Clerk. She now wrote in support of the contractor's complaints. She said that over recent months she had been in contact with a number of people who were allegedly owed large sums of money for work which they had completed for the Council. She said that these people had alleged that the Council consultant was behaving in an unethical and corrupt manner. She also wrote:

As a [person with a political background], I am all too familiar with the laws which govern contracts and Councils need to be totally accountable when dealing with public monies.

Contractors and sub-contractors

On 13 March 1992 the Queensland Police Service referred allegations from Contractor 1 to the Commission. The QPS had received the information from the Australian Federal Police. The material from the AFP included information from a second contractor [Contractor 2], who alleged that he had been required to pay \$15,000 to the consultant's assistant in order that he could continue with a contract with the Council.

On 26 March 1992, 31 March 1992, and 13 April 1992, a Federal Member of Parliament referred complaints to the Commission from three contractors who had undertaken work for Aboriginal Council D and now complained of unfair treatment by the consultant and his assistant. The first matter related to allegations by Contractor 1. The other complaints were made by two contractors who had dealt with the Council [Contractors 3 and 4], both of whom complained about the fact that "extras" properly incurred during their contracts with the Council were not paid because of interference by the consultant and his assistant.

On 24 November 1993 the Commission received another complaint from a person who had worked as a sub-contractor on a project for Aboriginal Council D. He complained that the contract under which he had been employed had been cancelled by Aboriginal Council D before work was completed and that the Council was holding final payments and a security deposit. He said that he understood that the Council had dealt in a similar way with other contractors and he asked the Commission to investigate his complaint and the other complaints.

Aboriginal Council D - Auditor-General's and Transition Officers' reports

As part of its investigation in relation to Aboriginal Council D, the Commission examined reports by the Auditor-General and by officers of the DFSAIA. Some of these reports make reference to matters relevant to the allegations investigated by the Commission.

1 June 1988---An officer of the Department's Transition Team reported on a visit to Aboriginal Council D. Some of the matters he noted were:

- **Rent**---The balance of rents outstanding as at 26 April 1988 was \$39,286.16, and at 30 June 1987, \$39,554.63. He said that the Council should be commended for their efforts in rental collection.
- **Loans**---Loans were being issued to residents as well as wage advances -- advances given were not over pro rata due.
- **General fund voucher**---General fund vouchers for \$1,738 and for \$4,500 paid for furniture for residents moving into new homes. These loans were repayable by the residents, however, proper controls were not kept. "The project officer assured me that these would be in order by audit. Voucher number . . . for \$3,020 was for purchase of furniture for [the Deputy Chairman's] residence. This has been repaid through [his] wages".

9 October 1989---An officer of the Department's Transition Team reported on a visit to Aboriginal Council D. Some of the matters he noted in his report were:

- **Cash-take** procedures between the Canteen Manager and the Cashier were not being followed.
- **Wage advances** were still occurring but only at the Chairman's discretion and scrutincering.
- **Plant and equipment stocktake** had not occurred as per audit recommendations.
- **The value of outstanding rents** had increased from \$33,130.25 to \$49,141.96. The project officer advised that due to an increase in houses built, outstanding debts had also risen.

The report noted that the Council had prepared itself for the Auditor-General's staff, and apart from the matters raised would pass audit unqualified.

11 January 1990---The Auditor-General wrote to the Minister for Family Services and Aboriginal and Islander Affairs advising that the audit for the period to 2 October 1989 had disclosed a number of unsatisfactory matters with respect to Aboriginal Council D. He referred to the following matters:

- Council meeting allowances---The Council did not comply with a Departmental policy directive with regard to payment of allowances to Councillors who were also employees of the Council. The Council said it would not comply because it thought the policy inequitable.
- Beer canteen---The total write-offs at selling price as per the daily stock and cash position report (selling price control) was \$23,843.02. The figure was compromised of write-offs for damaged or stale stock, adjustments to the selling price for discount sales for special occasions, issue to casual unpaid staff for unloading bulk supplies, theft due to break-in and free issues for staff functions.

The report noted that the Council's performance had improved in relation to matters raised on the previous audit report. Procedural and internal controls, where practicable, were maintained to a high standard. The financial statements were also of a high quality and amendments thereto were facilitated because data was maintained on a personal computer.

30 May 1990---Two consultants to the Department's Transition Team reported on an internal audit conducted on Aboriginal Council D. Some of the matters raised in their report were:

- Loans---Council continued the practice of loans to both staff and private individuals.
- Sitting fees---Councillors' sitting fee rates were increased by motion and Council continued to pay these amounts in addition to normal wages to Councillors who were also Council employees.

The report noted that the Council "continues to perform its functions in a more than satisfactory manner".

Financial years ending 30 June 1991 and 30 June 1992---Although the Auditor-General noted some unsatisfactory aspects of the Council's performance during these financial years, the Council received an unqualified audit report for both years. Unsatisfactory matters which the Auditor-General noted included continued shortages in the beer canteen and failure to complete a plant and equipment stocktake.

7 January 1994---The Queensland Audit Office wrote to the Chairman of Aboriginal Council D in relation to the audit for the financial year ending 30 June 1993. The letter stated that the auditor was of the view that although the Council's general performance was equal to the previous year, there appeared to be a deterioration in the management and follow-up procedures as evidenced by reported matters. The reported matters included:

- Beer canteen shortages---Shortages of stock totalling \$94,840 (average cost price) and cash of \$14,797 were reported.
- Rental arrears---Arrears by current and former tenants totalled \$132,619 and \$43,253 respectively. An amount of \$43,743 being rentals owed by deceased persons or deemed to be uncollectable had been written off during the year.
- Emergent and extraordinary expenditure---Excess expenditure was not approved by resolution of the Council as being emergent or being extraordinary in nature. The auditor recommended that appropriate financial statements should be prepared on a regular basis for Council's review to monitor any expenditure which may be considered emergent or extraordinary in nature.

Allegation 1 That the Council Clerk of Aboriginal Council D was dismissed for being a "whistleblower"

The Commission first received information about this matter from a support organisation for Council employees. The support organisation had been receiving information from the Council Clerk about alleged corruption and mal-administration in the Council and was aware that the Clerk had provided information on the matter to others including the Minister for Family Services and Aboriginal and Islander Affairs. A representative of the support organisation said that the Council Clerk and other Council employees had travelled to Brisbane to give information about the Council to the Minister's secretary, and that their absence from their employment for that purpose was to be used by the Council as a basis upon which to dismiss them.

At a Council meeting on 21 March 1990, (four weeks after the first contact with the Commission) a motion was moved and carried that the Council Clerk should be dismissed.

"She's been told to leave . . ."

In a newspaper article on 20 May 1990, the Chairman of Aboriginal Council D denied that the Council Clerk had been dismissed for any improper reason. He said that the Council would not reinstate the Clerk as she had tried to undermine its authority. He was quoted as saying:

We've been patient with her but we could no longer tolerate her. There was no foundation for her allegations. As far as I'm concerned she has been dismissed. She's been told to leave the community.¹⁵²

¹⁵² This is one of many instances during its investigations of Island and Aboriginal Councils where the Commission heard that certain residents were evicted or threatened with eviction from a community for various reasons. In fact, it appears that the Community Services legislation does not give an Aboriginal or Island Council the right to eject a person normally resident in the area. For example, section 66 of the Community Services (Aborigines) Act 1984 gives a person who is "a member of the community resident in the area" a general authority to be in the area, and to reside in the area.

Council records show that friction had been developing between the Council Clerk and the Council, particularly between the Clerk and the Chairman, for some months prior to her dismissal.

The minutes of 8 November 1989 contain the following entry:

At the completion of the Housing Officers report the Council Clerk . . . began berating the Chairman regarding the movement of people within houses. The Council Clerk took it upon herself to launch into a series of allegations concerning Council and Councillors. The Chairman suspended the Council Clerk as at 5.40 pm. The Council Clerk refuted the Chairman's ability to take this action. The Chairman indicated that he would pursue the matter further.

At a Council meeting on 17 January 1990 the minutes note the following:

The Chairman voiced his opinion that the Council Clerk was undermining the authority of Council and that a severe reprimand was to be issued and that her union be so informed.

In discussion it was stated that the Council Clerk, along with others was missing from her place of employment on Friday, January 12th, without explanation.

It was further stated that the Council Clerk had been reprimanded before for flaunting her position before Council in such a manner as to undermine Council's authority (Council Minutes dated November 8, 1989).

As this was the second reprimand received, the Council Clerk was informed that she must bear the consequences of her actions. Council expects loyalty from its employees, especially those in senior positions. It was felt that Council had been extremely patient with [the Council Clerk's] conduct and had been helpful to her, it was further felt that this situation had been abused . . . [another employee] was to be forwarded a severe reprimand for his actions on Friday, January 12th (as previously stated) and his continued efforts to undermine the authority of [Aboriginal Council D].

Motion: 90/4

That letters of severe reprimand be forwarded to the Council Clerk . . . and [another employee].

...

The reference in this minute to the employees' absence on 12 January 1990 relates to the fact that the Council Clerk and two other employees travelled to Brisbane on that date to raise concerns about Aboriginal Council D with the secretary to the Minister for Family Services and Aboriginal and Islander Affairs, apparently without notifying the Council or obtaining approval for their absence from work.

The Council Clerk received a letter of reprimand signed by the Chairman on 18 January 1990. The letter read as follows:

Re: SEVERE REPRIMAND

This letter is to be taken as written confirmation of verbal instructions to you at yesterday's Council meeting.

You are advised that this letter serves as a severe reprimand following certain aspects of your attitude towards this Council, whilst an employee of this Council.

You have continually, for a period of some twelve (12) months attempted to undermine the authority of your employing body [Aboriginal Council D].

You were spoken to regarding your attitude in November last year (Council Minutes dated November 8, 1989) and there has been no improvement during the period of time elapsed.

Your recent involvement with a group of people with detrimented views to this Council cannot be tolerated because of your senior position on Council.

Recent newspaper articles indicate that your position on Council is untenable and it is felt that Council has been extremely patient with you.

Your recent trip (Friday, January 12th) to Brisbane seeking Ministerial intervention in this Council's operations was a direct slight to this Council.

Should you fail to improve your situation with Council I will have no option but to place this matter before Council for decision as to your continued employment.

...

"A very precarious situation"

At a Council meeting on 1 March 1990, the Council Clerk was asked about information provided to a support organisation for Council employees:

... [the Council Clerk] was questioned regarding leaked information. [a Council employee] was aware of the situation prior to receipt of letter from Council. [Council Clerk] stated that [the support organisation] rang Friday and she informed them that Council was not happy with [the Council employee's] performance.

[The Deputy Chairman] stated that it was a Council function to release information and a Council function only.

[The Deputy Chairman] stated that he wanted it recorded that the Council Clerk ... had in fact released information to [the support organisation] the day after a Council

meeting, prior to a letter being written regarding the situation of [the Council employee].

[The Deputy Chairman] recommended that if concrete evidence regarding the leak of information could be placed to any one individual then that person should be instantly dismissed. The Chairman stated that that was the correct course of action.

Discussion followed.

[The Council Clerk] admitted that she had taken photocopies of Council records for the purpose of giving evidence to outside parties . . .

Pro rata pays were raised:¹⁵³

The Chairman stated that [the Council Clerk] had no right taking any information from Council offices, and indicated that she had put herself into a very precarious situation.

The Chairman felt that this was a serious matter and should be dealt with accordingly.

[The Deputy Chairman] recommended that the matter be brought to a full Council meeting after the forthcoming election.

The Chairman explained the process of obtaining information regarding Council affairs.

A discussion on dissatisfaction with [the Council Clerk's] attitude to Council followed.

It was resolved that the Council would raise the question of the Council Clerk's behaviour at the first Council meeting after the election.

The following note appears in the minutes of a meeting on 21 March 1990, the first after the election:

1. [The Council Clerk]: [The Deputy Chairman] referred to the previous meeting where [the Council Clerk] had admitted to passing information to outside organisations without Council authorisation. [The Council Clerk] had been given warnings, a severe reprimand and a final warning.

[The Deputy Chairman] moved a motion that [the Council Clerk] be dismissed as Council Clerk. [Another Councillor] seconded the motion.

¹⁵³ This appears to be a reference to one of the allegations made by the Council Clerk in a letter to the support organisation dated 31 January 1990. In that letter she alleged that the Chairman of the Council had allegedly obtained an advance on recreation leave due to him on a pro-rata basis in order to purchase furniture, but had not in fact gone on holidays and had continued to receive his normal wage, see page 332.

...
That [the Council Clerk's] services be terminated as of today's date and
that [the Council Clerk] be paid for four (4) weeks pay in lieu of notice.
...

That the position of Council Clerk be advertised as vacant.

On 22 March 1990, the Council wrote to the Council Clerk in the following terms:

Re: TERMINATION OF SERVICES

I would refer your attentions to previous correspondence and conversations with Council regarding your attitude towards the Council whilst in its employ.

Council has continually made it abundantly clear that your attitude towards Council is not of an acceptable standard.

You were issued a severe reprimand on 18 January 1990 outlining Council's view of your continued employment should the situation fail to improve.

At the last Council meeting you admitted that you had taken photocopies of Council records for the purpose of giving evidence to outside parties and providing information to outside parties without Council authorisation.

You were informed that the matter will be brought to the attention of all Councillors at the next Council meeting.

You are well aware of the contents of a memo regarding Council views of leaked information and resulting actions by Council (Council Minutes dated 6th March 1989).

At the Council meeting held last night all Councillors present resolved that your services as Council Clerk with [Aboriginal Council D] be terminated.

You are advised that your position with Council is effectively terminated as of today's date.

...

The Chairman and the Deputy Chairman

The Council Chairman was interviewed by investigators in relation to the dismissal of the Council Clerk. He said that there were a number of reasons for her dismissal. The reasons he advanced were:

- That she was continually undermining Council's authority.

- That she continually leaked confidential Council information to outside bodies.
- That she made allegations concerning corruption in the Council to the press, to a support organisation for Council officers, and to a group of concerned citizens in the community.
- That the allegations she made were untrue and made him angry, because the Council was subject to strict audits by both the DFSAIA and the Auditor-General's office.
- That the Council Clerk had been repeatedly warned about her conduct at Council meetings and had been sent a letter of reprimand.
- That she was absent from her position as Council Clerk without leave on several occasions, on one occasion for a period of one week.

The Council Chairman said that the resolution to terminate the Council Clerk's services had been passed unanimously by Councillors present at the meeting when it was discussed. He also said that the former Council Clerk was not qualified to hold the position, although he conceded that her temporary replacement was not qualified either.

The Deputy Chairman of the Council was also interviewed and stated that the Council Clerk had been dismissed for the following reasons:

- Insubordination and poor attitude towards work.
- He had warned her on a number of occasions about holding conversations during working hours with members of a concerned citizens group with which she was involved.
- Complaints about her behaviour had been received from staff within the Council to the effect that she was spending hours talking to members of the concerned citizen group rather than doing her job.
- Absenteeism.

The Deputy Chairman said that he was aware that the Council Clerk had made allegations of corruption in the Council to the media. He said that this had had no influence on the Council's decision to dismiss her, and that the decision was based on her poor work performance and her attitude towards the Council.

"Religion and corruption"

Some of the allegations which the Council Clerk made to outside organisations related to the Council's relationship with a consultant who managed several major projects for the Council. The consultant was interviewed and said that he had had little to do with the Council Clerk because he was principally involved with the supervision of the outside work force. In relation to the Council Clerk and her allegations, he said:

[The Council Clerk] had a vested interest in, (ui) through her sort of affiliation with the church. Somehow or other she got a downer on the decision makers in the Council, and with a group of other people were, became very very disruptive in that community . . . I've never seen any of the allegations that [the Council Clerk] has come in with have any substance whatsoever.

A former Council employee who had worked with both the Council Clerk and the consultant was also questioned about the Clerk's dismissal. She said that in her opinion, the Council Clerk had done what she considered was appropriate, but that the Council had been justified in dismissing her:

. . . but she was only trying to do what she thought best for the community but she got on to a high of being, religion sort of come into it, then she got, she found God and she got onto a high about religion and corruption and all this sort of thing. But originally, her first time with them trying to get something done was fair, she was being fair and reasonable then, but because, she was sacked from her position which she deserved to be sacked for. The Council Clerk does not go out and, regardless of what's right and wrong, and blab to the whole community about workings of things that have just not got to do with anyone else. You've got to have your loyalty somewhere, but she did it the wrong way. Her her main aim was good, you know, but she was doing it all wrong.

The former employee also said that the Council Clerk's dislike of the consultant may have influenced her to make some of her allegations.

Rumour and hearsay

The Commission found no evidence during its investigation to suggest that the Council Clerk did not make her complaints about the operation of the Council in good faith, but many of the allegations she made were found to have been based on rumour and hearsay. Two of the allegations made by the Council Clerk and investigated by the Commission are considered later in this report (see Allegations 2 and 6).

Allegation 6, which related to the consultant's father improperly using Council equipment, could not be substantiated. Allegation 2 related to the fact that the Council Chairman had obtained an advance on his pro-rata holiday pay entitlement to purchase furniture. Although investigation disclosed that this was true, it also disclosed that the practice of obtaining these advances was wide-spread and that both the Auditor-General and the DFSAIA were aware of the practice and tolerated it. In fact, the Council Clerk herself had obtained a similar advance on her pro-rata holiday pay entitlement to purchase furniture.¹⁵⁴

Some of the information provided by the Council Clerk proved to be unreliable, especially her allegations against the Council's consultant. For example, she said that the consultant had hired his cousin to work as his assistant. In fact, both the consultant and his assistant told Commission investigators that they were not related, and had met only once prior to the assistant applying for an advertised position as the consultant's assistant.

Conclusion

The Commission is satisfied, as a result of its investigation, that the Council Clerk of Aboriginal Council D was dismissed by resolution of the Council on 21 March 1990. The Commission is also satisfied that she was dismissed because of friction between her and Councillors about allegations of corruption and mal-administration in the Council which she had made over a period of time to various persons and groups.

The Chairman and Deputy Chairman of the Council told investigators that the Council Clerk was dismissed because she had made allegations against the Council which were untrue, and because she had provided confidential information from Council records to outside organisations. The last allegation seems to relate mainly to her provision of photocopies of the Chairman's pay records to support her allegation that he had received advances on his pro-rata holiday pay entitlements.

The Commission did not investigate all of the Council Clerk's allegations. Those that it did investigate could not be substantiated. This does not mean that the allegations were not true or that they were not made in good faith. However, the fact that some could not be substantiated does have some bearing on whether or not the Councillors were justified in dismissing her for making what they claimed were untrue allegations.

¹⁵⁴ See page 348.

In the Commission's view, the Council's zeal in this case to protect the privacy of its records and its operations was not consistent with the accountability demanded of elected officials. The Council took the view that the Clerk was making false allegations and that she persisted in making those allegations after being warned to desist. However, employees of publicly funded bodies are, in the Commission's view, entitled to some leeway about matters they seek to bring to public attention and the methods they use to do so.

Even if the Commission was satisfied that the Council acted inappropriately in dismissing the Clerk, the question of whether she was dismissed for being "a whistleblower" remains. The only persons protected by the present "whistleblowers" legislation in this State are those who are dismissed because they have given evidence to or assisted the Commission. The Council Clerk did not, prior to her dismissal, provide information to this Commission, although information she had provided to another organisation was referred to the Commission. In fact, the Complaints Section of the Commission did not commence operation until after the Clerk's dismissal. A more fundamental problem in bringing the Council Clerk within the "whistleblower" provisions of the Criminal Justice Act is that the relevant provisions were not in force at the time of her dismissal and do not operate retrospectively. In those circumstances, even if the evidence that the Clerk was wrongfully dismissed was clearer, the Commission could not take action to effect her re-instatement.

Allegation 2 That the Chairman of Aboriginal Council D was loaned \$3,050 on one occasion and \$500 on another as advances on his pro-rata recreation leave entitlement

This allegation was made by the Council Clerk to a support organisation for Council staff in January 1990, and was repeated in a complaint to the Commission after she was dismissed in March 1990.

Advances to employees

The staff of Aboriginal Council D had received loans in the form of advances on their pro-rata recreation leave entitlements for many years prior to the Council Clerk's complaint. According to records examined by the Commission, the practice was obviously known to and tolerated by the DFSAIA and the Auditor-General's office. Writing in June 1988, an officer of the DFSAIA's Transition Team noted:

Loans: Loans are being issued to residents as well as wage advances - advances given are not over pro-rata due.

In a 9 October 1989 report on Aboriginal Council D, an officer of the Department's Transition Team noted:

Wage advances are still occurring but only at the Chairman's discretion and scrutineering.

On 30 May 1990 two consultants to the Department's Transition Team reported:

Council continues the practice of loans to both staff and private individuals. Advances are made through wage advance code . . . and are not more than accrued pro-rata recreation leave. These advances are repaid through wage deductions which were sighted during audit.

The Auditor-General's report on Aboriginal Council D for the period ending 26 September 1988 notes:

Wage advances: The advance wages were paid to employees in contravention of Ministerial Direction 5.13,¹⁵⁵ they were paid to employees deemed to be in need of assistance and were only paid up to the extent of their pro-rata leave entitlements. Therefore the Council was not considered to be at risk. The Chairman advised that, in future, such payments would be minimised.

Advances to the Chairman

In fact, the practice of wage advances to employees was so common that the Council had printed a form entitled, "Application for P.R.H.P." [pro-rata holiday pay]. The form stated that the application was to be lodged five working days before the Wednesday of the pay week. It stipulated that repayments were to be made at a minimum rate per pay period of 10% of the amount advanced. At the bottom of the form, a space was provided for the Council Chairman's approval. His was the only approval required.

Council records show that the Chairman obtained two advances on his pro-rata holiday pay entitlements. An application in the Chairman's name dated 20 September 1989 was found in Council records. The application sought an advance of \$500 and specified that the amount would be repaid at the rate of \$50 per pay. The usual practice was that the Chairman approved advances of this kind. Council records show that the standard application form was filled out for the advance of \$500 and two signatures appear in the approval section. Neither of those signatures belong to the Chairman.

Another advance against the Chairman's pro-rata holiday pay was made on 20 December 1989, this time in the amount of \$3,050. The cheque for this amount was paid to a furniture supplier for various items of household furniture. Advances were usually repaid at the rate of 10% of the amount advanced per pay, which in this case would have amounted to \$305. The records show that the Chairman repaid this advance at the rate of \$100 per pay.

Council records show that both sums advanced to the Chairman were repaid by him through wage deductions.

Investigators were shown a large file at the Council offices containing many applications for advances by various members of the community and Council staff. Investigators noted that the complainant in these matters, the Council Clerk, had herself received similar advances. When asked about this matter, the Council clerk

¹⁵⁵ For information about Ministerial Directions see page 16.

conceded that she had received advances, but said that her complaint about the Chairman was that he had not sought approval for his advances from the Council.

The Council's accountant of four years was interviewed in relation to this matter. He said that because of limited banking and credit facilities within the community all employees of the Council were allowed to draw advances on pro-rata holiday pay to which they were entitled. The advances were classified as loans, and most employees repaid the loans by having deductions made directly from subsequent pays, so that their leave entitlement was preserved. The accountant said that the Chairman of the Council was also a Council employee, and was entitled to recreation leave. He confirmed that the Chairman had availed himself of advances on his recreation leave entitlement on at least two occasions.

Conclusion

The Commission's investigation disclosed that it was a common practice at Aboriginal Council D to advance loans to staff members who had pro-rata recreation leave entitlements, and to recoup the advance by deduction from wages.

Council records show that the Chairman of Aboriginal Council D received an advance of \$500 on his pro-rata recreation leave entitlements on 20 September 1989, and another advance of \$3,050 on 20 December 1989. Both amounts advanced were repaid by the Chairman through wage deductions.

In view of the fact that the system of advances against accrued leave entitlements was known to and tolerated by the Department, the Auditor-General's Department and the Council, the Commission cannot conclude that the Chairman acted unlawfully in obtaining these advances. On the other hand, as the only system in place for obtaining advances involved obtaining the Chairman's approval, the Council Clerk had reason to be concerned about the propriety of the Chairman being allowed these advances without the matter formally being placed before Council.

Allegation 3 That the Deputy Chairman of Aboriginal Council D allowed a Council owned vehicle allocated to him to be used to taxi residents around the area, and that residents were charged \$50 each to use this service

This allegation was made to the Commission by the Council Clerk after she had been dismissed from her position with Aboriginal Council D. It was one of a number of allegations she made in relation to the Deputy Chairman's alleged abuse of his position. In relation to the motor vehicle allocated to the Deputy Chairman by the Council for his use, the Council Clerk said:

He hires out the Council car - \$50 per person. If more than one person go in the car, that's \$50 each. We believe he pockets the money.

The passengers

A community resident who had once served on the Council told investigators that the Deputy Chairman charged passengers a fee of \$50 to travel to nearby towns in the Council vehicle allocated to him. He said that two of his daughters had paid the Deputy Chairman for travel in the vehicle a few months previously.

The investigators spoke to the resident's daughters. The first daughter initially confirmed that she had paid the Deputy Chairman \$50 to travel in a car, but said that she would not give a statement in the matter because she was related to him. She later said that the \$50 she had paid to the Deputy Chairman was, in fact, a loan and that he had paid it back to her. She said that he had, on occasions, lent her money which she had not paid back, and that she therefore had no complaint in relation to him.

The second daughter interviewed said that she had never paid the Deputy Chairman any money to be transported in the Council vehicle.

The Council accountant told investigators that he had never heard of the alleged practice of charging passengers for the use of the Council owned vehicle which was allocated to the Deputy Chairman. He said that no monies had been received by the Council in respect of the alleged hire of the vehicle.

Football and shopping

Investigators interviewed the community resident who had been nominated as the driver of the vehicle on the occasions when it was hired out. He said that, at times, the Deputy Chairman asked him to drive the Council vehicle allocated to him. He said that he was called upon to drive as he was a non-drinker. He told investigators that the Deputy Chairman's vehicle had been used to transport footballers to connecting buses and to take community residents shopping. He said that he had never collected money from the passengers on behalf of the Deputy Chairman and had no knowledge of a hire fee being charged for use of the vehicle.

The Deputy Chairman told investigators that he was allocated a motor vehicle because of his duties with the Council and that the Council paid for the fuel and repairs for the vehicle. He told investigators that he sometimes allowed other Council employees to drive the vehicle and that community members were sometimes given a lift when the vehicle went into a nearby town. The Deputy Chairman said that he had never charged any person for use of the vehicle.

Conclusion

The Commission's investigation in this matter disclosed that:

- The Deputy Chairman of Aboriginal Council D was allocated a Council owned vehicle for his use.
- On occasions, he allowed that vehicle to be used to transport community members to nearby towns or to sporting events.
- A community resident who, on occasion, drove the vehicle for the purpose of transporting community residents had no knowledge of any fee being charged for the use of the vehicle.
- Two community members who were nominated as people who had been required to pay a fee for the use of the vehicle, denied that any such fee had been charged.¹⁵⁶

¹⁵⁶ As an example of the difficulties encountered in investigations in such small communities, it is worth noting that both of these witnesses were related to the person the subject of the allegation and one of them lived in his house.

In the circumstances, the Commission was unable to substantiate the allegation of misuse of Council property against the Deputy Chairman of Aboriginal Council D.

Allegation 4 That Aboriginal Council D had entered into an arrangement with a consultant who:

- (a) effectively made all decisions about Council contracts and "ran" the Council;**
- (b) refused to approve "extras" payments to Council contractors for additional costs legitimately incurred during projects;**
- (c) improperly used Council funds to pay for fuelling and servicing his private vehicle and to pay the wages of his personal secretary;**
- (d) gave the Council Chairman a block of land as a bribe to ensure his continued co-operation**

These allegations were made in various forms by the former Council Clerk of Aboriginal Council D and by five contractors who had worked on projects for the Council.

(a) That the consultant effectively made all decisions about Council contracts and "ran" the Council

Witnesses interviewed about this allegation by the Commission were clearly divided between those who considered that the consultant's relationship with the Council was unhealthy and those who considered that the relationship had benefited the community.

"They asked me to participate . . ."

The consultant was first retained by Aboriginal Council D as a project manager in September 1986. He was a registered builder by trade. In the years prior to 1986 he had been involved in some large scale housing developments in remote areas, although the company with which he was formerly associated had gone into

liquidation. He then became involved in a project at Aboriginal Council D through members of his family who were also in the building trade. According to the consultant, it was while he was working for his family that he first had contact with members of Aboriginal Council D, which eventually led to his being retained as a consultant:

While I was there, through various discussions with the Chairman and Deputy Chairman, I suggested to them that there was a series of undertakings that the town should take, and, why weren't certain aspects of their town development being undertaken? They said to me that they did not know how to do that, and they asked me to participate in the overall project management of their town and the establishment of the CDEP¹⁵⁷ . . . [After the contract in which my family was involved was completed] I then took up the position as project manager for [Aboriginal Council D].

The Council applied for and received Government funding for the appointment of the consultant. It initially appointed the consultant on a retainer of \$1,000 per week. This retainer continued until 19 July 1989. Prior to that time, the consultant approached the Council and advised that his workload required him to employ an assistant in order to supervise the new projects which were being planned by the Council. The consultant also requested a change to the terms of his retainer. What he proposed to Council was that both he and his assistant would be paid at the rate of \$32.60 per hour for the total consultancy hours provided by them, to a maximum of 40 hours per week each. The Council accepted this arrangement which continued, except for changes to the hourly rate payable, until May 1993. At that time, the consultant, who had been leaving more and more of the work in the community to his assistant in order to devote himself to his other business interests, decided to end his business relationship with the community. The position as project manager was taken over by his assistant. The Chairman of the Council described the reason for the consultant's departure in these terms:

Q: When did [the consultant] leave?

A: This year.

Q: And what brought that about?

A: Nothing, just that, ah, he felt that most of the major works had been done for the community, the major capital works program, projects had been done now, and probably felt time that he went on his own way, or whatever, you know.

¹⁵⁷ See page 37, footnote 60.

"Why would we want . . . A contract?"

Despite the fact that the consultant was to work for the Aboriginal community for seven years from 1986 and, according to the Chairman, handle projects worth \$55M, he never entered into a formal contract with the Council. The original funding application for his position in 1986 indicated that he had agreed to sign a contract.

The fact that no contract was ever signed was, apparently, more because of reticence on the part of the Council than reluctance on the part of the consultant. In 1992 the Council's accountant told Commission investigators:

Well, [the consultant has] for quite some time wanted Council to enter into a formal agreement. Council have, to some extent, on my recommendation, have dithered on that one. We want to make sure that if a formal agreement is entered into that it, um, that it covers both Council and [the consultant]. That both have seen to be fairly treated. At this point in time Council has the option to dismiss [the consultant] at a day's notice if it is required.

In relation to the issue of entering into a contract with the Council the consultant said:

Q: . . . right, and was there ever a contract negotiated at that time for you to commence work there?

A: No, well our arrangements were clearly identified, but there was no contract in writing, no.

Q: Did you ever, following that, have a formal written contract with [Aboriginal Council D]?

A: We've never had a formal written agreement with [Aboriginal Council D], no. We, at one stage, after the early part of, I think when [the Council Clerk] was involved in the CJC, we endeavoured to set up a contract, and they said, well, why would we want to have a contract with you? I mean you know, we can sack you at any time, you know, we can have your services as and when we call them, they're quite happy with the arrangements . . .

Council records contain an unexecuted copy of a contract between the consultant and Aboriginal Council D. The draft contract was evidently forwarded to the Council by the consultant but had never been executed.

Dissent and confusion

Over the years during which the consultant and his assistant worked for Aboriginal Council D, it is clear from the information provided to the Commission that they took a dominant role in all aspects of management of the projects which the

Council undertook. The consultant and/or his assistant played a major role in the tendering process, the ordering of goods and services, and the approval of payments to the contractors.

As to whether the consultant and his assistant effectively controlled the Council, opinions within the community differed widely. By 1989 certain members of the community were already dissatisfied with the Council's continued association with the consultant. In January 1989 a Council employee wrote to the Federal Minister for Aboriginal Affairs outlining his view of the situation which had developed in the community:

[Aboriginal Council D] and the entire Community Management is being subject to frequent interference by your DAA officers . . . this has created considerable dissent and confusion in the community. It has also exacerbated community management problems that are already severe due to the presence, influence, and continued employment of [the consultant as building superintendent].

ESSENTIAL ISSUE: [The consultant] - At a public meeting held on 17th of January 1989, community members demanded to know when [the consultant's] contract would run out.

...

The CDEP workforce have been on strike since last week and all vowed not to return to work until [the consultant] leaves the community.

The issue of whether or not the consultant should leave the community was the subject of further discussion at a Council meeting on 23 January 1989. The minutes referring to the discussion are cryptic, but it was clear from information provided to the Commission that the dominant issue discussed was the continued presence of the consultant in the community. The minutes note:

The Chairman . . . stated that the purpose of the meeting is to discuss the present crisis.

After a lengthy discussion, no compromise was reached and this led to the resignation of six persons as below:

[Deputy Chairman]

[A Councillor]

[Four staff members]

Despite this unrest, the consultant's work in the community continued and, six months after this meeting, he was allowed to take on an assistant because of the increasing workload.

"I am the Council . . ."

According to a Council employee who had worked closely with the consultant, the consultant regularly attended Council meetings:

- Q: What would have his input been into the Council meetings?
- A: Most of it was supposed to have been just what was happening in the community as the building consultant . . . every time they had a meeting they had to report progress on whatever was happening but I do know that, a couple of times I was in there when [the consultant] was in there. [The consultant] held the floor, you know and he would be telling, he had the art of being able to convince the Council to do something and think it was their idea . . . Same with even employing staff, you know, Council would like someone somewhere, and if [the consultant] didn't want them there, no way and he just had complete control . . .

She said that she had had an argument with him once about his treatment of another staff member and he had told her that she owed him loyalty:

And I was just astounded to think, and I said, "I don't work for you, I work for the Council", and he said, "I am the Council, I am the loyalty".

According to the consultant, he attended Council meetings, but merely to report to the Council on his duties as project manager:

We're asked to every Council meeting to report on the workforce because we supervise the workforce and are involved in all aspects of their capital works programs and we report on those at Council meetings, yes.

According to the Chairman of the Council, the Council relied on the expertise of the consultant and his assistant to advise them on matters:

- Q: Now if the contractor claimed that a certain amount of progress hadn't been made or had been made, and [the consultant] or [his assistant] said no, it doesn't amount to that much, if he didn't agree, would the Council pay that money?
- A: No . . . not if our [consultant] said that that amount of work hadn't been done.
- Q: Yeah, so you rely entirely on [the consultant] to . . .
- A: Well, that's what . . .
- Q: . . . manage the project?
- Q: That's right, that's what we pay them for to, you know, we're not out in the field and they're the technical people, they're out on the job, supervising our work . . .

Conclusion

During the period in which the consultant and his assistant worked for the Council, it is clear that the Council relied heavily on their advice and allowed them complete control in the day-to-day running of the projects they supervised. However, in various areas the Council had access to other expert advice including that available from their in-house accountant and from an independent firm of accountants who were commissioned at one stage to audit the contracts managed by the consultant. No impropriety was discovered during the course of this independent audit, the results of which have been reviewed and assessed by Commission financial analysts.

The consultant has been described by a former Council employee as honest, but abrupt and lacking in tact. This employee resigned as a result of the consultant recommending his demotion and had no reason to have any particular loyalty to him. Similarly, the consultant's assistant was described by a contractor who did a lot of work for the Council as "hard . . . but pretty fair". Others described the consultant and his assistant in far less flattering terms. There is no doubt that the degree of control exercised by the consultant and his assistant, combined with their tendency to be abrupt and direct in their dealings with people, caused considerable concern to both community members and outside contractors.

The Commission's investigation has shown that the Council relied to a substantial degree on the consultant and his assistant for advice in all areas relating to contract management, employment, tenders and purchases. The investigation has not, however, disclosed that the consultant and his assistant usurped the functions of Council or, in effect, "ran" the Council through their consultancy.

(b) That the consultant refused to approve "extras" payments to Council contractors for additional costs legitimately incurred during projects

Several of the complaints made to the Commission in relation to Aboriginal Council D related to the fact that the consultant allegedly refused to approve the payment of "extras" where additional costs had been legitimately incurred during contracted projects. The consultant and his assistant told investigators that they had never objected to paying additional costs on contracts where the costs had been necessarily incurred and had been approved prior to being incurred. They both said that "extras" had been paid on many contracts under their supervision, but that they would not recommend that the Council pay costs which were not justified.

The five contractors who complained to the Commission about the consultant and his assistant alleged that, in various circumstances, verbal agreements had been reached between the parties that additional work would be undertaken and paid for and that the Council, on the consultant's advice, had then refused to pay for the additional work.¹⁵⁸

While it is clear that the five contractors who complained to the Commission were dissatisfied with the payments they received under their contracts with the Council, several other contractors who had undertaken work of substantial value for Aboriginal Council D experienced no such problems. The owner of a firm which had carried out a number of contracts with Aboriginal Council D said that he had always put in written requests for payments, including extras payments, and was paid promptly for them. Another said that he had requested a variation to a contract to include a substantial increase in the price, and that it was approved and paid. A third contractor, who had been involved in a number of building projects in the community, said that he had been paid for "extras" without experiencing any problems.

Conclusion

Investigators spoke to the dissatisfied contractors at length and were provided with details of various ways in which they said that they were underpaid in relation to their contracts with Aboriginal Council D, mainly by being refused additional payment for extra work. The Commission also had access to a detailed report prepared by a construction consultant who examined a number of the claims made against the Council by these contractors. Having reviewed the interviews and the report, the Commission considers that the contractors' complaints in relation to the payment of "extras" are civil disputes whose resolution falls outside the Commission's jurisdiction. No contractor interviewed made any allegation of criminal conduct or official misconduct on the part of any member of Aboriginal Council D in relation to this matter. Similarly, with the exception of an allegation by one contractor that the consultant and/or his assistant solicited a bribe,¹⁵⁹ no

¹⁵⁸ During lengthy interviews, several of the contractors detailed the matters which they said constituted breaches of contract by the Council. The Commission understands that some of these alleged breaches have been or will be the subject of legal action between the parties. In the circumstances, the details of each alleged breach of contract will not be canvassed in this report, in order not to prejudice any such proceedings.

¹⁵⁹ See allegation 5, page 363.

contractor alleged criminal conduct or official misconduct on the part of the consultant or his assistant.

In the Commission's view, the contractors' claims against Aboriginal Council D should be dealt with by the appropriate court exercising civil jurisdiction.

(c) That the consultant improperly used Council funds to pay for fuelling and servicing his private vehicle, and to pay the wages of his personal secretary

The former Council Clerk claimed that the consultant improperly used Council funds to pay for fuelling and servicing of his motor vehicle and to pay the wages of his personal secretary.

The lack of a formally executed contract made this allegation difficult to investigate. In the absence of a contract, the Commission examined Council records about the terms upon which the consultant was engaged in 1986. It is clear from Council minutes and correspondence between the consultant and the Council that under the terms of his employment with the Council:

- The consultant agreed to use his own motor vehicle when engaged in Council work.
- The Council agreed to provide service, maintenance and fuel for the vehicle.
- The Council agreed to employ a secretary at Council expense to work for the consultant.

Despite her position, the Clerk seems to have been unaware of the fact that the consultant was entitled to have his car fuelled and serviced at Council expense and that the Council had agreed to provide him with a secretary while he worked as their project manager. Her lack of knowledge may indicate how poorly the Council's and the consultant's relationship was documented or, at least, how inaccessible the related documents were.

Conclusion

The use of Council funds to maintain and fuel the consultant's vehicle and to pay the wages of his secretary was in accordance with the terms of his employment, and not an improper use of Council funds.

(d) That the consultant gave the Council Chairman a block of land as a bribe to ensure the Chairman's continued co-operation

The final matter investigated concerning the relationship between the consultant and the Council was an allegation made by a contractor who had worked for the Council. In a letter to the Minister for Family Services and Aboriginal and Islander Affairs, this contractor alleged that he had heard that the Council Chairman had accepted a block of land from the consultant as a bribe to allow the consultant's relationship with the Council to continue.

It was obvious from the terms of the complaint that the complainant had no direct evidence in relation to this allegation. Commission financial analysts made extensive searches to determine if a transfer of land had taken place between the consultant and/or people related to him and the Chairman and/or people related to him. The searches revealed no evidence that any such transfer had taken place during the period of the consultancy.

A gift of land

The consultant was questioned in relation to this matter by investigators:

- Q: It has also been alleged that you gave [the Chairman] a block of land as a gift?
- A: Oh, that's an insane proposition.
- Q: Do you deny that totally?
- A: I mean, anyone could track that you could check, that's insane. I didn't have the money to give away blocks of land, and I still don't.
- Q: Have you ever had any dealings with him at all in relation to land, as in sales of land, or . . . ?
- A: I was involved, I think, technically, you know, with land transactions around [Aboriginal Council D] . . . you know, I had some involvement with rural, that's where [the Chairman] that's where his technical interest lies. You know he is interested in the whole community, but he's more skilled in the area of cattle and horses and things like that. I was involved in, you know, with [the Chairman] but no, no personal . . .

- Q: Not on a personal basis?
A: That's right.

The Chairman of the Council denied in fairly robust terms that he had ever received any gift from the consultant:

- Q: Have you personally ever received any gifts of any sort from [the consultant]?
A: No.
Q: You're laughing, why are you laughing?
A: Well, when you ask me those sorts of questions.
Q: There's, aren't rumours floating around--- that you haven't told us about, hey?
A: Hey?
Q: There's not rumours floating around that you haven't told us about?
A: No, I mean that sort of question's laughable, ask me if I've received any sort of gift from him.
Q: If someone suggested that he gave you a fairly substantial block of land for, for favours that you might be able to do him, what would you say about that?
A: Give me a block of land?
Q: Mmm?
A: I've already got our land, we've got land here, I don't want any more land [laughing]. I've got about 50,000 hectares here. I don't want any more. [laughing]

Conclusion

It is not clear from the way in which this allegation was made that it was ever more than a vague rumour in the community. In any case, the Commission's investigation has disclosed no evidence to substantiate the allegation.

Allegation 5 That the consultant retained by Aboriginal Council D solicited a \$17,000 bribe from a contractor, and that as a result of this request \$8,500 was paid by the contractor to the consultant's assistant

This allegation was made by Contractor 2,¹⁶⁰ initially in a letter to the Australian Federal Police, and later during interviews with Commission investigators.

According to the information provided by the AFP, Contractor 2 told them that he had been awarded a \$362,000 contract with Aboriginal Council D to renovate 12 houses. The information provided by the AFP went on to say that:

He further states that he was required to pay approximately \$15,000 between February and December 1991 to [the consultant] as bribe money to continue with this contract. [Contractor 2] stated that he would leave the money in a blank envelope on [the consultant's] desk on a monthly basis. [Contractor 2] stated that he had no evidence to support this allegation. He further stated that [the consultant's assistant] . . . sold him a [motor vehicle] for \$8,500. This vehicle was valued at \$6,000 and he was advised that he was required to purchase the vehicle off [the consultant's assistant] to secure the contract. He has evidence of the bank cheque paid for this vehicle.

"No money, no payments"

Contractor 2 was interviewed by Commission investigators in March 1992 about the allegation he had made to the AFP. He told investigators that two years previously he had concluded a contract for construction work with Aboriginal Council D. He said that he had tendered for and won the contract for an agreed price of \$362,000. Contractor 2 said that during the tendering process and after he was awarded the contract he had dealt mainly with the consultant's assistant. The Council Chairman had also attended some pre-award meetings, and the consultant had visited the community about once a month during the course of his contract. According to Contractor 2, during the course of the construction he had a discussion with the consultant's assistant. During this discussion, he was given verbal approval to increase the cost of each of the twelve units from \$30,000 to

¹⁶⁰ See page 334.

\$44,000. The effect of this verbal agreement was to increase the overall cost of the project from \$362,000 to \$530,000, an extra cost to the Council of \$168,000.

Contractor 2 said that the contract took longer to complete than he had expected, and that as completion approached, he began to approach the consultant's assistant to ask for payments for the extra work which had been negotiated:

... And anyhow as we got towards the end of the contract, I was getting desperate for money because I, I had people chasing me, and when I kept asking about it [the assistant] said, "Well look" he said, "This is between you and [the consultant]". He said, "[The consultant] wants 10%". He said, "You've got to give me \$17,000 before I can give you the money". And I said, "Is this for you or [the consultant]?" And he said, "No, this is for [the consultant]".

- Q: Right, before we go on, where did this conversation take place?
A: At [Aboriginal community D].
Q: All right, and who was present there?
A: Only myself and [the assistant].
Q: And whereabouts did it take place at [Aboriginal community D]?
A: At his office.

Contractor 2 said that he had a further conversation with the assistant about the money requested:

And I said, "Well what's that for?" And he said, "Well that's to get you the money, the extra \$168,000". And I said, "Well that's not on". And he said, "Well, no money no payment" ... He said, "That's, hasn't gone through the Council and [the consultant] won't put it through the Council unless you come to the party".

- Q: That was 10% of that amount did you understand?
A: 170.
Q: 10% of 170?
A: Right
Q: And where did that 170 come from?
A: That was the extras on the contract.

The investigator asked Contractor 2 about his response to the request for the extra money:

- Q: ... and what was your response to this?
A: Well, at first I just freaked out, you know, but then I thought to myself well, it's better to pay some and get my— was owed to me because I had creditors pushing me.
Q: Yes?
A: So I give him a cheque for \$8,500.
Q: Yeah and when did you do that?
...
A: On 24 October 1990

Contractor 2 then produced bank records which showed that he had purchased a bank cheque in the amount of \$8,500 payable to the consultant's assistant on 24 October 1990.

"It's for the car . . ."

Contractor 2 told the investigator about a motor vehicle he had allegedly purchased from the consultant's assistant on the same day that he obtained the bank cheque for \$8,500:

Now what [the assistant] said, he ordered the money like that [a bank cheque] because his accountant said he had to get it like that for some reason, but we also bought a car off him at the same day for \$6,500 for my wife.

Q: Right?

A: But he got paid in cash for that.

Q: Right, I'll get to the car in a minute. How was that amount of \$8,500 derived at?

A: Well, I worked it out at half what he wanted. He wanted \$17,000 . . . 10% of that, I give him half, trying to get half.

Contractor 2 said that he had obtained the cheque and some cash on a Friday morning and taken it around to the assistant's house. He said that he had given the money to the assistant's wife, as the assistant was not at home:

Q: . . . you told me about the car before?

A: Yeah, well, the car I bought it on the same day for my wife, and I ended up giving him \$6,000.

Q: Yeah, same day as what, same day . . . ?

A: Same as I give him \$8,500 I give him also, [the assistant] \$6,500 cash for the car.

Q: Yeah, who'd you pay that money to?

A: To his wife.

Q: So you've taken to her and, what you're saying is you've taken the cheque and the cash?

A: That's right.

Q: All right, any conversation with her about that particular money?

A: No, no. I just said, "Here, it's for the car", and she give me the registration paper and I, but I never got a receipt. And he said, "Well, I'll look after that", [the assistant] said before I went, you know, before I picked the car up, he said, "I'll look after all that".

He was asked about how he came to buy the car from the assistant:

Q: Where did the original conversation take place about the car?

A: Well, he was going to put my son off the job if I didn't pay for the car. This was a month beforehand. If I didn't, if I didn't buy the car . . . this was a month before that. See he asked me if I wanted to buy [the car] but I said, "No, not particularly" and he said, well a couple of weeks later he said, "Look I've got to get rid of that [car]". And I said, "I don't want the bloody thing". He said, "Well, if you buy it, it will look better". Anyhow, I give him \$6,500 for it.

"That was for the car"

Contractor 2 said that two months after he gave the cheque and the cash to the consultant's assistant, he left the community to go home for Christmas. He said that he had intended to return to complete the contract, but had received letters from the Council telling him not to return. He said that the assistant had then refused to approve payments for the "extras" to the contract and he was also in dispute with the Council over their retention of his security deposit on the contract.

Contractor 2 said that when he began to ask the assistant for the extra costs which he had incurred on the contract, the assistant said that he was going to say that the \$8,500 cheque Contractor 2 gave him was payment for the car:

But he said, he'll say that I give him the \$8,500 for the for the, when I told him I wanted the money he told me that he was going to, that he had a bank cheque for \$8,500 and he was going to say that that was for the car. And that's how he was holding it over me.

Contractor 2 was asked about his association with the consultant during the contract:

Q: . . . I asked you before, what association were there . . . did you have with [the consultant] how often did you see him?

A: Well [the consultant] used to come out once a month, well [the consultant] was [the assistant's] boss. Now, he gets, he was God at [Aboriginal community D], as far as I was concerned if anything wanted to be fixed [the consultant] would fix it, you know. Now [the assistant] used to work for him because I think he used to drive his car. He didn't ever work for [Aboriginal community D], but, you know, it was like a baker's shop. They'd fix everything up out the back and then present the cakes out the front for the Council and I don't think the Council knew what was going on itself.

Q: Right. Did you have any trouble with [the consultant] yourself?

A: Never had any trouble with [the consultant]. He said everything that you want, we'll fix it up . . .

Q: . . . I'll just ask you this, in your own mind did you believe that money was forthcoming when you gave . . . ?

- A: Well, I honestly did think it was going to [the consultant].
Q: Did you get any response from [the consultant] after the cheque had been given to [the assistant's wife]?
A: No, [the consultant] doesn't talk much . . .

Payment by monthly instalments

Contractor 2 was asked about the information he had provided to the AFP, in particular, a statement attributed to him that "he was required to pay approximately \$15,000 between February and December 1991 to [the consultant]". He said that the year was wrong, as he had left the community in December 1990:

- A: The year is wrong. It's 1990.
Q: Yeah, and the year's wrong, 1990, okay . . . According to [the AFP information you said] that you would leave the money in a blank envelope on [the consultant's] desk, . . . on a monthly basis.
A: That's how it was going to be at first. Yeah, that was early in the piece.
Q: Yeah?
A: Yeah, but we never done that because I never, you know we never done that until I gave him the one bulk sum.
Q: All right, now, when you say that— can be done— how does that relate to what you've told me now, is that a different—?
A: No, that's the same thing. That's the same money.
Q: Yeah, yeah. But in my mind, again, I understand the conversations that you've had with [the assistant] about the \$17,000 we're talking about, is in relation, in relation to your contract isn't it?
A: That's right.
Q: In relation, you see I'm talking about times in between February and December 1991 and to leave the money in blank envelopes on [the consultant's] desk on a monthly basis?
A: Yeah, yeah, that's when [the consultant] come down. See now, that's what we were gonna do first . . . but [the assistant] was there and [the consultant] wasn't. First of all all we said we'd put it on the desk, you know, but that didn't eventuate because I didn't put it on the desk.
Q: Alright, but how much was it going to be over a monthly basis?
A: Well, it was going to be about \$15,000. We thought that at that time the extras were only going to be \$150,000 to \$160,000.
Q: Yeah, but what I'm trying to get at is . . . was there any arrangement on how many payments were going to be over this monthly basis?
A: Oh, no, no, no, it wasn't really, cause it was only when [the consultant] came down.

Contractor 2 then said that he had discussed with both the consultant and the assistant at the beginning of the contract the fact that they wanted to be paid 10%

of any extras incurred.¹⁶¹ He said, however, that they had told him that they would not be able to get the extras approved until the end of the contract, so that he would not be required to pay 10% of the extras in monthly instalments, but could pay the entire amount at the end of the contract.

The second interview

Contractor 2 was interviewed again by Commission investigators four months later. He told investigators that the question of additional work being approved was raised about 14 days after he started work on the contract in February 1990. He said that he was approached by both the consultant and the consultant's assistant to carry out work additional to that specified in the contract. He said that during a discussion with both of them, it was agreed that he would be allowed an extra \$14,000 for each of the twelve units he was constructing. He said that during this conversation with the consultant and his assistant, the question of paying them to approve the "extras" was raised:

- A: Yeah, well, at that time they said, "It's going to cost you".
Q: What was the nature of the conversation at that time?
A: Well, when I give them the \$14,000 extra [the additional cost per unit], they said, "Well, it's going to cost you money", just like that, they didn't sort of elaborate on it.
Q: Who was it actually said that to you?
A: That was [the consultant].
Q: And did he give you a percentage at that time?
A: No, no, it was [the assistant] that said 10%.
Q: And was that during the same meeting?
A: Yeah, I think it was, yeah, either that day or the next day . . . see, [the consultant] never used to be there permanent. [The assistant] was there permanent and he worked for [the consultant] . . .

Contractor 2 said that he agreed to pay the 10%, but indicated that he would not be able to pay immediately:

But I did indicate to them that I couldn't pay it because at that time we were just starting off, and they said, "Don't worry about that 'til we finish the other, 'til we get it finished" . . .

Contractor 2 was asked whether there had been any discussion about his paying 10% of the extras allowed other than at the end of the contract:

¹⁶¹ This statement seems completely at odds with contractor 2's statement at the beginning of the interview that he was first told about the fact that the consultant wanted 10% in a conversation with the assistant only, "towards the end" of the contract, see page 364.

- Q: Would there, was there ever any arrangement to make payments to them prior to that?
- A: Oh, they did, they did mention monthly at the start, and I said, "Well, I can't do it, because I'm buying extra material".
- Q: When did that discussion take place?
- A: That was at the, that was in the first discussion . . .
- Q: And how was that money to be delivered?
- A: To give it to [the assistant].
- Q: Any in any particular way, just give it to him in his hand in cash or what was it to be?
- A: Oh, in cash yeah. Yeah, I had to give it to him in cash, he wanted it in cash.
- Q: And was there any particular way that that money had to be handled?
- A: No.

"That can be for the car"

Contractor 2 was asked about the arrangement he made to purchase the assistant's motor vehicle:

- Q: All right, when did he first approach you in relation to the vehicle?
- A: Ah, that was about 3 months, about June, July.
- Q: About June or July after you started work there right? Now, did he actually approach you or did you make some approach to him?
- A: Ah, we were just naturally talking, you know talking about it, I don't know if I made the approach or he made the approach, no, I think he, he asked me if I wanted it, yeah.
- Q: All right. And you say that you indicated to him that you would like to but you couldn't afford it?
- A: That's right yeah . . . yeah, well, no, I told him I couldn't afford it at that stage, and then it dragged on a couple of months then he said, "Well if you don't hurry up and pay for it you're off the job".

Contractor 2 said that, initially, the assistant had wanted cash for both the car payment and the bribe payment of \$8,500. He said that he told the assistant on the Friday that he made the payments that he had a bank cheque for the \$8,500, and cash in the amount of \$6,500 for the car:

- A: Yeah, well, I was going to give him cash at the time but I got a bank cheque, plus I had the other cash with me then.
- Q: Well, so you gave him the bank cheque?
- A: I give him the bank cheque for half of the, half of the 10%.
- Q: Right?
- A: But he said, "Well, that can be for the car". We worked it out on the phone that it'd be alright to put it in for the car.
- Q: Right and the other money, how much was that?
- A: \$6,500.
- Q: And you say that was in cash?

A: Yeah.

Contractor 2 said he took the money around to the assistant's house and gave it to his wife, as the assistant was not home. He said that he handed an envelope to the assistant's wife, and that the envelope contained the cheque for \$8,500 and cash for \$6,500. He said that the envelope had the assistant's name on it, because he did not know whether the assistant was going to be home or not. He said that the assistant's wife took the envelope but did not open it in front of him. He said that the assistant had left the form for transferring the registration of the car on the front seat of the car, already filled out. Contractor 2 said that the assistant had filled out the top part of the form containing the vendor's details. Contractor 2's wife then filled out the remaining section, which included the value of the car being purchased. He agreed that \$5,000 had been written in that section as the purchase price of the car. Contractor 2 told investigators that the assistant had told him that he would give him a receipt for \$5,000 for the purchase of the car, as for some reason connected with the assistant's previous business, he was not able to sell the car for more than \$5,000.

Contractor 2 told investigators that if he had paid the bribe to the consultant and the assistant and they had honoured their agreement to pay the extras in the contract, he would not have made any complaint to the authorities about the matter.

Payments, favours and kick-backs

The consultant was questioned by investigators about whether he had ever asked the contractor to pay him a percentage of money due for extras:

Q: . . . right have you at any time ever received payments of money from contractors in [Aboriginal Community D] in order that payments of extras completed by those contractors would be approved for payment by Council?

A: A really simple one. I have never received any ex gratia payments, favours, kick-backs from anybody and nor am I involved in that, nor will I be . . .

Q: All right do you have any knowledge of [the assistant] ever receiving any such payment?

A: No if I had - I'd have got him sacked immediately.

The consultant said he had been approached once by a contractor (not Contractor 2) with what amounted to a bribe offer. He said that he had told the contractor never to mention the matter again, and said that he would pretend that it had not happened.

The consultant's assistant was also questioned about the allegation that a payment was demanded to approve extra payments on Contractor 2's contract:

- Q: You know [Contractor 2]?
- A: Yep.
- ...
- Q: At around about that time you sold him a motor vehicle?
- A: That's true.
- Q: And the allegation is that he was told . . . that he would have to pay 10% of the monies that were owed to him as extras, as he terms it, for those extras to be approved by Council. In other words he was, he claims he was owed \$17,000 for extras, he was to pay, and this is after a conversation with yourself, sorry, the extras were \$168,000, in round terms \$170,000. He was to pay yourself who in return would, I suppose, the money was to go to [the consultant] as well, he was to pay 10% of that for those extras to be approved. If he paid \$17,000, he was to get \$170,000. Do you understand what I'm saying?
- A: Sure.
- Q: Right. Did you ever at any stage have any conversation with him?
- A: Never.
- Q: About those matters?
- A: No . . . certainly, I sold him the car, which he still owes me about \$600 on as well . . . it's no secret that I sold [Contractor 2] a car. I think he paid me \$8,000 for the vehicle. He still owes me about I don't know 3 or 4 or \$600, which I'll never get paid of course . . .
- Q: How did he pay you for that vehicle?
- A: He paid, he paid for me at, he paid my wife . . . where I live . . . by cheque.
- Q: And at no stage was there any conversation, forgetting the car, the sale of the car, in relation to this payment of extra . . .
- A: No. No never.
- Q: And have you heard that allegation or that rumour before?
- A: Haven't heard that one, that's a new one.

The assistant told investigators that he had filled out the top portion of a form to transfer the registration of the motor vehicle to Contractor 2. He agreed that the price put on the transfer form was \$5,000, whereas the purchase price according to him was \$8,500. The assistant said that for the purposes of assessing stamp duty, he believed that a person was entitled to put the market price of the vehicle on the form, and that he had received an appraisal from a motor vehicle dealer saying that the car was worth \$5,000:

. . . and but, but the price I negotiated with [Contractor 2] was always \$8,5000, you know, for the total.

- Q: Yeah?
- A: And the stamp duty was actually worked out on the lesser figure, if you put that, there is the less stamp duty someone pays on it, you know.
- Q: Yeah, yeah, right.
- A: And that's probably the reason why I did that . . .

The Assistant's Wife

The assistant's wife was questioned in relation to the payment to her husband. She said that she was aware that her husband had sold a motor vehicle to Contractor 2 and that she was present at the house one day when the contractor came around with a cheque to pay for the car. She said that it was the first time she had ever met Contractor 2. She said that he handed her a cheque for \$8,500, and that she and her husband had later banked the cheque. She said that she had some general conversation with the contractor when he gave her the cheque, but nothing in particular about the purchase of the motor vehicle. She said that there was no cash involved in the sale of the motor vehicle and that she was not given any cash with the cheque. The assistant's wife said that she believed her husband was still owed about \$400 for the motor vehicle, and that he often said to her that he had still not received the extra money owing.

The assistant's wife said that the cheque which she was given by the contractor was not in an envelope when she received it. She said that her husband had left the keys of the car and the registration papers on the front seat, and she was not required to hand anything to the contractor in return for the cheque.

Cash or cheque?

Commission financial analysts conducted extensive searches of bank records in order to determine whether Contractor 2 had in fact made a cash payment of \$6,500 to the assistant. The analysts could find no record of any large sums of cash being banked by the assistant or his wife during the relevant period.

It was difficult to confirm from bank records whether Contractor 2 withdrew \$6,500 in cash to pay to the assistant. He regularly withdrew large sums of money in order to pay his workers. Contractor 2 told investigators that an amount of \$6,000 which, according to bank records, was drawn as a cash cheque for wages, formed part of the \$6,500 cash he gave to the assistant's wife. He said that, because he was in overdraft, he had to say that the \$6,000 cash cheque was for wages, as the bank allowed him to draw for wages, but would not have allowed him to draw money to pay for a car. According to the available records, the \$6,000 cash cheque drawn by Contractor 2 was for wages. The only evidence that it formed part of an amount of \$6,500 in cash given to the assistant's wife comes from Contractor 2.

Bank records confirmed that the bank cheque for \$8,500 drawn by Contractor 2 was paid into the assistant's account. Contractor 2 has provided three distinct

explanations about why he obtained a bank cheque for this payment, instead of obtaining cash.

During his first interview, he said that he had obtained a bank cheque because the assistant wanted the payment in that form:

- Q: ... What type of cheque is it, it's a bank cheque?
A: Yeah, it was a bank cheque.
Q: Right?
A: Now what [the assistant] said, he needed the money like that, because his accountant said he had to get it like that for some reason ...

Later in the same interview, he said that he had obtained a bank cheque because he wanted a record of the payment:

- A: And I drew that \$8,500 out of the bank in [a town], put my cheque over the counter, because I wanted a record of this asshole getting this money.

During his second interview, Contractor 2 said that he had intended to obtain the \$8,500 in cash, but had been forced to get a bank cheque because he was not at his usual bank branch:

- A: [The assistant] said, yeah, he said I want the cash for [the car] and the other cash, and I got him a bank cheque for eight and a half thousand, and he said, well that's for [the car], not for me. I got him a bank cheque because of, it was in [a provincial town] and I had to get a bank cheque over the counter because, he was, I come in from [Aboriginal Community D] late and I couldn't get down to [my usual branch in another town], so I give him the cheque ...

Conclusion

In the absence of any clear documentary evidence or banking records to support Contractor 2's allegation that he was required to pay a bribe to the assistant and/or the consultant, a successful prosecution in this matter would depend entirely upon the evidence of Contractor 2.

Contractor 2 has given several versions of the circumstances leading to the alleged payment of the bribe by him.

According to the information he allegedly provided to the AFP he was to pay \$15,000 to the consultant as a bribe between February and December 1991. According to the record made by the AFP officer to whom the contractor spoke, he

said at that time that "he would leave the money in a blank envelope on [the consultant's] desk on a monthly basis".

Contractor 2 told Commission investigators that he had initially discussed a monthly payment with the consultant and his assistant, but that it was eventually agreed that he would be allowed to make a lump sum payment at the completion of the contract. In his first interview, Contractor 2 said that the reason for abandoning the monthly payment plan was that the consultant told him that he could not get the "extras" approved until the end of the contract, when a lump sum could be paid. In the second interview, Contractor 2 said that the plan was abandoned because he could not afford to make the payments monthly because of other commitments.

When he was first interviewed, Contractor 2 told investigators that the plan for monthly payments involved his leaving an envelope on the consultant's desk each month. At his second interview, he told investigators that the plan for monthly payments was that he would hand cash directly to the assistant.

In relation to his reasons for obtaining a bank cheque for the bribe payment rather than cash, Contractor 2 variously told investigators that this was due to: bank requirements, a request from the assistant's accountant to obtain the money in that form, or the fact that he wanted proof that he had paid the money to the assistant.

Early in his first interview, Contractor 2 said that the bribe was solicited from him by the assistant alone, on behalf of the consultant, "towards the end of the contract". Later in that interview and in his second interview, he said that the question of paying the bribe was raised with him at the beginning of the contract, in a conversation with both the consultant and the assistant.

According to the AFP, Contractor 2 told them that he had bought a car off the assistant with a bank cheque for \$8,500. This accords with what the assistant says about the price which Contractor 2 paid for the car. But Contractor 2 said during his interviews with Commission investigators that the car was purchased for \$6,500 cash, and the \$8,500 bank cheque was obtained to pay a bribe to the assistant.

Apart from the inconsistencies in the versions given by Contractor 2, there are certain elements of his story which are inherently unlikely. The first is that he allegedly made an bribe payment with a bank cheque, but on the same day paid for the legitimate purchase of a car by cash. The second is that he, by coincidence, purchased the car from the assistant on the same day that he made the alleged bribe payment, making it very difficult to determine whether or not the money paid was in fact payment for the motor vehicle or payment of a bribe. It is also

unlikely that a person soliciting a bribe would request a bank cheque rather than cash, as on one of Contractor 2's versions the assistant did.

The Commission interviewed seven other contractors who had worked on projects for Aboriginal Council D. All of these contractors had dealt with the consultant and/or the assistant, and many of their contracts had involved substantial sums of money and payment of "extras" for additional work. None of these contractors alleged that bribes had been solicited from them by the consultant or his assistant. The fact that none of these contractors made such allegations is significant, particularly as several of them were involved in bitter contractual disputes with the consultant and his assistant and certainly had no reason to protect them.

In all the circumstances, the Commission considers that Contractor 2's allegation cannot be substantiated.

**Allegation 6 That timber and/or steel belonging to
Aboriginal Council D was used in the
construction of a building owned by the
family of the Council's consultant**

This allegation was made to the Commission by several complainants, including the former Council Clerk and the six Council members and/or staff who resigned from the Council over the Council's decision to continue employing the consultant.

The letter signed by the six people who resigned from the Council stated:

We would like you to investigate missing building materials, which we have a witness who will testify in court to the fact, that he has seen on building site [belonging to the consultant's family], with the [Aboriginal Council D] stamp on it.

In a letter dated 26 March 1990 the Council Clerk, wrote:

Please investigate allegations that [the consultant] took steel and timber belonging to [Aboriginal Council D] to [the site where his family was constructing a building].

The Clerk's witnesses

The former Council Clerk said in her complaint that a person living in a provincial town near the community knew about the material being diverted to the consultant's family and could provide information in relation to the allegation.

This witness was interviewed and said that he had heard the allegation, but had no direct information about it. He said that another person living in the town had told him that he had video-taped evidence of a truckload of steel and mesh being taken to the building site where members of the consultant's family were engaged in construction work. He said that the other man had told him that the consultant had been asked about this and had responded by saying that there were two lots of material on the truck, some owned by Aboriginal Council D and some owned by the consultant's family. The consultant had supposedly explained that the material belonging to Aboriginal Council D had had to be offloaded as the material belonging to his family was underneath it, and that this had led to the allegation that Council property had been used in the construction.

Commission investigators spoke to the witness nominated as someone who had video-taped evidence about a truck being unloaded at the building site. This

witness, who was a former resident of Aboriginal community D, said that he had heard rumours about a truckload of steel being taken to the building site, but that he had no direct knowledge about it. He said that he had no video-taped evidence or any other evidence about the matter.

More witnesses

A former Councillor interviewed by investigators said that he had been told by another Councillor that a truckload of timber had been diverted from Aboriginal Community D for use in a building being constructed by the consultant's family. The Councillor who was nominated as the source of this information told investigators that he had heard the rumours but had no direct knowledge about the matter at all.

A contractor who had complained to the Commission about problems he had had with the consultant said that a person who had worked on the building site told him that he had seen timber on the site with "Aboriginal Council D" written on it. However, during an interview with investigators the person who had worked on the site said that he remembered seeing timber on the site which did not belong there, but could not remember what was written on the timber.

Council supplies and the Council truck

Investigators interviewed the manager of an equipment store that sold equipment to Aboriginal Council D and to the consultant's family. He said that he had supplied equipment to the building site and, over a four-year period, had also supplied a considerable volume of material to Aboriginal Council D. He claimed to know nothing about any property belonging to Aboriginal Council D being sent to the building site.

The Council's accountant told investigators that he was aware of a building constructed by the consultant's family. The accountant said that he believed that this allegation about use of Council property in the building had arisen because a Council truck had travelled from the community to a provincial town to collect some equipment for the Council. The truck had then gone to the building site where the consultant's family was working to pick up scaffolding which had been purchased from the consultant's family by Aboriginal Council D. It was the accountant's view that somebody had seen the Council truck at the building site and assumed that Council property was being unloaded.

A former building supervisor from the community was interviewed in relation to this matter. He had resigned from his position with the Council after the consultant had recommended that he be demoted. He told investigators that when he was employed by the Council he had been involved in requisitioning materials for construction projects. He said that during his employment with the Council all material which was ordered on behalf of Aboriginal Council D was used in the projects for which it was ordered. He recalled a building being constructed by the consultant's family. He said that on one occasion he had driven a Council truck to the building site to remove scaffolding which had been purchased from the consultant's family by Aboriginal Council D. He said that it was shortly after this trip that rumours began circulating in the community about the alleged use of Council materials in the construction of the building. Although the consultant was the cause of his resignation from the Council, the witness said that, in his opinion, the consultant had been honest in his dealings with the Council.

The consultant and his family

A member of the consultant's family who had worked at the construction site told investigators that he recalled an occasion when a Council truck had arrived at the site from Aboriginal community D with a load of steel. He said that the truck had gone to the site to pick up scaffolding which the Council had purchased. He said that he did not think that it was safe to place the scaffolding on the steel already on the truck and the truck was sent away. The truck returned at a later date and transported the scaffolding to Aboriginal community D. In his opinion, these trips by the Council truck to the building site led to the rumours about Council property being used on the site.

The witness gave investigators access to the documentation in his possession relating to the construction of the building in which Council material was allegedly used. All work performed on the site had been extensively documented, and there were detailed records of materials purchased. In relation to steel used in the building, the records showed that it was provided by a supplier in a provincial town. In relation to the timber used, the records showed that it was supplied by a hardware store in the same town. The steel and timber were provided in accordance with specifications in the original architect's plans.

The consultant told investigators that he had had no interest in the building being constructed by his family. He said that he had not been involved in the construction of the building and had not ordered any equipment for it. In relation to the allegation that timber from Aboriginal Council D was used in the construction, he said that very little timber had been used in the building and that no material belonging to Aboriginal Council D had been used to his knowledge.

The consultant was questioned about the allegation that steel supplies had been provided for the building from Aboriginal Council D:

Q: . . . Same situation for the steel supplies for [the family's building], would the same situation be there?

A: Yes, I've heard of this before, that there was, that [the Council Clerk] said that in fact some of the [building] was built with reinforcing from [Aboriginal Council D]. This is a physical impossibility, because if you understand anything about how buildings like this are built, the steel was scheduled by [a supplier] . . . and what they do is they go through and they take the complete working drawings and they define every piece of mesh and metal in the building and then they quote that material and then they supply that material on order . . . It is impossible if you pay the total account of the schedule to not have used up all of the material supplied. It is something that's irrefutable . . . I've heard this before, it's a nonsense, and it's something that's absolutely irrefutable.

Conclusion

Despite extensive investigations, and despite the fact that rumours in relation to this allegation persisted in the community for many years, the Commission was unable to find any person who had any direct knowledge that property belonging to Aboriginal Council D was used in the construction of a building owned by the consultant's family. Every witness to whom the Commission was referred was found to have based their information on rumour and hearsay.

In the Commission's view, this rumour probably began to circulate after a Council truck travelled to the building site where the consultant's family was working to pick up scaffolding which the Council had purchased. Several witnesses, including the driver of the truck, agreed that this trip to the site occurred, but none could say that any Council material was taken from the truck or used on the site.

The Commission's investigation found no evidence to substantiate this allegation.

CHAPTER 8

Summary of conclusions and recommendations

Some of the problems which the Commission encountered in these investigations were unavoidable---the remoteness of the communities, the lack of accommodation and transport, and the difficulties in locating witnesses. Other problems encountered were, in the Commission's view, avoidable and could be alleviated by amendments to the legislation under which the Councils operate and by a willingness on the part of DFSAIA to enforce the provisions of the legislation.

The preceding chapters have set out in detail the results of the Commission's investigations of a number of allegations about each Council. The allegations canvassed in those chapters represented a cross-section of the total number of allegations investigated. Some of the conclusions reached in relation to those allegations will be referred to in this concluding section to illustrate the way in which the Commission's investigation of the Councils was largely frustrated by a lack of records, internal controls and accountability in some of the Councils. Not all of the problems encountered by investigators are capable of neat categorisation, but three main areas of concern emerged during the Commission's investigation in relation to the Councils. They were:

1. Deficient Financial Record-keeping;
2. Minutes of Meetings/Public Meetings;
3. Conflicts of Interest.

1. Deficient financial record-keeping

Background

"One step forward, and two steps back"

There is, in the Commission's view, considerable confusion about what sanctions, if any, attach to a Council's failure to keep proper financial records. It is clear that, in past years, the only practical sanction has been the possibility of being adversely mentioned in an Auditor-General's report. For many of the Councils, this sanction does not appear to have had any significant effect on the way in which they operated. Four of the six Councils which the Commission examined in this report

received qualified audit reports in 1992-93. Three received qualified reports in 1991-92, and three in 1990-91.

In relation generally to the Councils, there does not seem to be any discernible pattern in the history of their relationships with the Auditor-General, certainly not in relation to the question of which Councils receive qualified audit reports from year to year. With very few exceptions, the fact that a Council has received an unqualified report in a particular year does not guarantee that that trend will continue. It often means only that, in a particular year, qualified and efficient staff have kept the Council's records. In many Councils, favourable audit reports are dependent more on the quality of individual staff employed than on any constant and progressive improvement in the performance of the Council. As one staff member of the Auditor-General's office told investigators, the progress of the Councils is often a case of "one step forward and two steps back".

Until 1990, the financial accountability of the Councils relied upon their compliance with Ministerial Directions issued under the Financial Administration and Audit Act. Although the Commission's investigation found many instances where Councils had not complied with the Directions, it is unclear whether any sanction applies to such failure to comply. The Directions were treated by many Councils, and some auditors, as recommendations rather than prescriptive provisions. The Parliamentary Committee of Public Accounts noted in its 1990 report on the Councils that the legal status of the Ministerial Directions remained "unclear".

Councils' non-compliance with the Acts

In 1990, the legislation governing the Councils was amended to provide that each Council was required to produce and adopt an Administration and Financial Procedures Manual by 31 December 1992. As the Auditor-General's most recent report on the Councils noted, no Council had produced a manual by that date. According to DFSAIA, 11 Councils have now produced manuals and had them approved by the Auditor-General. Another 14 Councils have produced manuals which have not yet been so approved. The legislation provides that the manuals will take effect when they are formally adopted, by the Council Chairman signing a certificate to that effect. According to DFSAIA, no manuals have been formally adopted by the Councils. An officer of DFSAIA wrote to the Commission about this matter on 11 March 1994 in the following terms:

In my view, it is unlikely that many Councils will adopt their manual until personally visited by the Department to facilitate the adoption process.

The situation therefore remains that, as of the date of this report, no council has complied with the provisions of the legislation which required each Council to produce and adopt a manual by 31 December 1992. It is an offence for a Council to fail to comply with any provision of the legislation under which they operate, and the Director-General of DFSAIA is nominated in the Acts as the person who may commence a prosecution for any breach of the Acts.

The Acts under which the Councils operate also require each Council to prepare and adopt budgets for the funds they administer by 31 August each year. The Auditor-General noted in his most recent report on the audits of the Councils that not all Councils had complied with this provision. According to the Auditor-General, 8 Councils did not prepare budgets for 1992-93, while a further 3 prepared budgets only for certain funds. Of the 20 Councils which prepared full budgets, six adopted their budgets after the statutory deadline, while four did not do so at all. The failure of the Councils to comply with the provisions of the legislation under which they operate is an offence, and the Director-General of DFSAIA is nominated in the Acts as the person who may commence a prosecution for any breach of the Acts.

"Prosecution would not be appropriate..."

The Commission wrote to DFSAIA on 2 March 1994 requesting advice as to whether or not the Director-General had given any consideration to commencing prosecutions against the Councils which had failed to comply with the provisions of their Acts with respect to producing and adopting Administration and Financial Procedures Manuals and producing and adopting budgets. An officer of DFSAIA replied in these terms:

To the best of my knowledge no serious consideration has ever been given to prosecuting a Council over failure to comply with the provisions of the Act. In the particular case of procedures manuals, given the lengthy process involved in developing them, prosecution would not be appropriate at this stage.

However your comment about prosecution for failure to comply with the Community Services Act raises an interesting issue. Given the Department's policy position which sees the Councils being responsible for their own financial affairs and the Department pursuing compliance with the Act, the possibility of prosecution for failure to comply with the Act needs to be considered.

As you would appreciate, a decision to prosecute a Council for failing to comply with the provisions of the Act would need to be very carefully considered by the Director-General. Nevertheless, despite the relatively small penalty associated with such failure, prosecutions may, in certain circumstances, resolve an impasse over

compliance with the Act.

It is very difficult to investigate allegations of financial wrong-doing when there is no clear objective standard against which to measure the behaviour. There is presently, in the Commission's view, no effective sanction against Councils which fail to keep adequate financial and administrative records. The lack of such records was a real impediment to successfully investigating many of the allegations which were made to the Commission. Some examples drawn from the investigations outlined in detail in the preceding chapters are set out in the following section.

Deficient financial record-keeping---examples drawn from investigations

Example 1

Island Council A - Allegation 2

That the Council Chairman unlawfully obtained fuel and other supplies from the Island Industry Board Store and the Island Council without paying for same

Reaching a conclusion with respect to this allegation was hindered by a number of factors including:

- investigators could not establish with certainty the Council's "usual" procedures for storing fuel because of lack of records or formal procedures in relation to this issue;
- the Council's cash-received and debit records lacked detail;
- the Chairman's business records were similarly lacking.

Despite these uncertainties, the Commission was satisfied that many local residents had a clear perception that Council fuel was freely used by the Chairman for his private purposes, even to the extent of being regularly stored at his premises, and furthermore, that the Chairman at times "borrowed" Council fuel. However, deficiencies in both the Council's and the Chairman's records made it impossible to determine the circumstances of this "borrowing" and whether or not the Council was ever reimbursed for fuel used in this way. Given this unsatisfactory situation, there was insufficient evidence to support any charges against the Chairman.

Example 2

Island Council A - Allegation 3

That the Chairman and former Council Clerk were involved in sly-grogging (and other illegal activities)

As part of its investigation of the allegation of "sly-grogging", the Commission attempted to examine the operation of the Island's canteen. Investigators were able to confirm that the canteen suffered large losses during the first year of its operation.

Investigators were unable to delve more deeply into either the original large loss or any subsequent thefts and losses. As with other aspects of Council operations, financial records to support a proper investigation were either inadequate, missing or non-existent. In the circumstances, the Commission's investigation could find no evidence of either the Chairman's or the former Council Clerk's direct involvement in sly grogging, or of their alleged involvement in theft from the canteen.

Example 3

Island Council A - Allegation 6

That the Council Chairman used a Council-owned generator at his store

Although sometimes vague and offering inconsistent details, statements made by Island residents indicated that the Chairman had used a Council generator to provide power to his house and store, perhaps when his own generator had broken down.

The Chairman seemed at first willing to admit that he may have borrowed a Council generator, but when pressed on the issue, said that he had never used a Council generator.

Although there was no conclusive evidence to support the allegation, the investigation did highlight the poor state of Council record-keeping. The Council's assets register was poorly designed and maintained. It was impossible to determine exactly how many generators the Council owned and the register did not always record serial numbers and other identifying information which would have allowed a detailed comparison between Council purchases and the equipment then in the Council's possession.

In the absence of proper records, including a properly detailed assets register, the Commission found it impossible to reach a positive conclusion concerning this allegation.

Example 4

Island Council A - Allegation 7

That the Chairman's son improperly obtained a Council dinghy

The original allegations relating to this investigation were vague, and the statements that residents later gave to CJC investigators, although generally in agreement, disagreed on the detail, if they were able to provide any detail at all. The nub of the matter seemed to be that an Island woman had won a tender to purchase a dinghy and outboard from the Council but had been denied the opportunity to pay for and collect the goods. The tender had been awarded to one of the Chairman's sons.

Relevant documentation held by the Council, for example, assets register, tender files and Council minutes, was incomplete, confused, or lacking detail. Nonetheless, it raised concerns about either the manner in which the tender process was conducted or the accuracy of the Council's record-keeping. The announcement of the winning tender, according to the minutes, was made before the advertised close of the tender and before the winning tender by the Chairman's son had been submitted. In other circumstances, this anomaly may have been taken as evidence of impropriety in the tendering process, but the Council minutes could not safely be relied upon and could well have been mis-dated by mistake (as other minutes were found to be during the investigation).

Example 5

Island Council A - Allegation 9

That there were irregularities in the wages paid to the Chairman's oldest son

The allegations that prompted the Commission's interest in these matters suggested two irregularities in the Chairman's son's wages: that the son had received wages when he had been absent from the Island, presumably with the sanction of the Council Clerk and/or the Council Chairman; and that the Chairman had used his influence to supplement the son's wages by appointing him a policeman, in which position he had not performed any police duties.

The original complainant did not name the time during which these actions had taken place. Although other residents generally supported the notion that the son had received the wages of a community policeman but had not performed any related duties, they also could not say when the activity had occurred. Furthermore, there was some disagreement about the kind of work he had performed, if they thought he had done any work at all.

With respect to the first issue, the Chairman's son admitted he had been away from the Island for certain periods. Payroll records for 1987-1990 showed two periods during which he did not receive a wage. At least one of those periods was consistent with both the Chairman's and the son's accounts of his absence from the Island.

With respect to the second issue, the Chairman's son said that he had been a police officer for 6-12 months. He did not know why he became a police officer. He said he did not wear a police officer's uniform. His father, the Council Chairman, denied that the son had ever been employed as a policeman.

Council payroll records show that the Chairman's son was paid as a policeman on varying hours and at varying rates of pay from 01 July 1987 - 9 June 1988. However, investigators were not able to locate a duty statement to establish the kinds of duties performed by a community police officer. Furthermore, Council's payroll records were inconsistent or incomplete, especially so far as the Chairman's son was concerned. Investigators were unable to establish with any certainty the identity of the son's supervisor(s) or the wages clerk. A key Council employee of the time, the Council Clerk, could not be located. There was no information to establish the role, if any, that the Council Chairman may have played in allocating jobs.

Given these difficulties, there was insufficient evidence to substantiate the allegation.

Despite being unable to find evidence to support the allegations, the information presented to the Commission did raise serious concerns regarding aspects of the Council's management and operations, in particular, the apparent failure to consistently maintain timesheets and a poorly managed payroll system.

Example 6

Island Council B - Allegation 5

That a former Councillor had stolen funds from the Council canteen

Records showed that the Council may not have had an appropriate place from which to run the canteen. At various points, probably during the period when the former Councillor was in charge, the canteen operated from under the former Councillor/canteen operators' house, and subsequently from a badly secured shed.

The canteen ran at a major loss during the period that the former Councillor was operating the canteen---March 1987-June 1988. Explanations for the loss were many and varied:

- mismanagement of credit sales;
- mismanagement of cash sales and poor sales records;
- stock give-aways or discounting;
- low arithmetical skills on the part of sales assistants;
- poor security allowing theft of stock.

There was some evidence to support the claim that the canteen operator took a percentage of money from the sale of each carton, but this had apparently been done with Council approval. There was also some evidence to suggest that amounts of cash from beer sales may have been held in the canteen operator's home---according to the Chairman, the theft of money "amount unknown" from the canteen operator's house was one of the reasons for the canteen's loss.

A police investigation into the matter failed to identify anyone criminally responsible for the shortage and found no evidence to charge anyone with an offence.

Investigators found the administration of Island Council B to be in some disarray. There appeared to be no organised system of filing, and books and documentation were on top of cupboards and over the floor. Records from the Council Clerk's business were interspersed with Council records. Group certificates belonging to residents and relating to the previous two or three years were found on the floor behind filing cabinets.

In relation to this allegation, records for the period that the former Councillor was operating the canteen were similarly inadequate and could not have been used to support a prosecution.

Example 7

Aboriginal Council A - Allegation 5

That Council purchased equipment from an agency at grossly inflated prices in circumstances which suggested corrupt purchasing practices

From 1988 to 1992 Aboriginal Council A purchased equipment from a supplier to a total amount of \$452,000. Many of the items the supplier sold to the Council were obtained from companies that the Council itself could have approached directly. If Council staff had made those approaches, the Council would have paid considerably lower prices than its usual supplier was charging. Inquiries made by investigators revealed that a competent purchasing officer who was prepared to telephone other companies could have bought the same equipment at substantially lower prices.

The Council paid substantially more for directing its purchases through the supplier. Some witnesses suggested to investigators that the Works Supervisor was responsible for directing orders to the supplier.

The Works Supervisor said that he always had approval for any orders he placed, but it is clear from his interview that sometimes this would have been in the form of verbal approval from the Chairman, Deputy Chairman or Council members.

Financial analysts attempted to determine whether any secret commission or corrupt payment had been paid by the supplier to the Works Supervisor in order to secure orders. No evidence was found of any such payments. It would be difficult to determine whether or not payments were made if, for example, payments were made in relatively small amounts of cash over a period of time. For much of the period during which the Council dealt with the supplier, there appear to have been no internal written guidelines for purchasing procedures. Witnesses spoke of occasions where orders placed without Council approval were ratified some months later at a Council meeting. The Ministerial Directions provided that written quotations should be obtained for purchases of more than \$3,000, but the Council Clerk, like many witnesses interviewed by investigators, considered that these directions were "recommendations only". The Council's long relationship with this supplier, and the grossly-inflated prices charged, are highly suggestive of major inefficiency on the part of some of those responsible for the Council's purchasing practices.

However, the investigation revealed no direct evidence of the supplier making corrupt payments to any person connected with the Council and it was not possible to build a case based on circumstantial evidence because of the general laxity in

the ordering process that the Council followed for much of the period of its dealings with the supplier.

Example 8

Aboriginal Council B - Allegation 2

That Council-owned machinery was used on private property at no charge or at an unrealistically low charge, and that large groups of CDEP workers were used on private properties

In relation to the allegation that Council machinery had been used to the benefit of private individuals, investigation disclosed that:

- Council machinery has been used on properties for non-Council activities.
- In at least some instances, residents paid the Council for the use of Council machinery. However, due to the lack of records on the use of Council machinery by private individuals, the Commission could not determine whether those using it always paid a hire charge or if the fee they paid was a uniform one.

In relation to the use of CDEP workers on individual properties, the Commission found that:

- Prior to 10 July 1993 it was Council policy to allow workers funded by CDEP to be employed in privately-operated business enterprises.
- Due to the state of Council records, it was not possible to determine whether those gaining personal profit or advantage from the use of CDEP labour ever reimbursed the Council.

Although the possibility of favouritism in the use of Council equipment and allocation of CDEP workers was clearly a matter which concerned members of the community, it was impossible to determine from the Council records whether such favouritism occurred.

Example 9

Aboriginal Council C - Allegation 3

That the Deputy Chairman chartered a flight at Council expense to attend a funeral in a private capacity

This investigation highlights the difficulty of investigating matters when related documentation is either incomplete or missing and the investigation must rely on the statements of witnesses. In the present case, the memories of many of the witnesses seemed to improve, rather than deteriorate, with time. One witness who was closely associated with the booking of the charter gave three slightly different accounts of the sequence of events.

On the strength of statements made to the Commission, there is very little doubt that the Deputy Chairman did indeed make a return trip on a charter flight to another Aboriginal community in order to pay his respects at a relative's funeral. There was general agreement that he attended the funeral in a private capacity, not as a representative of the Council.

The Commission is satisfied that neither the Clerk, the Accountant, the Chairman, nor the Council gave any approval, either written or verbal, for the charter to be booked as a Council expenditure. However, the investigation failed to find conclusive evidence to verify or support the Auditor-General's statement concerning the manner in which the Deputy Chairman effected the booking of the charter.

The charter seems to have been the subject of an order form. How the Deputy Chairman secured a blank order form---the Accountant claims to have retrieved the Council's various order books and secured them with himself and the Clerk---remains unclear. Likewise, the identity of the person who completed the order form remains unclear. Statements by the auditors, who could recall seeing the order form, supported the fact that the order form bore only one signature. Both the Clerk's and Accountant's statements on this matter were unreliable.

The Auditor-General's report stated that the Deputy Chairman had misrepresented a verbal approval by the Clerk with the air agency operator in order to secure the booking. No witness interviewed in relation to this matter made a similar assertion. The air agency operator, who would have had first hand knowledge of the exchange between him and the Deputy Chairman, claimed he could not remember anything about the matter. In the Commission's view, the suggestion that the Deputy Chairman may have "stood over" the air agency operator in order

to effect the booking must remain conjecture. The operator remembers nothing of the transaction, and the Deputy Chairman refused to be interviewed.

This investigation generally confirmed the Auditor-General's conclusions concerning the personal nature of the charter flight, the lack of Council approval for the charter and the Deputy Chairman's personal authorisation of the order form. If the investigation had been able to show that the Deputy Chairman had misrepresented the Clerk's approval to the air agency operator, there may have been grounds for a criminal prosecution. Similarly, if the investigation had been able to show with certainty that the Deputy Chairman had "stood over" the air agency operator to effect the booking, this may also have been grounds for prosecution.

But given the conflicting statements on this issue, and the complete lack of documentary evidence about the circumstances surrounding the charter, there was insufficient evidence to recommend prosecution.

This investigation led to some unsettling observations on Council administration and community life. The first concerned the state of the Council's financial administration. Its inefficiency was perhaps well-illustrated by the disappearance of all records concerning the charter flight (unless, of course, someone deliberately effected their "disappearance").

The second concerned the Council's policies and procedures. Relevant rules, directions, and guidelines appeared to mandate no particular policy or procedure for the booking of airline tickets and charters at Council expense. The Council seems to have developed an ad hoc approach to the matter: the investigation failed to establish exactly what procedure should have been followed for booking the charter, a problem that the auditors had earlier faced themselves. The lack of Council policy on this matter would have further complicated any attempt to mount a successful prosecution.

During the course of interviews, the Clerk claimed that until the audit he did not understand precisely what his responsibilities were under the applicable legislation and guidelines. In any case, he seemed to suggest that his authority was constantly undermined or ignored in the community, if not deliberately by the Deputy Chairman then inadvertently by other Councillors. In the Commission's experience with this and other Councils, he was not alone. The process of ordering owed more to personalities, lack of security on order books, and whim, than guidelines, and the circumstances of this particular transaction may not have been much different from many other purchases that the Council made.

Deficient financial record-keeping---recommendation

The Commission considers that it is essential from an investigative point of view that the financial procedures which bind the Councils be given force of law as soon as possible.

The Commission recommends that the Director-General of the DFSAIA take immediate steps (including, if necessary, prosecution proceedings) to ensure that each Council complies with its duty under the Community Services Acts to produce and adopt a Financial and Administration Procedures Manual as a matter of priority, in accordance with the Director-General's duty to administer the Acts under which the Councils operate.

2. Minutes of meetings/public meetings

Background

Many of the difficulties which the Commission encountered in investigating allegations against the Councils arose because minutes of Council meetings were either confusing, lacking in detail or non-existent.

Some of the allegations which were made to the Commission were clearly based on rumour and hearsay which was, to a large extent, generated by community members not being aware of decisions made in Council, or the reasons behind those decisions.

In the Commission's view, it is essential that the Acts under which the Councils operate require the Councils to hold regular meetings, keep accurate minutes of the meetings, have the minutes signed and adopted at the next meeting of Council, and make the minutes available for public inspection. These requirements are no more onerous than those contained in the Local Government Act, which governs the conduct of meetings by mainstream local authorities. Apart from the problems which the absence of coherent, reliable minutes can cause during an investigation, it is difficult to see how the Councils can be seen to be accountable to the communities they serve, unless they observe these fairly minimal requirements with respect to meetings.

Some examples which relate to this issue, drawn from the investigations outlined in detail in the preceding chapters, are set out in the following section.

Public meetings/minutes of meetings---examples drawn from investigations

Example 1

Island Council B - Allegation 7

That the Council failed to make records of meetings available to the public

One of the issues which the Commission examined in relation to this Council was whether or not a public meeting was held at which residents approved the purchase by the Council of some equipment. During this investigation, some residents raised with investigators the fact that they were not allowed to see minutes of Council meetings. Questioned about this topic one resident said:

No. They don't give no minutes to the people of [...]. They don't give no minutes. ...In the last six years when [...] and [...] been in the Council and even before that, even you can go back for 20 years, nobody get any minutes or things ...

The Chairman confirmed the residents' perception that Council minutes were not available and seemed prepared to defend the practice as part of the Island way of life:

- Q: Yeah, but do you put a copy of the minutes up, a photocopy up on the wall for people to read so they know what's going on?
A: Everybody know what's going on.
Q: Yeah, is it only word of mouth?
A: (ui) a public meeting. But that's our way of life.

The Commission learned that Council meetings were held at the Council office and, with minor variations, seem to have been held with some consistency every fortnight or so. However, these meetings were closed to the public. With little or no information about Council proceedings available, rumours of corruption and nepotism grew quickly, were embellished and flourished almost unchecked.

The Commission cannot pretend to have the same understanding or insights into the management of community affairs as Councillors. Nonetheless it finds it hard to understand how "way of life" or "culture and tradition" could justify the lack of openness with which Council administration and decision-making were evidently carried out on Island B.

Unlike mainstream local authorities, Island Councils were not required under their governing legislation to make the minutes of their meetings available for public

perusal. Under present legislation and guidelines they are still not required to do so. In the Commission's view, this should be changed.

Example 2

Aboriginal Council A - Allegation 1

That funds allocated to the Council for the construction of a fire station were not used for that purpose and had not been accounted for

It was clear from the interview with the complainant who made this allegation that he had no personal knowledge about the matter and had relied entirely upon what his brother had told him about the alleged misuse of funding for the fire station. Investigators established that funds received by the Council had been used for their intended purposes. This allegation, like many investigated by the ATSI Task Force, was an example of a rumour which assumed the proportions of fact in some people's minds, largely because Council decisions had not been regularly conveyed to the wider community.

Example 3

Aboriginal Council A - Allegation 2

That the Council-funded major extensions to a business operated as a private enterprise by the Council Chairman, and that the Chairman used his influence with the Council to obtain Council accommodation for an employee of that business

There is no doubt that the Council paid for extensions to a Council-owned service station leased to the Chairman for private enterprise. The Chairman stated that he requested Council funding for the extensions in his capacity as tenant of the garage and that the extensions had been approved at a Council meeting. Council minutes were ambiguous to say the least. All that can be said with any certainty is that a motion of some kind about a quote for extensions to the service station was carried. While members of the community may well have been justified in suspecting favouritism in the Council's approval of these extensions, there is no clear evidence that the Chairman improperly used his position to obtain the approval. He denies that he did so, and he was not present at the meeting where the quote for the extension was apparently accepted by Council.

The minutes show that the Chairman did attend at least some of the meetings during which the Council discussed the allocation of a Council house to his employee. He clearly had a conflict of interest in this matter.

In this case it was impossible to determine from the minutes whether a disclosure of this conflict of interest was made, and whether or not the Chairman absented himself from discussions. It appears clear that on at least one occasion he did absent himself, but his absence is not recorded in the minutes.

Although the Council appears to have kept minutes for all its meetings, the quality of those minutes left much to be desired. For example, as far as the present case was concerned, the minutes did not show whether or not the Chairman was present for some or all of the discussions of the matters in which he had an interest.

If the Council had properly recorded the basis for its decisions in the minutes and made those minutes available for public inspection, community members' suspicions about the Chairman's possible influence in both these matters could have been reduced and perhaps dispelled.

Example 4

Aboriginal Council B - Allegation 1

- a) That the Chairman of Aboriginal Council B borrowed \$36,000 from a Government grant intended to be used to develop a by-laws program, and obtained a bank loan to repay the amount prior to audit; and
- b) that a community resident was provided with a Government grant to establish local by-laws and was at the same time receiving CDEP funding through the Council

The Commission's investigation into these allegations showed that:

- Aboriginal Council B received a \$39,000 government grant to undertake a by-laws project.
- A community member appointed by the Council to undertake research for the by-laws project was paid from the government grant provided.

The Commission found no evidence that the community member received CDEP wages at the same time that he was in receipt of income from the government grant. Similarly, there was no evidence that the Chairman of the Council borrowed

any funds from the by-law grant funds, or that he later attempted to obtain a loan in order to repay such funds prior to an audit being undertaken.

This allegation was another example of the sort of rumours which abounded in Aboriginal communities where members had no clear understanding of how their Council operated, or the basis upon which Council decisions were made. If minutes of the Council meetings where this grant was discussed had been made available for public inspection, the community may well have been better informed about the truth of the matter.

Example 5

Aboriginal Council C - Allegation 2

That the former Clerk had manufactured inaccurate sets of minutes for meetings held by Aboriginal Council C

Whilst many of the Councils which the Commission investigated kept minimal or no minutes of meetings, in the case of Aboriginal Council C the Commission was confronted with a confusing array of minutes. Some of these sets of minutes duplicated others and, in some instances, contradicted them.

The Commission's investigation into this matter encountered several unresolved questions of fact. The first concerned how the minutes examined by the Commission came into the Council's possession. The auditors' recollections of events during their examination of the Council's accounts were vague. Their statements indicate that the former Clerk may have given them some minutes and that the "new" Clerk also gave them some minutes.

The auditors could not recall having seen some of the minutes which were produced to Commission investigators. This may indicate that more minutes had been produced, or that existing minutes were altered, after the auditors' departure from the Council.

Identifying the source of the minutes was not helped by their failure to consistently identify the minute taker.

Considerable time has passed since the minutes in question were written and witnesses' memories of incidents that led up to the auditors' visit have already begun to fail. In the Commission's view, there is little doubt that the minutes prepared by the former Clerk were inaccurate and did not reflect the meetings which they purported to record. However, given the problems with both witnesses

and available documentation, the Commission could not recommend any criminal or disciplinary action against any person in relation to the preparation of these inaccurate minutes.

Public meetings/minutes of meetings--- recommendation

The Commission recommends that the Community Services Acts be amended to require that Councils:

- hold regular meetings, which will be open to the public except when the 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.

3. Conflicts of interest

Background

Most of the allegations made to the Commission related either directly or indirectly to perceptions in communities that Councillors were using their positions to benefit themselves or their relatives or friends. In many of the communities examined, the Council has effective control of all private enterprises and much of the work force. In those circumstances, proper pecuniary interest provisions are essential, in the Commission's view, to allay community concerns about Councillors using their positions for pecuniary gain. The Commission does not see any logical reason why the Councils should not be subject to pecuniary interest provisions in terms similar to those which bind mainstream local authorities. In fact, in small communities where many of the residents are related and the Council exercises such substantial control over the lives of the residents, clear pecuniary interest provisions are probably even more necessary than in the mainstream councils. The present legislation provides that Councillors must declare pecuniary interests but, unlike the Local Government Act, does not require the keeping of a pecuniary interest register. Investigation of allegations of failure by Councillors to declare pecuniary interests would be greatly facilitated by the keeping of such a register.

Unlike the new Local Government Act 1993, legislation relating to Aboriginal and Torres Strait Island Councils does not provide for exclusion from office of a Councillor who is convicted of failing to declare a pecuniary interest. In the Commission's view, such a provision could act as a deterrent to Councillors who were minded to use their positions for pecuniary gain.

The present legislation does not provide that Council employees should declare pecuniary interests in contracts before Council. In one case which the Commission examined in relation to these Councils, a Council employee sold goods to the Council through a company which he operated, in circumstances which gave rise to a considerable conflict of interest on his part. Under the present Acts, he was not required to declare any interest. In the Commission's view, the pecuniary interest provisions of the Community Services Acts should be amended to provide that Council employees are required to declare pecuniary interests, in terms similar to the provisions of the Local Government Act.

Some examples of perceived conflicts of interest by Councillors or Council employees drawn from the investigations outlined in detail in the preceding chapters are set out in the following section.

Conflicts of interest---examples drawn from investigations

Example 1

Island Council B - Allegation 4

That the Council purchased mobile accommodation and other equipment at inflated prices from a company directed by the Chairman and Deputy Chairman

A considerable amount of time has elapsed since the purchase the subject of this allegation took place. Even in 1991, it appeared that some of the property had been lost or misplaced and an independent estimate of its value would have been extremely difficult. Nonetheless, in the Commission's view, the evidence suggests that the Council was *extremely generous* in the amounts it paid for the equipment. The fact that the equipment was being purchased from a company directed in part by the Chairman and Deputy Chairman can only have contributed to residents' suspicions that Councillors would benefit personally from the sale. Rumour had apparently already increased the purchase price by \$10,000 and expanded the number of items covered in the purchase.

Whilst it is clear that the Chairman and Deputy Chairman took part in the Council decision to tender for the equipment, and were involved in the company which stood to benefit from the sale, the legislation governing the Council at the time did not require pecuniary interests to be declared.

Many of the Torres Strait communities have less than 200 residents of voting age. Members of the Councils are often related, though perhaps not so closely or consistently related as on Island B. This investigation in particular highlights the problems that this causes for these communities in managing their affairs in accordance with the legislation and the usual customary procedures to ensure the integrity and accountability of its elected representatives.

Example 2

Island Council B - Allegation 6

That the Council gave favourable treatment to a relative regarding the purchase of equipment

Although Council minutes showed that the community had been consulted about the purchase of the gym equipment during a public meeting, in the Commission's view there is some reason to believe that the meeting's attendees may not have been fully representative of the community as a whole and perhaps were more disposed to approve the purchase than members of the general community.

The Council's decision to purchase the equipment to encourage physical health and community spirit was an admirable one. Yet, if some residents can be believed, very few, if any, people used the equipment when it was available for \$5/hour, and apart from a brief period of use by footballers, after it was sold to the Council it fell into complete disuse.

The purchase of the equipment was to some extent carried out in accordance with Ministerial Directions. However, contrary to the Ministerial Directions, the Council did not call for the three quotations required for purchases of more than \$3,000. There was no evidence to suggest how the Council arrived at the purchase price of \$9,120.

In the circumstances, there is not sufficient evidence to conclude that the Council's action amounted to favourable treatment of the Deputy Chairman's relatives as opposed to merely disregard, lack of understanding, or ignorance of the Ministerial Directions.

Example 3

Aboriginal Council A - Allegation 2

That the Council-funded major extensions to a business operated as a private enterprise by the Council Chairman, and that the Chairman used his influence with the Council to obtain Council accommodation for an employee of that business

There is no doubt that the Council paid for extensions to a Council-owned service station leased to the Chairman for private enterprise. The Chairman stated that he requested Council funding for the extensions in his capacity as tenant of the garage and that the extensions had been approved at a Council meeting. Council minutes were ambiguous to say the least. All that can be said with any certainty is that a motion of some kind about a quote for extensions to the service station was carried at a Council meeting. While members of the community may well have been justified in suspecting favouritism in the Council's approval of these extensions, there is no clear evidence that the Chairman improperly used his position to obtain the approval. He denies that he did so, and he was not present at the meeting where the quote for the extensions was apparently accepted by Council.

The minutes show that the Chairman did attend at least some of the meetings during which the Council discussed the allocation of a Council house to his employee. He clearly had a conflict of interest in this matter.

Since 1990 the Community Services (Aborigines) Act has contained a provision similar to the Local Government Act, making the failure to declare a pecuniary interest an offence. Unlike the Local Government Act, which applies to mainstream local authorities, the Community Services (Aborigines) Act does not require the Council to keep a pecuniary interest register or make it available for inspection. Rather, it requires that Council members disclose conflicts of interest, that these disclosures be recorded in Council minutes, and that members not be present for or take part in discussions on those issues.

In the present case it is impossible to determine from the minutes whether such disclosure was made, and whether or not the Chairman absented himself from discussions. It appears clear that on at least one occasion he did absent himself, but his absence is not recorded in the minutes.

Although the Council appears to have kept minutes for all its meetings, the quality of those minutes left much to be desired. For example, as far as the present case was concerned, the minutes did not show whether or not the Chairman was present for some or all of the discussions of the matters in which he had an interest. In

the absence of a requirement that the Council keep a pecuniary interest register, it is also difficult to determine what interest, if any, the Chairman declared during discussions in respect of this matter. It is clear that he had an interest in obtaining accommodation for his employee and that he may have taken part in some discussions about the matter at Council meetings. But in the absence of a pecuniary interest register, and reliable minutes about his presence at meetings where the issue was discussed, there is not sufficient evidence to determine whether the Chairman has breached the pecuniary interest provisions of the Community Services (Aborigines) Act.

Example 4

Aboriginal Council A - Allegation 3

That Council funds and equipment were used to maintain a road to an area where the only full-time residents are the sister and brother-in-law of the Council Chairman

This allegation, like several other allegations made to the Commission, seemed to be based on hearsay and inaccurate information. The Commission's investigation disclosed that community members other than the Chairman's relatives used the road in question and that it was a public road which the Council was required to maintain. The use of Council equipment to maintain the road was not, therefore, improper. The allegation does, however, indicate the concern community members felt about Council decisions being made where Councillors may have had conflicts of interest in the matter.

Example 5

Aboriginal Council B - Allegation 3

That the Chairman of Aboriginal Council B was allowed to lease a Council-owned business to operate as private enterprise, and that he was lent \$28,000 by the Council to assist in the operation of the business

At the time of his negotiations to lease the Council service station the person the subject of this allegation was either Chairman of or a member of Aboriginal Council B. The minutes show that he was present at several Council meetings during which the proposed lease was discussed but they do not indicate that he has absented himself or refrained from taking part in discussions. In fact, it is clear that at a crucial meeting during which the Council decided to grant him a loan of

the service station's stock on hand, there were only three Councillors present to vote on the issue, including the prospective lessee.

The loan to the Chairman was a breach of the Ministerial Directions, but there is some doubt as to whether or not any sanction applies to failing to comply with these Ministerial Directions. Certainly, many persons interviewed in Aboriginal and Island communities considered that the Ministerial Directions were "only recommendations".

At the time of the Council meetings about the lease, the Chairman's failure to declare a pecuniary interest and absent himself from the meetings was not an offence. As a result of a Public Accounts Committee recommendation, in 1990 the Community Services (Aborigines) Act was amended to include a pecuniary interest provision in terms similar to the Local Government Act provision. Members of Aboriginal Councils are now required to declare pecuniary interests, and to take no part in the discussion of matters in which they have an interest.

Unlike mainstream local authorities, Aboriginal Councils are not required to keep a pecuniary interest register or to make the register available for inspection on request. In the Commission's view, there is no logical reason why Aboriginal Councils should not be required to keep a pecuniary interest register in terms similar to the provisions of the Local Government Act.

While the community members who made this allegation clearly had reason to be concerned about possible favouritism in the Council's business dealings with its Chairman, in view of the fact that there were no pecuniary interest provisions binding Council members at the time of these meetings, there is no evidence of any criminal or disciplinary offence by the Chairman.

Example 6

Aboriginal Council C - Allegation 1

That the former Council Clerk had an undisclosed pecuniary interest in the sale of personal video equipment through his company to the Council; and that the former Council Clerk sold the video equipment to the Council at an inflated price

Evidence presented to the Commission clearly shows that the purchase of the video equipment did not conform to any understanding of "good management practices" and that, in the Commission's view, the former Clerk set aside his responsibility to the Council and acted entirely in his own interest. He used his company to sell a

personal second-hand video camera and related equipment for more twice the cost of current model equipment. The price the Council paid was quite likely more than his wife had originally paid for the equipment two years prior to its re-sale to the Council.

Whether the video equipment was represented as new equipment is difficult to say, because no-one other than the Department's then Executive Officer could recollect any discussion of the matter at the time the purchase was made. The Chairman and another Councillor in particular had no knowledge of the matter. The invoices prepared by the former Clerk made no mention of the equipment's age or state of repair.

Some aspects of the purchase of the video equipment contravened Ministerial Directions. This would not have been unusual. According to the Auditor-General's report, much of the Council's administration left a great deal to be desired and would possibly have also been in contravention to the Ministerial Directions. But the failure to follow the Ministerial Directions attracts no sanction or penalty. Under the legislative framework at the time, neither would the former Clerk's actions in selling the camera to the Council, in particular, signing the cheque that paid for the equipment.

In the Commission's view there is good reason to believe that the Council was unaware of the entire transaction until the auditors raised it during their visit to the Council. Certainly, there is no evidence to suggest that the Council had been informed of the transaction in any conventional way. Although it was suggested that the Chairman's signature on the cheque which paid for the equipment may not have been genuine, the circumstances in which the cheque was signed, like other aspects of the evidence, pit one witness's recollection against another and no positive conclusion could be reached.

Despite incontrovertible evidence to show that the Clerk directly benefited by involving the Council in a transaction in which it paid significantly more for equipment than it needed to pay, the Community Services legislation does not require Council employees to declare pecuniary interests in matters before Council. Given this fact and the state of the evidence, the Commission was forced to conclude that no criminal or disciplinary proceedings could be recommended in this matter.

Conflicts of interest---recommendation

The Commission recommends that 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.**

Summary of recommendations

1. **The Commission recommends that the Director-General of the DFSAIA take immediate steps (including, if necessary, prosecution proceedings) to ensure that each Council complies with its duty under the Community Services Acts to produce and adopt a Financial and Administration Procedures Manual as a matter of priority, in accordance with the Director-General's duty to administer the Acts under which the Councils operate.**
2. **The Commission recommends that the Community Services Acts be amended to require that Councils:**
 - **hold regular meetings, which will be open to the public except when the 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.**
3. **The Commission recommends that 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.**

Postscript

On 9 June 1994, the Minister for Family Services and Aboriginal and Islander Affairs tabled a report in Parliament responding to Report No. 27 of the Parliamentary Committee of Public Accounts. The PAC report was released on 3 December 1993 and related to the financial administration of Aboriginal and Island Councils. The Minister's report to the Committee addressed in part the concerns about Council meetings and minutes which led to the Commission's second recommendation at the conclusion of this report (see page 405). The Minister indicated in her report in relation to that issue:

Most Councils are fully aware of the need to hold meetings and to accurately record the outcomes, and newly elected Councillors have been informed that regular meetings are an integral component of an accountability regime. This matter will be addressed by way of legislative amendment which will specify that Councils must hold a minimum number of meetings during the financial year and produce accurate minutes of those meetings.

The Commission welcomes this proposed amendment, but notes that it does not address the important issue of whether or not Councils should be required to make minutes of their meetings available for public inspection.

The Commission's remaining recommendations have not been specifically addressed in the Minister's response, although she notes in relation to the Councils' failure to adopt Financial and Administrative Procedure Manuals as required by the Community Services legislation that this is a matter which, inter alia, will "have to be addressed".