

The Parliament of the Commonwealth of Australia

**Review of Auditor-General's
Audit Report No. 29, 1989–90,
Aboriginal Affairs Portfolio**

House of Representatives
Standing Committee on Aboriginal Affairs
December 1990

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EXTRACTS FROM THE VOTES AND PROCEEDINGS
No. 4 dated Monday 14 May 1990

**AUDITOR-GENERAL'S REPORTS - PUBLICATION OF PAPERS AND
REFERENCE TO COMMITTEE:**

Mr Speaker presented the following paper:

Audit Act - Auditor-General - Audit report No.29 - 1989-90 - Aboriginal
Affairs Portfolio

Mr Beazley (Leader of the House), by leave, moved - that:

...

(3) the report be referred to the Standing Committee on Aboriginal Affairs

Question - put and passed

MEMBERSHIP OF THE COMMITTEE

Chairman	Mr D J C Kerr MP
Deputy Chairman	Dr M R L Wooldridge MP
Members	Mr J D Anderson MP Mr G D Gibson MP Mr M H Lavarch MP Mr P E Nugent MP Mr J L Riggall MP Mr R W Sawford MP Mr L J Scott MP Hon W E Snowdon MP
Secretary to the Committee	Mr A J Kelly
Inquiry Staff	Ms W Allen Ms S Hourigan Mr P Ratas

CONCLUSIONS AND RECOMMENDATIONS

The Committee finds that:

- 1 The committee finds that the occupation of the land by traditional owners does not necessarily preclude a business enterprise being conducted concurrently as few of those occupying the land may be involved in or affected by the enterprise. The Audit Office nonetheless will in the future need to continue to examine whether funds expended under either section are spent in accordance with the provisions of those sections. The Audit Office needs to be mindful that two or more sections may be operating concurrently.
- 2 Investments should appear in the balance sheets at their current value. The committee further believes that audit reports which would be available to shareholders, such as the Australian Valuation Office, should be made available to ANAO by the shareholders being audited.

The Committee recommends that:

- 1 Where possible, local valuers, anonymously instructed, be engaged to prepare pre-purchase valuations where for reasons of affordability it is not appropriate to have agents of the Australian Valuation Office make local inspections.
- 2 Prior to purchase Aboriginal and Torres Strait Islander Commission consider any non-commercial factors which may apply to an acquisition and formally determine a ceiling limit for acquisition taking all factors into account.
- 3 The Aboriginal and Torres Strait Islander Commission and the Australian National Audit Office continue to review the viability and effectiveness of Trelawney as an investment.
- 4 The strategic rationale for the economic and social objectives of a project be clearly set out so that the performance of the project can be appropriately assessed.
- 5 Should the audit report for 1989-90 be again critical of the accounting system, of the Australian Institut of Aboriginal and Torres Strait Islander Studies outside assistance should be sought on the selection and acquisition of a suitable system or enhancement of the current system.

INTRODUCTION

1.1 The report of the Auditor-General - Audit Report No.29, 1989-90, Aboriginal Affairs Portfolio, was referred to the committee by the House of Representatives on 14 May 1990.

1.2 The committee sought responses from the four agencies covered by the report:

- Aboriginal and Torres Strait Islander Commission (ATSIC was asked to respond on those Aboriginal Development Commission matters for which it had been given responsibility)
- Aboriginal Hostels Limited
- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS was asked to respond on behalf of its predecessor, the Australian Institute of Aboriginal Studies)
- Edward River Crocodile Farm Pty Ltd

1.3 A public hearing was held on the inquiry on 24 August 1990 at which representatives of the Aboriginal and Torres Strait Islander Commission, Aboriginal Hostels Limited, the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Australian National Audit Office gave evidence. The list of witnesses who gave evidence at the public hearing is at Appendix 1.

1.4 In reviewing the Audit report the committee did not attempt to undertake a detailed review of the efficiency and effectiveness of the programs and agencies mentioned. Rather, the committee only addressed the issues raised in the Auditor-General's report.

1.5 Audit Report No.29 appeared shortly after a period of intense scrutiny of financial accountability in the administration of Aboriginal Affairs.

1.6 On March 5 1990 the *Aboriginal and Torres Strait Islander Commission Act 1989* established the Commission to replace the Aboriginal Development Commission and the Department of Aboriginal Affairs.

CHAPTER 2

ABORIGINAL DEVELOPMENT COMMISSION

2.1 A number of matters concerning the Aboriginal Development Commission (ADC) were raised in the Auditor-General's report. As the ADC's establishing Act was repealed with effect from 5 March 1990 with the creation of the Aboriginal and Torres Strait Islander Commission (ATSIC) the committee sought responses from ATSIC on those ADC matters for which it has continuing responsibilities.

2.2 While responding on most items, ATSIC stated that it believed it to be inappropriate for ATSIC to comment on those matters which related primarily to the ADC's legislation, policies and procedures which are no longer in force and which were the responsibility of the ADC Board at the time of the audit¹.

Atula Station, Tanami Downs and Trelawney

2.3 The audit report on the financial statements was qualified in respect of payments made for the purchase and operations of Atula Station, Tanami Downs and Trelawney. In ANAO's opinion "payments to finance operations on these properties were made for the future benefit of Aboriginals and not for the purpose of enabling Aboriginals to engage in business enterprise as required by section 24 of the ADC Act"².

2.4 Atula Station and Tanami Downs were acquired by the ADC under section 23 for the purpose of enabling Aboriginals to occupy land but then financed under section 24 for the purpose of enabling Aboriginals to engage in business. The ANAO's report regarded sections 23 and 24 of the Act as mutually exclusive provisions. The ANAO argued that at best it was not clear that the Parliament intended that the purposes could be merged as ADC appeared to have done in respect of the two properties³.

¹ Evidence, p.55

² Audit Report, paragraph 1.4

³ *ibid*, paragraph 1.8

2.5 While there is no explicit provision that sections 23 and 24 of the ADC Act could be applied to the same property, neither is there any provision suggesting they cannot be exercised concurrently. As similar provisions exist in the ATSIC legislation, ATSIC sought a legal opinion from the Attorney-General's Department on the application of these provisions.

2.6 In an advice to ATSIC dated 4 October 1990 the Attorney-General's Department stated:

You seek my advice on whether the view you express in your memorandum as to the relationship between sections 14, 15, 16, 17 and 18 of the Act ('the specified sections') is correct. You take the view that the powers conferred on the Commission by those sections are not mutually exclusive and that the Commission is not precluded from exercising powers under more than one of the specified sections to provide funding for 'a collective purpose'. (I understand you to mean objectives such as the example you have cited of separate grants being provided to enable an eligible corporation to achieve the dual purposes of acquiring land and conducting a business enterprise on that land.) In my opinion, your interpretation is correct⁴.

2.7 The committee finds that ANAO misapprehended the law.

2.8 That it was legal for two different sections of the Act to be applied concurrently is not an excuse for a lack of rigour. Where two heads of power may each support particular expenditure, additional care must be taken to ensure that a grant is properly made with mutually agreed objectives. For that reason we took evidence in relation to ANAO's comments regarding "confusion" in the acquisition process.

2.9 Speaking of Tanami Downs the Audit Office said:

... it seemed to be a rather confused acquisition of land. It was purchased for special purposes, for Aboriginals to occupy the land, and then it was apparently changed to a business enterprise. So the valuation comes back to apparently a business enterprise. Not a special purpose at all, or was it both? We cannot be sure⁵.

⁴ Evidence, pp 87-90

⁵ Evidence, p 46

2.10 In response ATSIIC advised that Tanami Downs now employs a non-Aboriginal manager, an Aboriginal assistant manager and four full-time Aboriginal station hands. A development plan is in place and ATSIIC says community support is strong. ATSIIC expects that funding of the enterprise will cease in 1991-92 provided average seasons occur over the next two years.

2.11 ATSIIC further advised that as yet there is no community infrastructure in place to allow all community members who would like to move to Tanami to relocate. Plans are in place to establish three outstations to satisfy the relocation requirements of traditional owners⁶.

2.12 The committee finds that:

the occupation of the land by traditional owners does not necessarily preclude a business enterprise being conducted concurrently as few of those occupying the land may be involved in or affected by the enterprise. The Audit Office nonetheless will in the future need to continue to examine whether funds expended under either section are spent in accordance with the provisions of those sections. The Audit Office needs to be mindful that two or more sections may be operating concurrently.

Tanami Downs

2.13 The Auditor-General also queried the amount paid for Tanami Downs which was purchased in May 1989 for \$2.6 million. The Australian Valuation Office (AVO) valued the property before purchase at \$1.5 million and the ADC's rural extension officer estimated that the property would be sold for "not less than \$1.5 million and more likely \$2 million."⁷

2.14 As only two weeks remained before the auction and it was important not to advertise the Aboriginal interest in the property, the valuation was done by the AVO from its Adelaide office without going on-site⁸.

2.15 When ANAO queried the purchase price ADC advised that it had previously been unsuccessful when relying on a valuation below the value ultimately achieved at auction. At the Tanami Downs auction the ADC bid anonymously. There was spirited bidding commencing at \$1.8 million and it was passed in at \$2.3 million. It is however, an accepted convention that the vendor can bid up to the reserve

⁶ Evidence, p 85

⁷ Audit Report No.29, paragraphs 1.9-1.10

⁸ Evidence, pp 11-14

price. The property was ultimately purchased by private negotiation⁹.

2.16 The ADC had been caught out earlier when only allowing a 10 percent margin on top of an AVO valuation and missed out on irreplaceable land. Advice sought from the Australian Property Group of the Department of Administrative Services was that:

Government agencies are really no different from any other party in the property market. When purchasing a property advice is sought from professional valuers about the expected market value. This is then used as a guide in the auction or tender process.

It is up to the commercial judgement of the agency concerned whether it is worth paying above valuation and this may be influenced by any special value the property might have to that agency. You will appreciate of course that the precision of any valuation advice will be very much affected by prevailing market conditions¹⁰.

2.17 The committee believes that, by and large, the best measure of market value is the price achieved at open auction. This prima facie observation must however be qualified by two observations:

- (a) an eager purchaser can frequently chase "bait" bidding by the vendor's agents, and
- (b) sales by private negotiation following auction are by definition at a higher price than a public and competitive auction would arrive at.

While it would have been difficult to determine who else was bidding in that situation and it is often difficult to suppress the fact that land has considerable Aboriginal significance, the Audit Office stated that they had no reason to think that the price paid in the present case was other than a fair market value¹¹.

2.18 It would appear that the market was volatile at the time and the ADC may have had a better idea of local market values than did the Adelaide based AVO in this instance.

⁹ Evidence, p 12

¹⁰ Evidence, p 82

¹¹ Evidence, p 50

2.19 The committee expresses no view as to the issue of the price paid but there are two administration matters that the committee wishes to comment on.

2.20 The committee believes that ATSIC should continue the practice of the ADC to maintain anonymity as far as possible when interested in purchasing land for Aboriginal groups. We recommend however that:

where possible local valuers, anonymously instructed, be engaged to prepare pre-purchase valuations where for reasons of affordability it is not appropriate to have agents of the AVO make local inspections.

Finally, and most importantly we recommend that:

prior to purchase ATSIC consider any non-commercial factors which may apply to an acquisition and formally determine a ceiling limit for acquisition taking all factors into account.

Trelawney

2.21 The *Final Report of the Special Audit, The Aboriginal Development Commission and the Department of Aboriginal Affairs*, dated October 1989 outlined the Trelawney situation:

The Minister for Aboriginal Affairs referred to the Australian Audit Office a petition from Aboriginal people in Tamworth requesting an investigation into the activities of the property 'Trelawney' near Tamworth NSW. The petition complained that, although the property had been purchased to benefit the Aboriginal community, the community had received no benefits from it and no information about it.

Trelawney is a sheep and cattle property. It was purchased by ADC in February 1982 to establish a rural enterprise to benefit the Tamworth Aboriginal community and to give training in rural skills to local Aboriginal youth. The benefits to the community were to come from distribution of profits. The property is owned by ADC and managed by Agricultural Holdings Pty Ltd. The company has two directors, both Aboriginals. The property provides work for only two people (one of the directors and an Aboriginal employee).

Since 1982 ADC has provided \$1,380,000 for the property, comprising \$615,000 purchase price and \$765,000 in subsequent grants and loans. The value of the property was said to be \$674,000 plus stock \$140,000 in July 1989. The property has incurred losses since it was acquired and is dependent almost entirely on ADC financing. More ADC finance will be required. The loans have not been repaid and have fallen into arrears. ADC

hopes that loans will be repaid and dividends might begin late in the 1990s¹².

2.22 The Final Report concludes:

AAO remains of the view that ADC's financing of Trelawney is of doubtful validity and that ADC should review its involvement in the property. ADC's Corporate Plan 1987-1992 provided that no project shall be funded unless it has the potential to be commercially viable within five years of receiving funding¹³.

2.23 In response ATSIIC advised the committee on 16 October 1990 that:

Trelawney is currently half-way through an approved 5-year development plan involving a switch of emphasis away from dryland and irrigated cropping and towards livestock production. This switch has involved significant expenditure in terms of a pasture improvement program.

The property is currently employing two full-time Aboriginal persons. In addition, at present there are eight Aboriginal trainees constructing extensions to the shearing shed under a TAFE-run program. These extensions are part of a plan to provide the infrastructure (via accommodation and larger shed) to enable Aboriginal shearers training courses to be conducted on an on-going basis at Trelawney. The shearers training funding is from DEET.

During recent years, recurrent ADC/ATSIIC funding for the project has declined significantly. This, combined with good community support and the expected benefits from shearers training, are cause for future optimism¹⁴.

2.24 The committee agrees that a large amount of money has been spent on a business enterprise which has not achieved its business objectives. Trelawney is an example of multiple uses of a property leading to some problems in assessing the viability or success of each of the overlapping programs. Nonetheless those responsible for each program must ensure that it is well managed in terms of achieving its specific objectives. If wider objectives are to be taken into account then these should be set out in the performance indicators for the program. The committee is concerned at the Audit Report's suggestion that the Trelawney property may never become commercially viable and urges ATSIIC to give special attention to the rationale for its retention and continued funding.

2.25 The committee recommends that:

¹² Final Report of Special Audit, paragraphs 3.35-3.55

¹³ *ibid*, paragraph 3.4

¹⁴ Evidence, pp 84-85

the Aboriginal and Torres Strait Islander Commission and the Australian National Audit Office continue to review the viability and effectiveness of Trelawney as an investment.

2.26 On the wider question of properties being purchased for more than one reason, there has to be a strategic rationale for the economic and social objectives of a project. This should be clearly set out so that the performance of the project can be assessed. The objectives need not be immutable but the reasons for changes need to be clearly established. The Attorney-General's Department opinion on funding under multiple provisions stressed that each must be done in good faith as to the purpose¹⁵. The Committee recommends that:

the strategic rationale for the economic and social objectives of a project be clearly set out so that the performance of the project can be appropriately assessed.

2.27 The committee believes that accountability is of paramount importance in Aboriginal Affairs funding as those who suffer most when accountability fails are Aboriginal people.

2.28 The committee notes that section 17 of the ATSIC Act, which allows for the provision of assistance to business enterprises, includes a provision which requires the Commission to:

- have regard to the effect of the proposed exercise of power on the employment and training of Aboriginal persons and Torres Strait Islanders.

Business Capability

2.29 The audit report on the ADC's financial statements was qualified for lack of specific evidence that in all cases ADC had satisfied itself, when providing finance for business enterprises, that particular Aboriginals had the skills, management background and financing to successfully engage in the enterprises. The audit report for 1987-88 contained a similar qualification. Sub-section 24(3) of the ADC Act required ADC to be satisfied about business capability whenever providing finance for an enterprise. This provision of the Act was replaced in November 1989 with a provision that required ADC to be satisfied that the business was likely to become commercially successful¹⁶.

2.30 The relevant provision of the ATSIC Act, 17(3), requires the Commission to be satisfied that the enterprise is likely to become, or continue to be, commercially

¹⁵ Evidence, pp 87-90

¹⁶ Audit Report No.29, paragraph 1.11

successful. It is important that this statutory requirement is complied with. The committee deals with performance indicators, including the measurement of success, in paragraphs 2.46 - 2.47.

Payments for treaty purposes

2.31 The audit report on the financial statements was qualified in respect of ADC's payments to Tranby college in Sydney and the Island Co-ordinating Council at Thursday Island for the purpose of meetings on consultations for a treaty with Aboriginal people. In ANAO's opinion, the payments were not authorised by the ADC Act¹⁷. The details are set out in the Special Audit Report on ADC (March 1989) at pages 12 to 16 and in the Final Report of the Special Audit of ADC (October 1989) at pages 21 to 25.

2.32 In August 1988 \$43,000 was paid to Tranby co-operative in Sydney as financial controller for treaty related discussions at Framlingham in Victoria. In September 1988 Tranby provided evidence of expenditure totalling \$24,556 for the meeting. The unexpended remainder is yet to be recovered¹⁸. A further grant of \$80,000 was made to Tranby in September 1988 for a similar meeting in Cairns.

2.33 In a letter dated 29 November 1990 Mr W Gray, Chief Executive Officer of ATSIC advised:

Since my letter of 12 November 1990 efforts have continued to resolve the matter of grants made by the former Aboriginal Development Commission (ADC) to Tranby for treaty consultations and the Commission is now in a position to acquit the Framlingham component of the grant. Arrangements have also been made for the return of the unspent funds and an audited statement in respect of the Cairns meeting is expected shortly.¹⁹

2.34 In November 1988 \$80,000 was paid to the Island Co-ordinating Council at Thursday Island for treaty consultations in the Torres Strait. In a letter dated 29 November 1990 ATSIC advised:

With regard to the Island Co-ordinating Council, during the 1988-89 financial year, the ADC granted \$80,000 to the organisation to assist with treaty consultations. Of the funds, \$66,858 were used for the purpose originally intended, though with some unapproved variations to the original budget (meeting costs and entertainment costs were met from the administration component, and travel allowance costs were met from the accommodation and travel component). The balance of \$13,142 was returned to the ADC. The

¹⁷ Audit Report No.29, paragraph 1.14

¹⁸ Evidence, p 83

¹⁹ Evidence, p 92

grant was formally acquitted by ATSIC in September 1990.²⁰

2.35 The committee is concerned that it has taken so long to have these matters resolved. It notes that Australian Government has now budgeted \$4 million for the Aboriginal reconciliation process and accordingly expects that there will be no need or justification for sourcing funding for such purposes through the commercial arm of ATSIC.

Juninga

2.36 ADC provided funding to the Gwalwa Daraniki Association in the Northern Territory for the construction of a caretaker's residence and five cabins at the Juninga Centre for aged people. Funding provided by ADC over the two year period to 30 June 1989 totalled \$543,835. Other bodies provided funding for another five cabins and a twelve bed hostel. ANAO advised that the total cost of the project, which can accommodate 50 people, was \$1.5 million²¹.

2.37 Occupancy figures at Juninga Centre in August 1989 were:

- . seven people in the hostel, and
- . three cabins occupied

2.38 In view of the low levels of occupancy, ANAO questioned the effectiveness of the funding provided for the project. In response ADC said that, although occupancy levels were low, the need for such a facility had been well documented and the project was strongly supported by Commonwealth and Northern Territory Government agencies.

2.39 ANAO remained of the view that the cost effectiveness of ADC's funding for the project was questionable²².

2.40 In evidence, ATSIC advised that occupancy had risen to 22²³. Aboriginal Hostels Limited advised that this was close to capacity which was 32. The ten cabins can take 2 people each and the hostel accommodates 12 although this could be increased to 24 if there were two people to a room²⁴.

²⁰ *ibid*

²¹ Audit Report No.29, paragraph 1.16

²² Audit Report No.29, paragraphs 1.17-1.19

²³ Evidence, p 30

²⁴ Evidence, pp 29-30

2.41 The committee understands that there was initially some reluctance by aged people moving into a strange new environment but this initial reluctance has largely broken down. The committee is satisfied with the explanations provided.

Imparja Television

2.42 ADC's balance sheet includes as investments the cost of acquiring shares in a number of Aboriginal enterprises. As these enterprises are not subsidiary companies, audit reports on the companies' operations and state of affairs at balance date are not provided to ANAO.

2.43 The balance sheet includes the value of shares in Imparja Television Pty Ltd at their cost to ADC of \$2 million. The audit of ADC's accounts and records revealed that Aussat fees payable by Imparja Television were likely to have an adverse effect on the company and, consequently, on the value of ADC's shares in the company²⁵.

2.44 The committee believes that:

investments should appear in the balance sheets at their current value. The committee further believes that audit reports which would be available to shareholders, such as the ADC, should be made available to ANAO by the shareholders being audited.

Disclosure of enterprise finance and indicators

2.45 The Special Audit Report on ADC (March 1989) recommended (paragraph 2.10.11) that ADC should disclose publicly:

- (a) the names of people and organisations who receive enterprise loans and grants, together with details of the amount and purpose, and details of the amount and purpose, and details of any significant increase or other change subsequently made, and
- (b) performance indicators of the success of the enterprise program in enabling Aboriginals to engage in self sustaining enterprises²⁶.

2.46 In general terms the committee endorses these requirements although some qualification is necessary. It is important that all programs be assessed against predetermined performance indicators. While the enterprise performance indicators mentioned by the Audit Office, such as the number of Aboriginal directors and

²⁵ Audit Report No.29, paragraphs 1.20-1.21

²⁶ Audit Report No.29, paragraph 1.23

profitability are useful indicators, the objectives of the enterprise program are usually much broader. Performance indicators should encompass other matters such as the number of Aboriginal employees, training opportunities and social impacts. As training programs are primarily funded by DEET it is important that they be more closely co-ordinated with the enterprise program and performance indicators established for the combined program.

2.47 ATSIK acknowledged that the program area has received the most criticism. The committee is pleased to note that the Office of Evaluation and Audit of ATSIK is conducting a review of the enterprise program. One of its terms of reference is to establish performance indicators for "success"²⁷. The committee looks forward to the outcome of that review. The committee is concerned that 18 months have elapsed since the report of the Special Audit. The committee will continue to monitor the use of performance indicators.

2.48 The committee also generally agrees with disclosure of loans and grants with the qualification that ATSIK should have the right to not name particular recipients of grants and loans where to do so would;

- (a) run counter to "commercial in confidence" obligations, or
- (b) subject the individual to racist notice.

2.49 The committee believes such an exception should be sparingly utilised. In such cases the loans or grants should be disclosed in the form "Grant A (name withheld)".

Nardoola

2.50 ADC purchased the property Nardoola in NSW under section 28 of the ADC Act in 1982 and transferred it to Moree Local Aboriginal Land Council in November 1988. The Attorney-General's Department advised ANAO in February 1989 that Nardoola could be transferred under section 28 of the Act to the Land Council only for the purpose of section 24; that is, for the purpose of enabling Aboriginals to engage in business enterprise. The Special Audit Report on ADC (March 1989) commented at paragraph 2.3.98 that ADC did not require the Land Council to comply with this proviso²⁸.

2.51 An ADC investigation found that:

- no Purpose Clause had been included in the transfer document as Legal Branch thought it unnecessary due to NSW legislation;

²⁷ Evidence, p 22

²⁸ Audit Report No.29, paragraph 1.29

- . the use of the Purpose Clause was generally inadequate; and
- . the transfer procedure should be reviewed²⁹.

2.52 ATSIIC advised that the findings were discussed by the Audit Management Committee and action on the matter was taken by Assistant General Manager, Programs, to review the procedure to ensure that all legislative requirements are met and documented³⁰.

2.53 This transfer was carried out contrary to the provisions of section 28 and is a serious error. The committee emphasises the necessity of adequate procedures being in place to prevent further breaches of the legislative requirements.

Accuracy of ADC comments

2.54 ANAO informed the acting General Manager of ADC in November 1989 that it was concerned about the accuracy of comments made by ADC on various parliamentary and audit matters in the past year. ADC's response to the Special Audit Report of March 1989, its evidence to Senate Estimate Committee E and its Explanatory Notes issued with the Budget Papers contained numerous inaccuracies and misrepresentations of ANAO positions. ADC has also misrepresented legal advice from the Attorney-General's Department on audit matters.

2.55 These inaccuracies and misrepresentations had caused ANAO to spend considerable time in advising the Parliament and the Estimate Committee of the correct position. ANAO asked the acting General Manager to urge ADC staff to pay more attention to the accuracy of comments made on such matters in the future³¹.

2.56 Audit Report No.12, 1989-90 also points to false information in the ADC's Annual Report concerning delays in tabling it's Annual Report for 1987-88 in May 1989. Deliberate misleading of the Parliament is a contempt of the Parliament. Even careless reporting may be regarded as an "act or omission which obstructs or impedes either House of Parliament in the performance of its functions".³²

2.57 The committee stresses that the audit process is of paramount importance in ensuring accountability of government agencies to the Parliament and, through the Parliament, to the general community. Advice to the Parliament and the Audit

²⁹ Evidence, p 58

³⁰ *ibid*

³¹ Audit Report No.29, paragraphs 1.32-1.33

³² Erskine May, p 143 and House of Representatives Practice, p 686

Office must be accurate and the obligation on government agencies to ensure its accuracy is clear and unavoidable. The committee warns that similar inaccuracies in future annual or other reports to the Parliament coming before it for its consideration will be treated with the utmost seriousness.

CHAPTER 3

ABORIGINAL HOSTELS LIMITED

3.1 In regard to the audit of Aboriginal Hostels Limited the Auditor-General reported:

The results of the audit of the accounts and records were generally satisfactory, except that the audit revealed scope for improvement in the company's compliance with its required procedures and guidelines in respect of the regular banking of receipts by some hostel managers, and with controls over payroll and third party hostel grants. These matters had also been raised in the preceding two years³³.

The Auditor-General stated that measures had been proposed to improve procedures.

3.2 In response Aboriginal Hostels Limited recognised the problem of staff not adhering to company procedures associated with the control of revenue. This area had been a major focus of its internal audit for the previous 12 months. A 3 day seminar for regional finance officers had been held at which the necessity to monitor adherence to procedures was emphasised. Better form design has enabled early detection of delays by management³⁴.

3.3 The company similarly acknowledged problems in payroll/personnel practices in the regions. A payroll manual is being prepared for use by regional payroll/personnel officers. Selection procedures for payroll staff are being improved. From 1 July 1990 a new computer payroll system is being used which the company believes will enhance payroll practice, administration and labour cost control³⁵.

3.4 On third party hostel grants the company advised that action has been taken to ensure all acceptances of grant conditions and amounts are received³⁶.

³³ Audit Report No.29, paragraph 2.3

³⁴ Evidence, p 70

³⁵ *ibid*

³⁶ Evidence, p 71

3.5 The Audit Office made no further comment on the matters raised in the Audit Report. The committee accepts the assurances on improvements given by Aboriginal Hostels Limited and is satisfied with its responses.

CHAPTER 4

AUSTRALIAN INSTITUTE OF ABORIGINAL STUDIES

Signed financial statements

4.1 The Auditor-General was critical of the Australian Institute of Aboriginal Studies for the lateness of its signed financial statements for the financial year 1988-89. The Institute's Annual Report had not been printed or presented to Parliament by the end of 1989³⁷.

4.2 The Institute vigorously defended itself on this matter indicating that the lateness was due to the Auditor-General's staffing of the audit³⁸. The Audit Office advised that the Institute's first draft of the financial statements was provided a week earlier than the previous year. The Audit Office admitted staffing difficulties and said that the Audit commenced three weeks later than the previous year and the audit report was signed a little less than three weeks later than the previous year³⁹. In the circumstances, the committee believes the Audit Office report on this issue was somewhat one-sided.

4.3 The committee believes that both the Institute and the Audit Office should improve their arrangements so that the annual report including the audited accounts are tabled well within 6 months of the end of the financial year. The Institute's financial systems are dealt with further in paragraphs 4.6 - 4.10.

Stock on hand

4.4 The audit report on the Institute's financial statements for 1988-89 included a disclaimer of opinion on the figure for stock on hand as it was not possible to confirm the existence of stock held by a publishing agent on behalf of the Institute. The value of the stock was reported to be approximately \$220,000⁴⁰.

4.5 The Institute advised that the greatest part of the \$220,000 book stock was held in the Institute's warehouse in Canberra and had been accurately checked. Around 10 percent of the stock was held by the Institute's distributor in Sydney.

³⁷ Audit Report No.29, paragraph 3.2

³⁸ Evidence, pp 33-34, 72

³⁹ Evidence, pp 37-39, 77-78

⁴⁰ Audit Report No.29, paragraph 3.3

While providing monthly figures of sales and stock holdings, the distributor had not provided a firm stock balance for 30 June 1989. The distributor has been formally requested to provide a precise certification of stock at 30 June each year⁴¹. The Committee believes this will meet the audit requirements.

Financial systems

4.6 The audit report on the Institute's accounts and records for 1987-88 referred to aspects of the general ledger system and subsidiary financial systems which were considered to be cumbersome and inefficient. The 1988-89 audit noted little improvement although the Institute indicated that remedial measures would be taken⁴².

4.7 The Audit Office described the Institute's accounting system as overly complex for such a small organisation. The auditors received quite a number of separate drafts of the financial statements. These needed significant improvements before they complied with the standard requirements. The drafts were typewritten rather than computer printouts and while previous errors had been corrected new errors had crept into the statements⁴³.

4.8 The Institute acknowledged that "it has long been recognised that aspects of the general ledger system are cumbersome and inefficient". They noted "the ADP systems are those inherited by the current administration and the Council chose not to hire consultants to design new accounting procedures"⁴⁴.

4.9 The Institute's finance accounting system is on 3 stand-alone PC computers with three operators. The Audit Office believes the system should be an integrated one so that the operation can be further streamlined. The Institute says some streamlining has occurred⁴⁵.

4.10 The committee recommends that:

should the audit report for 1989-90 be again critical of the Institute's accounting system, outside assistance should be sought on the selection and acquisition of a suitable system or enhancement of the current system.

⁴¹ Evidence, p 73

⁴² Audit Report No.29, paragraph 3.4

⁴³ Evidence, p 37

⁴⁴ Evidence, p 73

⁴⁵ Evidence, pp 32-33, 41

CHAPTER 5

EDWARD RIVER CROCODILE FARM PTY LTD

Disclosure of inventory

5.1 Schedule 7 of the Companies Regulation requires companies to disclose the value of inventories in their balance sheet. The company omitted to disclose in the balance sheet the value of inventories (crocodiles) and skins in stock and to account for movements in their value in the profit and loss statement. Notes to the accounts show values of crocodiles and skins in stock but the value of the crocodiles was an estimate based on 90 percent of the numbers of crocodiles shown in the company's records⁴⁶.

5.2 The Audit Office believed a physical stocktake to be necessary to establish the number and value of the stock. The company has had difficulties in counting due to high pen densities. With the establishment of new facilities at Redbank near Cairns it has been possible to reduce pen densities and conduct a physical stocktake at Edward River. Crocodiles at Redbank are physically counted on transfer from Edward River⁴⁷.

5.3 It is now company policy that the value of crocodiles over 1 year old be disclosed in the company accounts rather than as notes to the accounts⁴⁸. The Committee believes these changes will allow the audit requirements to be fully met in future.

Tax Status

5.4 The Audit Office had sought from the company a copy of the advice from the Australian Tax Office exempting the company's operations⁴⁹. In a letter dated 14 June 1990 the ATO advised that after an examination of the Memorandum and Articles of Association it was considered that any income would be exempt under Section 23(g)(ii) of the Income Tax Assessment Act 1936. An Extraordinary General Meeting of shareholders held on 28 June 1990 approved the necessary amendments

⁴⁶ Audit Report No.29, paragraph 4.3

⁴⁷ Evidence, p 74

⁴⁸ *ibid*

⁴⁹ Audit Report No.29, paragraph 4.5

to the Memorandum and Articles of Association for the company to be exempt from income tax⁵⁰.

5.5 This matter appears to now be satisfactorily resolved.

4 November 1990

Duncan Kerr MP
Chairman

⁵⁰ Evidence, pp 74-76

APPENDIX 1

Public Hearing Held and Witnesses Heard

24 August 1990 - CANBERRA

Aboriginal and Torres Strait Islander Commission

BEADMAN, Mr R.J	General Manager, Policy Development Division
GOGGIN, Mr P	Assistant General Manager, Community Support Policy
GRAY, Mr W.J	Chief Executive Officer
MILLER, Mr W.E	General Manager, Policy Co-ordination
WATERS, Mr J.F	Assistant General Manager, Legal

Aboriginal Hostels Limited

BAROLITS, Mr E	Assistant General Manager (Operations)
CLARKE, Mr J.C	General Manager
ROOKS, Mr J.C	Assistant General Manager and Company Secretary

Australian Institute of Aboriginal and Torres Strait Islander Studies

DIX, Mr W	Principal
VARGA, Mr T.O	Director of Finance

Australian National Audit Office

KIMBALL, Mr B.T

Director, Group C

MINCHIN, Mr A.SJ

Executive Director

O'BRIEN, Ms L

Senior Director, Policy and
Development Branch

APPENDIX 2

FROM THE AUDITOR-GENERAL'S AUDIT REPORT No. 29 1989-90

ABORIGINAL AFFAIRS PORTFOLIO

The Auditor-General
Audit Report No. 29
1989-90
Aboriginal Affairs Portfolio

Australian Government Publishing Service, Canberra



Australian National Audit Office
Canberra ACT
22 February 1990

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Audit Act 1901*, I transmit to the Parliament Report No. 29, signed on 22 February 1990, on audits of the Aboriginal Development Commission, Aboriginal Hostels Limited, Australian Institute of Aboriginal Studies and Edward River Crocodile Farm Pty Limited.

Yours sincerely

J.C. Taylor
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the
House of Representatives

Parliament House
Canberra ACT

Key findings

This report covers audits of four bodies in the Aboriginal Affairs portfolio completed at 31 December 1989. Key findings were:

Aboriginal Development Commission (ADC)

During 1988-89 ADC, in ANAO's opinion:

- provided finance for the pastoral properties, Atula Station and Tanami Downs in the Northern Territory and Trelawney in NSW for the future benefit of Aboriginals and not for the purpose of enabling Aboriginals to engage in business enterprise as required by sub-section 24(1) of the ADC Act
- transferred a pastoral property, Nardoola, to the Moree Local Aboriginal Land Council without ensuring that it would be used for the purpose of enabling Aboriginals to engage in business enterprise as required by sections 24 and 28 of the ADC Act, and
- made payments not authorized by the ADC Act to Tranby College in Sydney and the Island Co-ordinating Council at Thursday Island for meetings to assist in consultations on a proposed treaty with Aboriginals.

Edward River Crocodile Farm Pty Limited

In its financial statements for 1988-89 the company omitted to disclose the value of crocodiles as inventory in the balance sheet as required by Schedule 7 to the Companies Regulations, and did not conduct a stocktake of crocodiles.

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Chapter 1.

Aboriginal Development Commission

1.1 The Aboriginal Development Commission (ADC) was established by the *Aboriginal Development Commission Act 1980* to further the economic and social development of people of the Aboriginal race of Australia and people who are descendants of indigenous inhabitants of the Torres Strait Islands. In particular, the ADC administers and controls a capital account with the object of promoting the development, self-management and self-sufficiency of such people.

1.2 With effect from 5 March 1990 the *Aboriginal and Torres Strait Islander Commission Act 1989* will repeal the ADC Act and establish the Aboriginal and Torres Strait Islander Commission (ATSIC) in place of ADC and the Department of Aboriginal Affairs.

1.3 ADC's signed financial statements for the year ended 30 June 1989 were received on 1 December 1989 and the audit report on the financial statements was provided to the Minister for Aboriginal Affairs on 8 December 1989. A report was also provided on the results of the audit of ADC's accounts and records on 18 December 1989. ADC's annual report and financial statements for 1988-89 had not been presented to the Parliament at the date of preparation of this report.

Atula Station, Tanami Downs and Trelawney

1.4 The audit report on the financial statements was qualified in respect of payments made for Atula Station, Tanami Downs and Trelawney. In ANAO's opinion payments to finance operations on these properties were made for the future benefit of Aboriginals and not for the purpose of enabling Aboriginals to engage in business enterprise as required by section 24 of the ADC Act.

1.5 Particulars of the payments for Trelawney are set out at pages 30 to 33 of the Final Report of the Special Audit of ADC, which was presented to the Parliament on 5 October 1989. Particulars of the other two properties are set out below.

1.6 During the year ADC acquired two 'shelf' companies to facilitate the purchase of Atula Station and Tanami Downs in the Northern Territory under section 23 of the ADC Act (finance to enable Aboriginals to occupy land). Atula Station was purchased for \$630 000 and Tanami Downs was purchased for \$2.6 million.

1.7 ADC then provided \$946 000 for the purchase of cattle, etc., for Atula Station and \$100 000 for operating expenses for Tanami Downs under section 24 of the ADC Act (finance to enable Aboriginals to engage in business), although there was little or no Aboriginal involvement in the companies or in the business of operating the properties. In ANAO's opinion the finance provided under section 24 was actually provided for the future benefit of Aboriginals, which is not a purpose authorised by section 24.

1.8 The properties were acquired under section 23 for the purpose of enabling Aboriginals to occupy land but then financed under section 24 for the purpose of enabling Aboriginals to engage in business. In ANAO's view sections 23 and 24 of the Act are separate provisions for different purposes, and it is not clear that the Parliament intended that the purposes could be merged as ADC appears to have done in respect of the two properties.

1.9 Tanami Downs was purchased in May 1989 for \$2.6 million. ADC had been willing to pay up to \$3 million for the property, although the Australian Valuation Office had valued the property in April 1989 at \$1.5 million and ADC's rural extension officer had estimated that the property would be sold for 'not less than \$1.5 million and more likely \$2 million'.

1.10 ANAO queried the excess of the purchase price above the valuation of \$1.5 million and the estimate of \$1.5 to \$2 million. ADC explained that it had been un-

successful when seeking to purchase some other properties because it had relied on valuations below the real market value. ADC also said that a premium on the valuation was justified in the case of Tanami Downs because it was purchased primarily for its traditional significance to the Walpiri people of the area.

Business capability

1.11 The audit report on the financial statements was qualified for lack of specific evidence that in all cases ADC had satisfied itself, when providing finance for business enterprises, that particular Aboriginals were capable of engaging in the enterprises. The audit report for 1987-88 contained a similar qualification. Sub-section 24(3) of the ADC Act required ADC to be satisfied about business capability whenever providing finance for an enterprise. (This provision of the Act was replaced in November 1989 with a provision that required ADC to be satisfied that the business was likely to become commercially successful.)

1.12 The instances noted by ANAO in respect of 1988-89 included finance for the construction of social facilities such as a women's centre/take away food outlet and an arts and crafts centre, grants to meet operating expenses of pastoral properties and grants for the acquisition or development of a pearling farm, a plant nursery and a community store. The Special Audit Report on ADC (March 1989) and the Final Report of the Special Audit of ADC (October 1989) contained other examples.

1.13 ADC advised ANAO of the difficulties involved in the assessment of the financial viability of projects and the capacity of Aboriginal people to manage and/or direct entrepreneurial endeavours. ADC outlined initiatives it was undertaking to facilitate such assessments.

Payments for treaty purposes

1.14 The audit report on the financial statements was qualified in respect of ADC's payments to Tranby College in Sydney and the Island Co-ordinating Council at Thursday Island for the purpose of meetings on consultations for a treaty with Aboriginal people. In ANAO's

opinion, the payments were not authorised by the ADC Act. The details are set out in the Special Audit Report on ADC (March 1989) at pages 12 to 16 and in the Final Report of the Special Audit of ADC (October 1989) at pages 21 to 25.

Juninga Centre

1.15 A direction by the then Minister in 1981 under section 8(g) of the ADC Act empowered ADC to provide assistance to Aboriginal bodies in connection with the provision of housing for Aboriginals and their spouses.

1.16 ADC provided funding to the Gwalwa Daraniki Association in the Northern Territory for the construction of a caretaker's residence and five cabins at the Juninga Centre for aged people. Funding provided by ADC over the two year period to 30 June 1989 totalled \$543 835. Other bodies provided funding for another five cabins and a twelve bed hostel. The total cost of the project, which can accommodate 50 people, was \$1.5 million.

1.17 Occupancy figures at Juninga Centre in August 1989 were:

- seven people in the hostel, and
- three cabins occupied.

1.18 In view of the low levels of occupancy, ANAO questioned the effectiveness of the funding provided for the project. In response ADC said that, although occupancy levels were low, the need for such a facility had been well documented and the project was strongly supported by Commonwealth and Northern Territory Government agencies.

1.19 ANAO remained of the view that the cost effectiveness of ADC's funding for the project was questionable.

Imparja Television

1.20 ADC's balance sheet includes as investments the cost of acquiring shares in a number of Aboriginal enterprises. As these enterprises are not subsidiary companies, audit reports on the companies' operations and state of affairs at balance date are not provided to ANAO.

1.21 The balance sheet includes the value of shares in Imparja Television Pty Ltd at their cost to ADC of \$2 million. The audit of ADC's accounts and records revealed that Aussat fees payable by Imparja Television were likely to have an adverse effect on the company and, consequently, on the value of ADC's shares in the company.

1.22 ADC advised that the Government was reviewing subsidy arrangements for television services in remote areas.

Disclosure of enterprise finance and indicators

1.23 The Special Audit Report on ADC (March 1989) recommended (paragraph 2.10.11) that ADC should disclose publicly:

- (a) the names of people and organisations who receive enterprise loans and grants, together with details of the amount and purpose, and details of any significant increase or other change subsequently made, and
- (b) performance indicators of the success of the enterprise program in enabling Aboriginals to engage in self sustaining enterprises.

1.24 In response, ADC advised that it would not implement recommendation (a) as it had received legal advice that such disclosure would breach confidential requirements.

1.25 ANAO understands that ADC was referring to legal advice obtained by ADC in September 1989 from Messrs Crossin Power Haslem, Canberra solicitors, about disclosure of commercial-in-confidence information requested by the Minister's direction of 11 April 1989 under section 11 of the ADC Act.

1.26 That legal advice did not relate to the audit recommendation. ANAO saw nothing in the legal advice that would prevent disclosure as recommended by ANAO. Disclosure of information about loans and grants in ADC's annual report would be authorised by section 40 of the Act, and the report is a privileged document when

tabled in the Parliament. In any event, as noted in the Special Audit Report, enterprise grants are in no way commercial and the loans are provided at concessionary interest rates from public funds.

1.27 ADC advised in respect of recommendation (b) that this had been implemented for the past three years with the publication of its program performance indicator targets in the Senate Estimates Explanatory Notes.

1.28 That is incorrect; the Explanatory Notes do not provide the information. ADC later agreed that it does not maintain such indicators. As indicated at page 66 of the Final Report of the Special Audit on ADC (October 1989), ANAO has urged ADC to maintain statistics of successful enterprises.

Nardoola

1.29 ADC purchased the property Nardoola in NSW under section 28 of the ADC Act in 1982 and transferred it to Moree Local Aboriginal Land Council in November 1988. The Attorney-General's Department advised ANAO in February 1989 that Nardoola could be transferred under section 28 of the Act to the Land Council only for the purposes of section 24; that is, for the purpose of enabling Aboriginals to engage in business enterprise. The Special Audit Report on ADC (March 1989) commented at paragraph 2.3.98 that ADC did not require the Land Council to comply with this proviso.

1.30 In May 1989 ANAO asked ADC what arrangements had been made, in compliance with section 28, to ensure that Nardoola was transferred for the purpose of enabling Aboriginals to engage in business enterprise. ADC replied in July 1989 that approved procedures were implemented to ensure compliance with section 28. ANAO asked for a copy of the relevant documents that ensured Nardoola was transferred in compliance with section 28. ADC's reply in November 1989 referred to a letter from Messrs Allen, Allen & Hemsley, solicitors, which merely confirmed that the property was transferred in November 1988 (without conditions).

1.31 It appears that the advice in July 1989 was incorrect; no procedures were implemented to ensure compliance with section 28 of the Act. Accordingly, it was necessary to qualify the audit report on ADC's financial statements for 1988-89.

Accuracy of ADC comments

1.32 ANAO informed the acting General Manager of ADC in November 1989 that it was concerned about the accuracy of comments made by ADC on various parliamentary and audit matters in the past year. ADC's response to the Special Audit Report of March 1989, its evidence to Senate Estimates Committee E and its Explanatory Notes issued with the Budget Papers contained numerous inaccuracies and misrepresentations of ANAO positions. ADC had also misrepresented legal advice from the Attorney-General's Department on audit matters.

1.33 These inaccuracies and misrepresentations had caused ANAO to spend considerable time in advising the Parliament and the Estimates Committee of the correct position. ANAO asked the acting General Manager to urge ADC staff to pay more attention to the accuracy of comments made on such matters in the future.

Minister's directions

1.34 On 11 April 1989 the Minister tabled in the Parliament a set of general directions to the ADC under section 11 of the ADC Act (HR Hansard page 1338). The Minister indicated that the directions arose from the Special Audit Report (March 1989) and the report of the Department of Finance. He said that the directions were to ensure that the ADC would operate for the remainder of its existence on a similar basis to the proposed Aboriginal and Torres Strait Islander Commission.

1.35 The directions included requirements that ADC was to provide the Minister and the Secretary of the Department of Aboriginal Affairs with quarterly reports on program activities and performance and the current status of large projects and reports on breaches of funding conditions.

1.36 At 31 January 1990 ADC had provided the following reports in compliance with the requirements mentioned above:

- a report on 30 November 1989 on program activities and performance for the quarter ending 30 September 1989
- reports on 19 January 1990 covering projects funded under the Rental Accommodation Program and the Business Development and Land Program for the quarter ending 30 June 1989
- a report on 19 January 1990 on breaches of the terms and conditions of funding covering four of the six regions.

Chapter 2.

Aboriginal Hostels Limited

2.1 Aboriginal Hostels Limited provides low cost, short-term accommodation for Aborigines and Torres Strait Islanders. The company's head office is in Canberra, and there are regional offices and hostels located throughout Australia.

2.2 The company's signed financial statements for the year ended 30 June 1989 were received on 4 October 1989 and the audit report was provided to the Minister on 6 October 1989. Draft statements had been examined by ANAO earlier. A report was also provided on the results of the audit of the accounts and records of the company. The company's annual report for the year together with its financial statements and the audit report thereon was tabled in the Parliament on 21 December 1989.

Scope for improvement

2.3 The results of the audit of the accounts and records were generally satisfactory, except that the audit revealed scope for improvement in the company's compliance with its required procedures and guidelines in respect of the regular banking of receipts by some hostel managers, and with controls over payroll and third party hostel grants. These matters had also been raised in the preceding two years.

2.4 The company advised of measures proposed to improve procedures.

Chapter 3.

Australian Institute of Aboriginal Studies

3.1 The Australian Institute of Aboriginal Studies was established by the *Australian Institute of Aboriginal Studies Act 1964*. The principal functions of the Institute are to promote Aboriginal studies and to assist universities, museums and other institutions concerned with Aboriginal studies.

3.2 The Institute's signed financial statements for the year ended 30 June 1989 were received on 27 November 1989 and the audit report was provided to the Minister for Aboriginal Affairs on 13 December 1989. A report was also provided on the audit of the accounts and records of the Institute. The Institute's annual report for the year, together with its financial statements and the audit report thereon, had not been presented to the Parliament at the date of preparation of this report.

Stock on hand

3.3 The audit report on the financial statements for 1988-89 included a disclaimer of opinion on the figure for stock on hand as it was not possible to confirm the existence of stock held by a publishing agent on behalf of the Institute. The value of this stock was reported to be approximately \$220 000.

Financial systems

3.4 The report on the accounts and records for 1987-88 referred to aspects of the general ledger system and subsidiary financial systems which were considered to be cumbersome and inefficient. The audit for 1988-89 noted little improvement in respect of these matters although the Institute indicated that remedial measures would be taken.

Chapter 4.

Edward River Crocodile Farm Pty Limited

4.1 Edward River Crocodile Farm Pty Limited operates and manages a crocodile farm at Edward River (now known as Pormpuraaw), Queensland, on behalf of the Aboriginal community at that location. The Commonwealth provides most of the finance required by the company.

4.2 The company's signed financial statements for the year ended 30 June 1989 were received on 16 October 1989 and the audit report was provided to the Minister for Aboriginal Affairs on 15 November 1989.

Disclosure of inventory

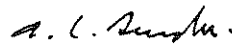
4.3 Schedule 7 to the Companies Regulations requires companies to disclose the value of inventories in their balance sheet. The company omitted to disclose in the balance sheet the value of inventories (crocodiles) and skins in stock and to account for movements in their value in the profit and loss statement. Notes 1(h) and (i) to the statements show values of crocodiles and skins in stock, but the value of crocodiles was an estimate based on 90% of the number of crocodiles shown in the company's records. Those records had not been verified by a physical stocktake.

4.4 As in previous years the company has advised of difficulties in assessing the number of crocodiles in its possession. It has acknowledged the need to adopt an effective stocktake system and to bring the value of inventory to account. The company has been seeking advice in an effort to establish a workable system.

Tax status

4.5 Note 11 to the financial statements states that the company's operations are exempt for income tax purposes. ANAO asked the company for a copy of the advice from the Australian Taxation Office exempting the company's operations. In reply in October 1989 the company advised that it had asked the Australian Taxation Office for clarification of its tax exempt status. The company indicated that it intended to await the outcome of its request before considering any amendments of its Memorandum and Articles of Association.

22 February 1990
Canberra ACT



J C Taylor
Auditor-General

APPENDIX 3

**EXTRACT FROM AUDITOR-GENERAL'S FINAL REPORT OF SPECIAL AUDIT,
THE ABORIGINAL DEVELOPMENT COMMISSION AND THE DEPARTMENT
OF ABORIGINAL AFFAIRS, OCTOBER 1989**

Aboriginal race of Australia and descendants of indigenous inhabitants of the Torres Strait Islands.

3.49 In practice ADC uses a working definition adopted by successive Governments since 1977:

'Aboriginal means a person of Aboriginal or Torres Strait Island descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he/she lives.'

3.50 Legislation administered by DAA includes definitions of Aboriginal similar to the definition in the ADC Act. In practice DAA uses the working definition.

3.51 In the course of the special audit some members of the public made complaints which in effect challenged the scope of the working definition and raised the question whether the working definition was wider than the statutory definition.

3.52 AAO sought advice from the Attorney-General's Department. In a detailed advising the Department said that the working definition was a valid means of determining whether a person belongs to the Aboriginal race within the meaning of the ADC Act.

Trelawney

3.53 The Minister for Aboriginal Affairs referred to the AAO a petition from Aboriginal people in Tamworth requesting an investigation into the activities of the property 'Trelawney' near Tamworth NSW. The petition complained that, although the property had been purchased to benefit the Aboriginal community, the community had received no benefits from it and no information about it.

3.54 Trelawney is a sheep and cattle property. It was purchased by ADC in February 1982 to establish a rural enterprise to benefit the Tamworth Aboriginal community and to give training in rural skills to local Aboriginal youth. The benefits to the community were to come from distribution of profits. The property is owned by ADC and managed by Agricultural Holdings Pty Ltd. The company has two directors, both Aboriginals. The property provides work for only two people (one of the directors and an Aboriginal employee). The directors

hold the shares in the company in trust for the Kamilaroi Aboriginal Corporation but the Corporation does not take part in the management of the property.

3.55 Since 1982 ADC has provided \$1 380 000 for the property, comprising \$615 000 purchase price and \$765 000 in subsequent grants and loans. The value of the property was said to be \$674 000 plus stock \$140 000 in July 1989. The property has incurred losses since it was acquired and is dependent almost entirely on ADC financing. More ADC finance will be required. The loans have not been repaid and have fallen into arrears. ADC hopes that loans will be repaid and dividends might begin late in the 1990s.

3.56 Between 1980 and 1985 DAA provided amounts totalling \$195 000 to assist with operating and training costs on the property when such matters came within DAA's responsibilities. More recently the Department of Employment, Education and Training (DEET) provided funds for training programs on the property.

3.57 ADC explained that the property was acquired for three purposes: primary production, training facilities and benefits by way of dividends to future shareholders. ADC is satisfied with the company's management of the property. The accounting firm which audits the company's accounts has provided unqualified audit reports on the company for the nine years to 1987-88 (the latest available at March 1989).

Matters of concern

3.58 There are several matters of concern to AAO. Although ADC explained that the property was acquired for several purposes, AAO formed the view from ADC documents that it was acquired mainly to establish a rural enterprise to benefit the Tamworth Aboriginal community by distribution of future profits. In AAO's view this makes ADC's financing of Trelawney similar to its financing of Yeperenye Shopping Centre at Alice Springs which ADC established to benefit the Aboriginal community by distribution of future profits.

3.59 As reported in the Special Audit Report (pp 36 and 37), the Attorney-General's Department found that

ADC's finance for Yeperenye was not authorised under section 24 of the ADC Act, because the finance was not provided for the purpose of enabling particular Aboriginals to engage in business. On that basis, AAO doubts that ADC's finance for Trelawney was authorised under section 24.

3.60 It seems unlikely that ADC's objective in financing Trelawney was to enable particular Aboriginals to engage in business. There is only one Aboriginal director engaged in the business; the other director provides part-time bookkeeping assistance. The Aboriginal employee is not regarded as engaging in the business. It would be an uneconomic application of public funds to outlay amounts totalling \$1 380 000 to enable one person to engage in a business that does not yet provide a living income.

3.61 Moreover AAO saw no evidence that ADC, as required by section 24 of the ADC Act, was satisfied on each occasion it provided finance that particular Aboriginals were capable of engaging in the enterprise. In its documentation ADC did, from time to time, consider their capability but did not state explicitly that ADC was satisfied that the Aboriginals were capable of engaging in the enterprise. In AAO's view an assessment of this kind is necessary because of the large amounts of public money involved in an enterprise that continues to incur losses.

3.62 ADC argued that, because Trelawney provides training facilities, it can also be regarded as an enterprise of a kind defined in section 4(1) of the ADC Act; namely, an enterprise relating to the provision of facilities for social purposes whether or not resulting in the acquisition of gain. AAO notes, however, that the facilities that ADC is referring to are the shearing shed and other facilities on the property that DEET uses for training purposes. Since these training facilities are not social facilities and are not provided as a business, Trelawney cannot in AAO's view be regarded as an enterprise within the particular definition.

3.63 In protracted correspondence with AAO, ADC disagreed with AAO's comments above and argued that its

financing of Trelawney was justified under the ADC Act. Although the Aboriginal community had received no benefits from distribution of profits, ADC said that there had been intangible benefits to the people involved in the property. It was not clear to AAO that any such benefits were commensurate with the amount of public funds that ADC has provided for the property.

3.64 AAO remains of the view that ADC's financing of Trelawney is of doubtful validity and that ADC should review its involvement in the property. ADC's Corporate Plan 1987-1992 provided that no project shall be funded unless it has the potential to be commercially viable within five years of receiving funding.

3.65 ADC also asserted that allegations and other matters concerning Trelawney were comprehensively addressed by the House of Representatives Standing Committee on Expenditure in 1984. AAO found no evidence of this and noted that the Committee's Report referred only briefly to Trelawney⁶.

3.66 The petition received by the Minister also referred to a lack of information about the property. It is, of course, a matter for the company and ADC to decide what information is to be given to the community in Tamworth. AAO considers, however, that, since the Parliament provides the funds for ADC's projects, ADC should have provided in its annual reports for Parliament more information about the substantial application of funds for Trelawney. AAO's concern about inadequate accountability regarding enterprise projects was set out in the Special Audit Report (page 59).

Joint Aboriginal Management Information Service

3.67 Senator Tambling asked AAO to investigate a complaint he had received concerning ADC's finance for the Joint Aboriginal Management Information Service (JAMIS) at Alice Springs NT. He queried DAA's and

6 'Inquiry into the Aboriginal Development Commission - Interim Report on Efficiency and Effectiveness of Expenditure' - Report of the House of Representatives Standing Committee on Expenditure, October 1984 (AGPS) pp 38 and 61.

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APPENDIX 4

**EXTRACT FROM AUDITOR-GENERAL'S SPECIAL AUDIT REPORT.
THE ABORIGINAL DEVELOPMENT COMMISSION AND THE DEPARTMENT
OF ABORIGINAL AFFAIRS, MARCH 1989**

2.3.11 In September 1982 Mr Robinson received his first loan from the ADC. It was for \$24432 to purchase a 1982 Ford Fairlane and to pay out the enterprise loan. The balance of the enterprise loan was \$5532 at that time. Repayments were \$394 per fortnight. By 31 August 1983 the arrears on this new loan were \$9309.

2.3.12 Despite the poor repayment record, ADC, in March 1984, granted a further loan of \$30759 for the purpose of enabling Mr Robinson to purchase a 1981 Ford Bronco and to refinance his existing loan. By October 1985 the balance of the loan was \$7333 including arrears of \$7253.

2.3.13 ADC pursued legal action for repayment. By December 1987 the balance of the housing loan and ADC legal costs had been paid out. By the same time the enterprise loan had been paid out and ADC's solicitors were pursuing payment of costs. At 6 December 1988, however, the balance of the enterprise loan was \$2513. It would appear this balance represents legal costs and interest.

2.3.14 ADC's comments were sought on 16 January 1989 but had not been received at the date of preparation of this report. See also Charleville Aboriginal Housing Company Limited of which Mr Robinson was Chairman.

Tranby College—Treaty consultations

2.3.15 During hearings by the Senate Committee on 25 and 26 October 1988 Senators Collins, Short and Tambling queried grants by ADC to Tranby College to assist in consultations for a treaty with Aboriginal people that the Prime Minister proposed in the 'Barunga Statement'. (Hansard 25 October pp.E318-325 and 26 October 1988 pp.E335-338)

2.3.16 Tranby College at Glebe in Sydney is registered as a charity organisation under the Co-operatives Act (NSW). Its registered name is Co-operative for Aborigines Ltd. It provides preparatory tertiary education for Aborigines and some consultancy services on training for Aborigines. It has Aborigines on its Board and its staff.

2.3.17 At the Barunga Sports and Cultural Festival in the Northern Territory on 12 June 1988, the Prime Minister announced to the Aboriginal people that he had agreed to the following proposals and considerations put to him by their elders (the Barunga Statement):

1. The Government affirms that it is committed to work for a negotiated Treaty with Aboriginal people
2. The Government sees the next step as Aborigines deciding what they believe should be in the Treaty
3. The Government will provide the necessary support for Aboriginal people to carry out their own consultations and negotiations: this could include the formation of a committee of seven senior Aborigines to oversee the process and to call an Australia-wide meeting or convention
4. When the Aborigines present their proposals the Government stands ready to negotiate about them
5. The Government hopes that these negotiations can commence before the end of 1988 and will lead to an agreed Treaty in the life of this Parliament.

2.3.18 At the ADC Board meeting in June/July 1988, acting Commissioner Dodson said that the ADC should assist in working towards completion of the treaty proposed in the Barunga Statement and should allocate funds to this area.

2.3.19 There were some comments made at the meeting to the effect that it would be more appropriate for the DAA to finance the treaty negotiations. However, after further discussion, the Board, on the motion of acting Commissioner Perkins, approved the provision of financial assistance of \$500 000 pursuant to paragraph 9(1)(c) of the ADC Act to allow co-operation and consultations with persons and organisations concerned with Aboriginal development, as outlined in the Barunga Statement.

2.3.20 At its next meeting later in July 1988, the Board considered ways of allocating the \$500 000. On the motion of Mr Perkins, they decided to make available financial assistance of \$43 000 for treaty-related discussions to the groups associated with a forthcoming meeting at Framlingham Vic; payment was to be effected through an appropriate Aboriginal body. ADC paid the \$43 000 to Tranby College on 2 August 1988.

2.3.21 At the Board meeting later in August 1988, acting Deputy Chairman Dodson reported that he attended the meeting of the National Coalition of Aboriginal Organisations at Framlingham Vic. He said that Tranby College acted as financial controller for the meeting and that there should be a saving of some \$18 000 from the \$43 000 that ADC had paid to Tranby.

2.3.22 After some discussion at the Board meeting of budgets and controls regarding the remainder of the \$500 000, Mr Perkins remarked that funding must be very tightly bound, so that the accounting does not rest with individuals. He said that Tranby College was not known as the apex of an administrative body; all accounts must be audited so that it can be proved that funds were expended properly. He said that a report should be compiled on Tranby College and its administrative capabilities to carry out the financial functions with regard to the treaty negotiations.

2.3.23 He also advised that Tranby College was negotiating with Cuba and Nicaragua to send students to those countries to study and it might not be wise for the ADC to be involved with that institution. He suggested that the secretariat office for treaty negotiations be based in ADC's Sydney office instead.

2.3.24 After further discussion, the Board, on the motion of Mr Perkins, approved that the remainder of the \$500 000 be made available as follows:

- \$377 000 to Tranby to establish a secretariat (\$100 000) and for the conduct of four meetings (\$277 000) in different regions of Australia, and
- \$80 000 to the Island Co-ordinating Council for consultation in the Torres Strait
- the meetings and consultative processes be acknowledged as part of the treaty negotiations between Aboriginal and non-Aboriginal Australians, and
- management of these funds and administrative arrangements, including accounting, be monitored by Acting Commissioners O'Shane, Yu and Acting Chairman Dodson.

Payments to Tranby College

2.3.25 From the amounts approved, the ADC has paid \$123 000 to Tranby (\$43 000 in August for the Framlingham meeting and \$80 000 in September for a meeting in Cairns). Payments were subject to the usual grant acquittal requirements to provide quarterly audited reports.

2.3.26 With regard to the proposed secretariat for which ADC approved a grant of \$100 000, ADC asked Tranby to provide itemised budgets of proposed expenditure. In September 1988 Tranby provided a proposed budget totalling \$100 000 and a document on the proposed secretariat. The document indicated that the secretariat would organise meetings for the National Coalition of Aboriginal Organisations to enable 'consultation on important issues, *ie* ATSIC, the "proposed" Treaty, Royal

Commission etc.' The document made no further reference to the treaty. The Coalition would determine the agenda for meetings on policy or social and economic issues.

2.3.27 Tranby's formal Acceptance of Offer of the grant was signed on 27 September 1988 by Mr Kevin Cook (Member of Executive) and Mr Kevin Tory (Chairman). Audit inquiries disclosed that the Chairman is Mr John Short, not Mr Tory. ADC's Principal Legal Officer pointed out in October 1988 that Tranby's formal objects would not satisfy the test of an Aboriginal body under the ADC Act. Arrangements were made to have Tranby change its formal objects before making further payments to it.

2.3.28 In subsequent advisings, however, Mr Adams QC indicated that Tranby would satisfy the definition of an Aboriginal body but that it was not necessary because the treaty negotiations fell within ADC's general power in sub-section 9 (1) of the Act. He also considered the possibility that payments to Tranby for the proposed Secretariat could be authorised under section 24—grants for business enterprise. (The legal opinions and related ADC documents were tabled in the Senate on 6 December 1988—Hansard p.3573.)

Payments to Island Co-ordinating Council (ICC)

2.3.29 The Board approved financial assistance of \$80 000 to the Island Coordinating Council (ICC) at Thursday Island for treaty consultations in the Torres Strait. The ICC is registered as the Island Advisory Council under *Community Services (Torres Strait) Act 1984 (Qld)*. The Chairman is Mr Getano Lui jnr, an acting Commissioner of the ADC.

2.3.30 When Audit queried the payment approved for the ICC, the ADC replied indignantly that the ICC was highly respected and that funds would be released progressively and only on receipt of an itemised budget. ADC was apparently unaware that the ICC's auditor (The Queensland Auditor-General) had commented publicly on numerous deficiencies and that ADC's Regional Office in Brisbane had already paid the grant in a lump sum merely on the basis of broad estimates of expenditure. The details are as follows.

2.3.31 Before paying the money, ADC asked the Council to agree to ADC's usual grant acquittal requirements and to provide a detailed budget. The Council agreed in October 1988 to comply with the requirements.

2.3.32 On 3 November the Chairman of the Council, Mr Lui asked ADC to release the money urgently to facilitate the first of the consultative meetings involving delegates from the mainland. In response to ADC's earlier request for a detailed budget, he provided the following details:

Budget	Travel	\$60 000
	Accommodation/travel allowance	15 000
	Administrative expenses	5 000
		<hr/>
		\$80 000

ADC release the funds to ICC on the following day.

2.3.33 The Auditor-General of Queensland, who audits ICC's financial statements, has reservations about ICC's procedures. In his Supplementary Report to the Queensland Legislative Assembly dated 21 March 1988 he said (p.6) that his audit

certificate in regard to the statements of the ICC alluded to 'numerous deficiencies in financial administration procedures generally'. The State Government then seconded a State department officer to ICC.

2.3.34 In January 1989 Audit received a letter alleging misuse of the grant by the ICC. Audit has sought comments from the ADC.

2.3.35 In Audit's view, the Board's decision was ill-considered. There was no application from Tranby to ADC and there was no formal submission from ADC staff to the Board on the matter. ADC had not previously made grants to Tranby. The Board did not satisfy itself that Tranby and ICC were suitable for the purpose and that the amount of \$500 000 was appropriate.

2.3.36 The Prime Minister had said that the Government should provide the assistance to establish the consultation process. There has been no communication from the Prime Minister to ADC on the matter. The Prime Minister's Barunga Statement referred to a proposed committee of seven senior Aborigines to oversee the consultations process, but ADC's arrangements with Tranby made no mention of them.

2.3.37 ADC has instead allowed Tranby to finance meetings for the National Coalition of Aboriginal Organisations. At the October Board meeting the Chairman enquired as to the identity of the Coalition and tabled a series of questions about its structure. Acting Commissioner O'Donoghue expressed dissatisfaction with the information given about it. Acting Commissioner Yu said that the Coalition was producing a paper on its role. The Tranby document on the role of the proposed secretariat indicates that the meetings cover matters irrelevant to the proposed treaty and the ADC.

2.3.38 It was not clear why Tranby was chosen in August 1988 as the appropriate Aboriginal body. The reasons appear to be that Tranby was well-regarded among Aborigines and had organised a march of Aboriginal people through Sydney on Australia Day 1988 to the satisfaction of the participants.

2.3.39 Audit put it to the ADC in January 1989 that the payments to Tranby and ICC were grants of financial assistance of a kind not clearly authorised by the ADC Act. Audit suggested that, to resolve the doubts, ADC should seek a formal notice in writing from the Minister under sub-section 8(g) of the Act to give ADC the function of assisting in the treaty consultations.

2.3.40 In a detailed reply on 1 February the ADC argued that the payments were wholly justifiable and provided a further legal advice from Mr Adams who confirmed his earlier advice that the payments were within ADC's powers. Audit referred the legal advice to the Attorney-General's Department which disagreed with Mr Adams' advice and expressed the opinion that the payments could not be regarded as coming within ADC's powers under section 24 or the other provisions of the Act.

2.3.41 Audit accepts the Department's opinion and passed a copy of it to the ADC on 17 February, shortly before completing this report. Audit is unaware of the action that the ADC now proposes to take but considers that ADC should make no further payments without authority from the Minister under section 8(g) of the Act. With regard to payments already made it should endeavour to determine how much of the finance already paid was used for discussion of matters not related to the proposed treaty. If further financial assistance is to be provided, ADC should endeavour to ensure that it is used only for the purpose intended by ADC.

2.3.42 Audit asked whether ADC would obtain from Tranby a refund of the \$18 000 unspent from the grant for the Framlingham meeting. ADC indicated that they were complying as required by the Financial Regulations. ADC's response is unclear since the ADC is not subject to the Finance Regulations.

Disclosure of Commissioners' Interests

2.3.43 During hearings by the Senate Committee on 26 October 1988 Senator Tambling asked whether the Chairman had received statements of pecuniary interests from Mr Perkins and the other Commissioners. (Hansard p.E360)

2.3.44 Senator Tambling's question refers to ADC's longstanding requirement that Commissioners should provide the Chairman with declarations of their private interests and those of their immediate family. It is not a statutory requirement but is in line with the normal practice of senior officers of the Commonwealth Public Service.

2.3.45 At the time that Senator Tambling asked, the Chairman had received declarations of interest from Mr Perkins but not from all other acting Commissioners. By 7 November 1988 all Commissioners had submitted their declarations.

2.3.46 Commissioners have been required to submit declarations to the Chairman since 1981. The declarations are noted by the Chairman, placed in a sealed envelope, registered and held in safe custody. If a Commissioner were found to have acted against the interest of the ADC, the declaration could be opened by an order of a court.

2.3.47 The House of Representatives Standing Committee on Expenditure recommended in 1984 that:

'A chronological register of interests of Commissioners should be maintained with the obligation placed on the Commissioners to update the register as interests are changed.'⁽¹⁾

2.3.48 At the Board meeting in June/July 1988, the newly appointed acting Commissioners were informed that declarations of interest should be provided to the Chairman. Mr Perkins had already provided three declarations, the most recent being in April 1988 before becoming an acting Commissioner. He submitted another in November 1988.

2.3.49 The ADC Act (section 18) provides only that a Commissioner who has a pecuniary interest in a matter being considered by the ADC shall disclose his interest at a meeting of Commissioners and shall not take part in their deliberation or decision on the matter.

Woden Town Club

2.3.50 In the Senate Committee's hearings on 26 October 1988, Senator Tambling queried ADC's financial assistance to Woden Town Club and Mr Perkins' involvement in granting the financial assistance (Hansard ppE373-380).

2.3.51 Woden Town Club is owned by Woden Town Club Aboriginal Corporation which was formed in 1987. The Club opened on 3 June 1988 in the basement of ADC's head office, Bonner House, which is owned by ADC. The President, Secretary and the Treasurer of the Club are Aboriginals and there are about five Aboriginals on the staff. Mr Perkins was President of the Club until November 1988 and an acting Commissioner of the ADC from May to November 1988.

(1) *Inquiry into the Aboriginal Development Commission— Interim Report on Efficiency and Effectiveness of Expenditure*—Report of the House of Representatives Standing Committee on Expenditure, October 1984, p.20



