

**Shifting State Constructions of Anangu Pitjantjatjara
Yankunytjatjara: Changes to the South Australian
Pitjantjatjara Land Rights Act 1981-2006**

DEIRDRE TEDMANSON

A thesis submitted for the degree of Doctor of Philosophy of the

AUSTRALIAN NATIONAL UNIVERSITY

February 2016

Declaration of Originality

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

A handwritten signature in cursive script, appearing to read 'S. M. A. J.', positioned above the 'Signed:' label.

Signed:

On: 20/10/2016

Acknowledgements

There are many people I would like to acknowledge for their support on this journey. First and foremost, I would like to thank Principal Supervisor and Chair of my Supervisory Panel, Dr Will Sanders, Senior Fellow at the Centre for Aboriginal Economic Policy Research (CAEPR) at ANU for his constancy throughout my candidature. From our first discussions to final submission, you have challenged, advised, guided and provided unfailing support and it is very much appreciated – thankyou.

Thanks also to supervisory panel members, Professor Jon Altman for generosity of spirit and inspiring ideas; Professor Tim Rowse for important early theoretical insights; Professor Richard Mulgan also for helpful early discussions. Thanks also to Professor Mick Dodson for timely clarifications and Professor Larissa Behrendt for insights into legal issues. I would also like to extend my gratitude to Director Jerry Schwab and everyone at CAEPR, staff, academics, colleagues, students all - for making me welcome throughout my time with the Centre.

Thanks also to all my wonderful friends and colleagues for your encouragement. To Lia Bryant, your support, timely debriefing, and ongoing belief in me and this project has been a tonic which helped keep me focused; I am very grateful. Thank-you Sue King, for your generosity and solidarity throughout this journey, from beginning onwards you have helped in so many ways, and it is much appreciated. I could not wish for better colleagues or friends. Thanks also to Christine and Peter, Frances Bedford, Bebe Ramzam (and Bibi Leslie and Dolly), Roxanne Colson, Dennis Colson, Gary Lewis, Sandra Lewis (and family), Makinti, Peter Furze, Peter McDonald, Lowitja O'Donoghue, Peter Buckskin, Maryann Bin-Sallik, Donna, Tammy, Ann Killen, Pauline, Collette, Denise Wood, Adrian Vicary, Kurt Lushington, Bill Edwards, Bruce Underwood, Sam Osborne, Jonathan Nicholls - and my colleagues in the corridor at Magill.

To people on the Lands I offer my respect and gratitude for all that you have so generously shared, Kunmanara Nyangu, Kunmanara Thompson, Yami Lester, Uncle Murray, Makinti Minutjukur, Lewis family, Burton family, Ramzan family, Singer family, Stepahn Rainow, Donald Fraser, Ronnie Brumby, Rex Tjami; and many many others. Palya.

I want to especially acknowledge the love and support of my beautiful family: to Louise, Sophie, Claire, Grace, Lucy, Jeff and Charlie – thank-you for being the joy of my life; and to the love of my life Hans, my partner, husband, colleague and friend – thank-you for your intellectual, material and emotional support, I could not have done this without you.

Abstract

The Pitjantjatjara Land Rights Act (PLRA), passed by the Parliament of South Australia in 1981, was a milestone for Indigenous self-determination in Australia and a pinnacle of Anangu/state relations. Although passed under Liberal Premier David Tonkin, the PLRA had its roots in the leadership of Labor's Don Dunstan, Premier for over a decade until 1979 and before that Aboriginal Affairs Minister. Dunstan's vision for Indigenous land rights and self-determination for the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands was embraced by both major parties. This historic achievement of communal land title and community self-determination was also the result of a five-year campaign by the Pitjantjatjara Council (PC) formed by Anangu in 1976. The PLRA created Anangu Pitjantjatjara (AP) as the 'body corporate' of Traditional Owners (TOs) and, through an elected Executive, empowered Anangu decision-making over development, access and other matters.

By 2004 the Rann Labor Government was arguing that self-determination on the APY Lands had failed and seeking to appoint an Administrator to oversee the Lands. Over the next two years, amidst much contestation, Rann gained Opposition support to substantially amend the PLRA. Amendments re-asserted SA Government oversight and control of the Lands through ministerial powers to direct the Executive, or to suspend it and appoint an Administrator, amongst other changes.

This thesis is a narrative account and critical analysis of what happened, how and why in the 25 years between the passing of the PLRA 1981 and its amendment into the APYLRA by 2006. It draws on two bodies of social science literature, critical policy analysis and political theory on Indigenous rights. Conceptually it argues that framing is an important part of the policy process. Using interpretative and critical policy thinkers like Colebatch, Bacchi and Fischer, the thesis considers how problems were identified and issues problematized in the politics of policy-making. It locates this discussion within broader questions of recognition, sovereignty, decolonisation and power.

The thesis argues that the original policy context for the PLRA sought greater self-determination as justice for Anangu, enhancing the social well-being of their communities and reversing some of the debilitating effects of colonisation. In a very different framing 25 years later, Anangu leadership and governance were blamed for social ills in their communities, such as petrol sniffing. Despite two Coronial Inquests identifying inadequate government service delivery as contributing to the persistence of petrol sniffing on the Lands, the State Government targeted self-determination as the problem. Anangu community-control was pathologised, whereas in 1981 it had been eulogized.

Drawing on the work of political theorists Kymlicka, Tully, Taylor and Fraser on minority rights and the politics of recognition, the thesis explores possibilities and limitations of self-determination within the context of the APY Lands. While the 1981 PLRA optimistically promoted Anangu self-determination as a form of internal decolonisation, this thesis argues that policy shifts through to 2006 mark a substantial retreat from the politics of recognition and minority rights.

Contents

Declaration of Originality	ii
Acknowledgements	iii
Abstract	iv
Contents	v
List of Figures	viii
List of Abbreviations	ix
Chapter 1: Introduction	12
1.1 Thesis Aims.....	13
1.2 Methodology	15
1.2.1 Personal location in thesis	19
1.3 Thesis Structure.....	23
1.4 APY Lands Context	26
1.4.1 Demographics	28
1.4.2 Communities, councils and homelands.....	29
1.4.3 Regional Anangu organisations	31
Chapter 2: Recognising Anangu Land Rights	35
2.1 Introduction	35
2.2 Dunstan’s Agenda	36
2.2.1 <i>Aboriginal Lands Trust Act 1966</i>	36
2.2.2 Incorporating Aboriginal ‘collective’ identity	37
2.3 Pitjantjatjara Land Rights Campaign: ‘ <i>Growing up the Country</i> ’	38
2.3.1 Ernabella Mission	39
2.3.2 Anangu leadership.....	42
2.3.3 ‘ <i>We want the Land here</i> ’	44
2.3.4 Underlying tensions within an emerging unity	45
2.4 Pitjantjatjara Land Rights Working Party	46
2.5 Party Politics and Converging Opinions	49
2.6 The Act Passes through the SA Parliament under a Tonkin Liberal Government	52
2.7 The 1981 Act.....	55
2.7.1 Anangu as ‘body corporate’	55
2.7.2 Consultation and consent of traditional owners	56
2.7.3 Executive.....	57
2.7.4 Permit access.....	58
2.7.5 Mining and development	59
2.7.6 Government access for the ‘advancement of Pitjantjatjara people’	60
Chapter 3: The First Decade: ‘<i>And Now We Live in Two Ways</i>’	61
3.1 Introduction	61
3.2 <i>Gerhardy v Brown</i> : Private or Public Land? ‘Discrimination’ or ‘Special Measure’?	62
3.3 Emerging Issues under the PLRA: 1983–1986.....	64
3.3.1 ‘ <i>Things that cause us unhappiness</i> ’: alcohol and petrol sniffing.....	66
3.3.2 Proctor review of the delivery of human services.....	70
3.4 <i>Pitjantjatjara Land Rights Act Amendment Bill 1987</i> : Moving towards Public Local Governance.....	73

3.4.1	Confusion between PC and AP	77
3.5	High-profile State and Commonwealth Reviews in 1987–1988.....	79
3.6	AP’s Response to the Dunstan Report	91
3.7	AP Moves to the Lands: Tensions with the PC Emerge	92
3.7.1	From open to closed communication	95
3.8	Reflecting Back on the First 10 Years	97
3.8.1	Celebrating the first decade: Anangu aspirations for the next decade	97
Chapter 4:	The Second Decade	100
4.1	Introduction	100
4.2	ATSIC Takes Centre Stage	102
4.2.1	Politically engaged Anangu—same people, different organisations?	104
4.2.2	Growth in regional organisations—crowded and competing	106
4.2.3	AP seeks to limit the piranpa and PC’s influence and develop its own role	108
4.3	Changing Commonwealth/State Balance and Other Policy Developments	109
4.3.1	Pitjantjatjara Lands Parliamentary Committee is abandoned	110
4.3.2	Anangu voices get action on asbestos	112
4.4	<i>Mayatja Manta Nyangaku Kutju</i> : Local Government for Anangu Communities?.....	114
4.5	Petrol Sniffing Persists	117
4.5.1	Alcohol supply and control issues: the HREOC Report	119
4.5.2	Deteriorating health and well-being on the Lands	120
4.6	The PC/AP Relationship: Tensions Erupt over Mining.....	121
4.6.1	Applications from the Pitjantjatjara Mining Company and Musgrave Block Holdings	123
4.7	Anangu Pitjantjatjara Operational Review 1998.....	127
4.7.1	PC/AP relationship: tensions escalate around the Operational Review.....	131
4.8	Reflecting Back on the Second Decade	133
Chapter 5:	2001–2002: Tensions between Anangu Pitjantjatjara and the Pitjantjatjara Council: First Coronial Inquest	136
5.1	Introduction	136
5.2	Signing a Service Agreement: Appointing an Administrator for AP	137
5.2.1	‘Practical reconciliation’ in practice	138
5.3	Twenty Years’ Celebration of the PLRA—as Petrol Sniffing Reappears	142
5.3.1	Coronial inquest announced.....	142
5.3.2	Celebrating the second decade of the PLRA	144
5.4	Rift between AP and the PC Widens as Rann Takes Office.....	145
5.4.1	AP turns away from the PC.....	145
5.4.2	A minority Labor government	146
5.4.3	PDP Strategic Economics Initiatives Plan (Phase II).....	149
5.5	Dodson Report	152
5.5.1	Parliamentary Select Committee on the PLRA established.....	155
5.6	First Coronial Inquest Reports	155
5.6.1	Findings.....	158
5.7	Conclusion.....	161
Chapter 6:	2003–2005: Consultations, Crisis, Consultants and a Second Coroner’s Inquest	164
6.1	Introduction	164
6.2	Statement of Intent	165
6.2.1	Mining still in focus as arts gain support	167
6.3	‘Working Together’: The COAG Trials	167

6.3.1 From Statement of Intent to MoU	168
6.4 ‘People Cannot Be Allowed to Die!’	169
6.4.1 ‘What is the name of that committee again please?’	172
6.5 COAG Trials: Mai Wiru and PY Ku.....	173
6.5.1 The ‘Allocations Committee’	175
6.6 Rolling (Over) the Executive	177
6.7 The Ides of March	179
6.7.1 ‘Tied up by red tape!’	181
6.7.2 ‘Time’s Up!’	182
6.8 ‘Rann Takes Control from Blacks’	184
6.8.1 ‘We will not be pushed around’!	185
6.9 Litster Visits the Lands—Litster Resigns	189
6.10 Collins Flies in	190
6.10.1 Collins reports and resigns	192
6.11 Report of the Select Committee on Pitjantjatjara Land Rights	194
6.12 O’Donoghue and Costello Enter the Fray	197
6.13 Executive Board Elections—October 2004	199
6.13.1 Crisis exploitation	199
6.13.2 The extraordinary elections—who votes, where and how?	200
6.13.3 Gender and representativeness	204
6.13.4 Election fall-out.....	205
6.13.5 Centralising control	205
6.14 Second Coronial Inquest	206
Chapter 7: Limiting Self-determination	209
7.1 Introduction	209
7.2 Anger, Anguish, Acquiescence, as the PLRA is Again Amended.....	209
7.2.1 Tjungugka Kuranyukutu Palyantjaku	210
7.2.2 ‘Undermining self-determination’	212
7.2.3 TOs travel to Adelaide to appear before the Aboriginal Lands Parliamentary Standing Committee.....	215
7.2.4 ‘Tjukurpa nyanganpa kampa kutjupankuku Pitjantjatjara Land Rights Actangka’	216
7.2.5 Passing of the Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill 2005	219
7.2.6 November 2005 AP Executive Board elections take place under the new rules	223
7.3 Significance of the Pitjantjatjara Land Rights (Miscellaneous) Amendment Act 2005	224
7.4 <i>Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances)</i> <i>Amendment Act 2006</i>	226
7.5 Reflections on Changes to the PLRA 1981–2006.....	229
7.5.1 Nganampa Manta Festival	229
7.5.2 Shifting concepts—self-determination or sovereignty?.....	230
7.5.3 Recognising group rights	233
7.5.4 Relevance of recognition theory	234
7.6 Politics, Policy and Hypocrisy—A Critical Policy Perspective.....	237
7.6.1 Shifting contexts—from self-determination to ‘normalisation’?.....	238
7.6.2 Shifting stories—from governance to ‘governmentality’	239
Chapter 8: Conclusion - ‘The Whole Aboriginal Problem in Microcosm’	242
References	246

List of Tables

Table 4.1: ATSIC AP Lands' Representatives 1990–2002	103
Table 5.1: Source PDP Report Matrix (2002, p.6).....	150

List of Figures

Figure 1.1: Map of Lands tri-State border modified, source APY Lands homepage (http://www.anangu.com.au/).....	26
Figure 1.2: AP Lands map 2001 source, ATSIC and Sinclair Knight Mertz.....	27
Figure 2.1: Premier Don Dunstan (centre) and the Minister of Community Welfare, Mr Payne (far left) talking to Anangu leaders at a campfire conference to discuss land rights (<i>The Advertiser</i> , 7 May 1977, p. 3). Reproduced courtesy of the SA State Library.....	46
Figure 2.2: Premier David Tonkin with Chairman of the Pitjantjatjara Council, Kunmanara Thompson, signing the Land Rights Act agreement, 2 October 1980. Messenger Press collection (copyright). Reproduced courtesy of the SA State Library.....	55
Figure 3.1: Offices of Anangu Pitjantjatjara Yankunytjatjara at Umuwa. Source: APY Lands (http://www.anangu.com.au/).....	94
Figure 3.2: Celebrations of 10-year anniversary of the PLRA (<i>Koori Mail</i> , 20 November 1991, pp. 12–13).....	99
Figure 5.1: 'Rolling Thunder', Proposed APY Relationships. Copyright Burdon, R, Burdon Torzillo Pty Ltd, 2002.....	141
Figure 6.1: <i>Koori Mail</i> (30 July 2003, p. 5)	171
Figure 6.2: SA State Electoral Office 2004, APY Lands election poster 2004, of SEO Annual Report 2004/5, p. 22	203
Figure 7.1: Source: Aboriginal Lands Parliamentary Standing Committee Annual Report (2005/6, p. 26)	217
Figure 7.2: Source: Aboriginal Lands Parliamentary Standing Committee Annual Report (2005/6, p. 34)	219

List of Abbreviations

ALT	Aboriginal Lands Trust
AnTEP	Anangu Tertiary Education Program
AP	Anangu Pitjantjatjara
APLIICC	Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee
ALPSC	Aboriginal Lands Parliamentary Standing Committee
APY	Anangu Pitjantjatjara Yankunytjatjara
APYLRA	Anangu Pitjantjatjara Yankunytjatjara Land Rights Act
ATSIC	Aboriginal and Torres Strait Islander Commission
COAG	Council of Australian Governments
DAA	Department of Aboriginal Affairs
DAARe	Department of Aboriginal Affairs and Reconciliation
DoHA	Department of Health and Ageing
DOSAA	Department of State Aboriginal Affairs
ELA	Exploration licence applications
HALT	Healthy Aboriginal Life Team
HREOC	Human Rights and Equal Opportunity Commission
LCL	Liberal Country League
MBH	Musgrave Block Holdings
MoU	Memorandum of Understanding
MTLR	Maralinga Tjarutja Land Rights
NPY	Ngaanyatjarra Pitjantjatjara Yankunytjatjara
NSW	New South Wales
PC	Pitjantjatjara Council

PLPC	Pitjantjatjara Lands Parliamentary Committee
PLRA	Pitjantjatjara Land Rights Act
PLRWP	Pitjantjatjara Land Rights Working Party
PY	Pitjantjatjara Yankunytjatjara
PY Media	Pitjantjatjara Yankunytjatjara Media
PYEC	Pitjantjatjara Yankunytjatjara Education Committee
RDA	Racial Discrimination Act
SA	South Australia
SAPOL	South Australia Police
SC	Select Committee
SCPLR	Select Committee on Pitjantjatjara Land Rights
SEO	State Electoral Office
SRA	Shared Responsibility Agreements
TO	Traditional Owner
UPK	Uwankara Palyankyu Kanyintjaku
UTLC	United Trades and Labor Council
YC	Yankunytjatjara Council

Dedicated to the people of the APY Lands

*'I am Anangu...This is my land you're speaking about. This land is our land.
We are the Traditional Owners, the tjilpis and pampas of this land, and we know the law, and
we know the culture. It is our past, and it is our future. It is our life.
The 1981 Act was discussed over many years and supported by all Anangu.
It recognised and accepted our land rights and our human rights to decide what could happen
on our land, in our ways, in Anangu ways, together on our land'¹.*

**Aboriginal and Torres Strait Islander people please be aware that this thesis
contains images and names of people who have since passed away.**

¹ Evidence ALPSC, 2006/5, p.30.

Chapter 1: Introduction

‘The law has been here forever’
Kunmanara Baker²

1.1 Thesis Aims

In March 1981, the South Australian (SA) Parliament passed the *Pitjantjatjara Land Rights Act 1981*.³ The legislation was an important milestone in the South Australian Government’s relationship with Indigenous⁴ peoples (Parliament of SA, House of Assembly, 4 March 1980, p. 3454), and it was heralded nationally and internationally as the first legislative land rights settlement of its kind in Australia⁵ (Peterson 1981, p. 121; Jaensch 1986; Richards 1986; Reynolds 1992). Then Liberal Premier David Tonkin referred to the PLRA as ‘one of the most significant pieces of legislation which has come before this Parliament in its entire history’ (Parliament of SA, House of Assembly, 26 November 1980, p. 2311).

Introduced initially in 1978 by then Labor Premier Don Dunstan as ‘an act of simple justice’ (Parliament of SA, House of Assembly, 22 November 1978, p. 2236), the legislation created a body corporate, Anangu Pitjantjatjara (AP), of all Pitjantjatjara traditional owners (TOs)⁶ in SA and gave them unique rights to control access to, and

² Kunmanara Baker cited in Toyne and Vachon (1984), p. 33.

³ Referred to in short form in this thesis as the *PLRA*.

⁴ In this thesis, ‘Pitjantjatjara’, ‘Yankunytjatjara’ and/or ‘Anangu’ are used to refer to people of the Lands; ‘Aboriginal’ is used to refer to Australian Indigenous people of mainland Australia (and as the preferred term for SA’s first peoples); ‘Aboriginal and Torres Strait Islander’ or ‘Indigenous’ refers to all of Australia’s first peoples (inclusive of peoples of the Torres Straits); or to international contexts regarding the world’s first peoples.

⁵ The *NT Land Rights Act 1976* had established rights for certain Aboriginal groups in the NT; however, the *PLRA* established land rights for a specific collective group of Aboriginal people for the first time anywhere.

⁶ The title for this thesis refers to ‘Anangu Pitjantjatjara Yankunytjatjara’. Anangu is the Pitjantjatjara term for ‘the people’, or ‘the human beings who belong to the earth’ (Toyne & Vachon 1984, p. 5), and refers to Pitjantjatjara Yankunytjatjara and Ngaanyatjarra peoples in the cross-border region of SA, NT and WA. The term ‘Anangu Pitjantjatjara’ or AP—and (after 2005) ‘Anangu Pitjantjatjara Yankunytjatjara’ or APY—has specific meaning under the *PLRA 1981*, now the *APYLR Act 1981* (as amended in 2005). In the Act, AP (and now APY) is designated the ‘body corporate’, which comprises all Pitjantjatjara traditional owners (TOs) and is defined as ‘a member of the Pitjantjatjara, Yankunytjatjara, Ngaaytjarra people...who has in accordance with Aboriginal tradition, social, economic and spiritual affiliations with and responsibilities for, the lands or any part of them’ (*PLRA* Part 1.4) within the SA Lands defined in and covered by the Act. The Executive Board is elected to carry out the wishes of APY as the ‘body corporate’. The 2005 Amendments to the Act altered the way the Executive was elected; changed its powers, role and function; recognised Yankunytjatjara people; and gave the South Australian Government new powers and conditions under which it could intervene in the affairs of APY. Where this thesis refers to AP, it is referring to the ‘body corporate’ of TOs as constructed by the 1981 version of the Act; and where it refers to APY, it is referring to the later 2005 amended version of the Act, which formally included recognition of Yankunytjatjara peoples.

development on, their traditional lands. It also established an Executive Board to carry out the resolutions of the AP.

In September 1981, SA's state-wide newspaper *The Advertiser* proclaimed the significance of the PLRA 1981 under the headline: 'Blacks given title to 10 % of South Australia in historic handing over ceremony.... Aboriginal people now have freehold title under Australian law to 102 630 square kilometres of the State' (*The Advertiser*, 5 September 1981, p.1). The newspaper then quoted Anangu leader Yami Lester saying that Pitjantjatjara people were 'happy with the agreement...we will probably make some mistakes at first, but we want all white Australians to give us a go' (ibid).

In March 2004, the then South Australian Labor Government's Deputy Premier Kevin Foley announced that the Government was installing a former Assistant Police Commissioner as the 'administrator' for the Anangu Pitjantjatjara Lands. He said that 'this government has lost confidence in the ability of the Executive of the AP Lands to appropriately govern their lands...Self-governance in the Anangu Pitjantjatjara Lands has failed' (Foley 2004). The next day, under the headline 'Self-rule is finished', *The Advertiser*⁷ said that the 'Government has lost confidence in the APY [Anangu Pitjantjatjara Yankunytjatjara] council and has intervened to take control of the region...effectively ending 23 years of self-determination' (Kemp 2004, p. 1).

This thesis is a contextualised narrative account and critical analysis of what happened, how and why in the 25 years between the passing of the PLRA in 1981, its review and amendment in 2004/5, and subsequent changes to the governance arrangements on the APY Lands in 2005/6. I argue that these events mark a period of significant change in public policy concerning state/Indigenous relations and illustrate a substantial shift in attitude away from 'self-determination'.⁸

This thesis documents and analyses the changes in Anangu governance arrangements during this period. It assesses why and how the PLRA 1981, which was initially viewed as a major step for self-determination, came to be blamed for the entrenched socio-economic disadvantage among Anangu. The nature of self-governance as envisaged and

⁷ *The Australian* (DiGirolamo 16 March 2004, p. 6) ran a similar story nationally under the headline: '(Premier) Rann takes control from blacks' and in its later edition: 'Rann takes charge in black lands', announcing an end to self-governance.

⁸ 'Self-determination' was adopted as Commonwealth policy in 1972 under the Whitlam government, and it remained a core tenet of policy until the Howard government assumed office in 1996. It is a core principle of the 2007 *UN Declaration on the Rights of Indigenous Peoples*. See Sanders (2002), Stokes and Gillen (2004), Sullivan (1996) and Dodson (1998) for self-determination in the Australian policy context and, for example, Anaya (1996) and Marks (2007) for international applications.

provided for in the original legislation was later portrayed as *the* ‘problem’ that needed to be addressed, while issues such as service delivery and citizenship entitlements to appropriate health, social and economic support were largely obscured.

By analysing the events in this ‘story’ from differing perspectives, this thesis critically reflects on shifts in the nature of Anangu/state relations in the 25-year period. I argue that this period marks a major shift in public policy away from the Dunstan era approach informed by principles and concepts about the potential of land rights, self-governance and self-determination to empower Anangu lives, to one in which the South Australian Government perceived an urgent need for government intervention and increased control over Anangu lives. This thesis explores the changing constructions of these issues in public discourse and how relevant policy themes embedded in debates on the public record are framed and then represented in the media.

This thesis explores the role of key stakeholder groups and policy actors. It analyses issues and events from the differing perspectives of Anangu individuals, communities and organisations, and state and Commonwealth Government protagonists. It analyses the voices of statutory bodies such as the Office of the State Coroner and the Human Rights and Equal Opportunities Commission (HREOC), and of professional consultants. Further, this thesis explores the role of the Coroner as an ‘ombudsman for the dead’ (Charles 2005, p. 77), as well as the effect of the findings of the coronial inquests into Anangu deaths by petrol sniffing in 2002 and 2005 (SA Coroner 2002, 2005). It also discusses the media’s influence in generating a climate of ‘moral panic’ (Cohen 1972, p. 9; HREOC 2003, p. 130) around petrol sniffing, and the impetus for intervention in the governance of the Lands.

To identify biases, this thesis discusses constructions of, and assumptions about, Anangu peoples contained in public documents, parliamentary debates and media commentary during this period. It also acknowledges the importance of considering gender in any critical appraisal of state recognition of APY as a distinct cultural collective with claims to group recognition through self-governance while simultaneously upholding the individual citizenship and human rights of Anangu women and children. The role of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women’s Council, which aims to advance the discussion of women’s rights within the context of Anangu land rights, is also explored.

In *Growing Up the Country: The Pitjantjatjara Struggle for Their Land*, Toyne and Vachon (1984) tell the story of Anangu's fight for land rights and their achievement resulting from the 1981 Act. Neville Bonner's (1988) *Always Anangu* (1988) details the development of the Anangu community's self-management infrastructure and the relationship between Anangu organisations and external agencies. In the ensuing decades, a range of reports and studies have examined the Lands in relation to anthropological, organisational, environmental, health, economic and social issues. Despite lengthy and contentious parliamentary debate, numerous government reports and high levels of media interest in the Lands, little academic literature to date has focused on the details of the policy, legislative and political contexts of Anangu governance or the PLRA in operation. This thesis fills the gap by conducting a detailed exploration of the PLRA in operation through the 25-year period from its origins in 1981 until 2006 and reflecting on shifts in policy during that time.

By detailing and analysing the events leading up to the review and subsequent amendment of the Act, this thesis develops new understandings about the relationship between APY and the state, and it contributes to the fields of public policy, political science and Indigenous studies. This thesis aims to review and analyse parliamentary debates, government inquiries, reports, media statements and associated documents on the public record to reveal:

- how Anangu Pitjantjatjara Yankunytjatjara have been constructed in a specific geographic region of South Australia and recognised in legislation and policy as both a culturally distinct group and a 'body corporate' for the purposes of self-governance from 1981 to 2006
- the diverse perspectives of Anangu and non-Anangu, who are engaged in often competing and contested positions regarding Anangu governance
- the effect of Commonwealth/State intergovernmental relations in the changing policy context in the 25-year period on the PLRA, Anangu governance and the provision of services to the Lands
- the significance of amendments to the PLRA regarding governance arrangements, election procedures and Anangu/state relations.

1.2 Methodology

This thesis uses a critical policy analysis approach that helps to reveal the relations of power embedded in the public policy process. It examines the historical accounts and

genealogical context of ideas and events to provide ‘a painstaking rediscovery of struggles together with the rude memory of their conflicts’ (Foucault 1994a, p. 22). A critical approach seeks to render a ‘problematized phenomenon—a particular policy practice for example—more intelligible’ (Howarth 2010, p. 325). Such an approach explores ‘how issues are understood and framed by the various policy communities’, such as the government, private sector, media and academia, who influence the course of public policy (Duncan & Reutter 2006, p. 244). Further, it explores how policy comes to have meaning (Yanow 1996) and how particular interpretations, ‘coherent stories or accounts’ form shared understandings through discourse (Dryzek 1997, p. 8). A critical approach views policy-making as interactive and interpretive rather than rational and instrumental. In this sense, ‘critical discourse rather than instrumental, purposive action’ is the focus (Bobrow & Dryzek 1987, p. 18).

Public policy is a form of politics through communicative practice (Fischer & Gottweis 2012; Colebatch 2009; Yanow 1996, 1993; Shapiro 1992; Habermas 1984). Through defining ‘what’s the problem represented to be’, policy is framed to respond to particular, often carefully chosen, interpretations of events (Bacchi 2009, p. 1). Framing is the process by which media, politicians and political organisations define and construct issues or events (Lee & Chang 2010; Shapiro 1992; Gamson 1992). The promulgation of a particular ‘policy storyline’ (Fischer 2003, p. 86) shapes the discursive construction of the issues that flow from the policy response.

Common perceptions of policy can presume decision-making to be based on rationality. A critical approach assumes that policy domains are sites of struggle and contestation between competing interests where power is unequally distributed, and where those with power shape policy to suit their ends. As Grimley suggests, ‘policy is an expression of values by a political dominant group’ (1986, p. 20). As Stevenson (2007, p. 3) argues:

Throughout the policy-making process (problem identification, program development and implementation, and program evaluation), differently situated social identities, such as the state, capital, workers, citizens, and consumers, etc., engage in a power struggle to define what constitutes a social problem and, by extension, how it is to be resolved. Success is the creation of policy agendas that resonate with, and reproduce an identity’s particular worldview and corresponding set of values. Ultimately, these are ideological struggles, most often discursive in nature and, although never fully realized, the goal is hegemonic achievement.

Critical policy analysis aims to expose the ideologies and values underlying particular policy contexts, the process by which problems are identified and solutions proposed, and the inclusivity or exclusivity of voices in the debate (Shapiro 1992; Forester & Fischer 1993; Fischer 1995; Yanow 2000; Pal 2001; Shapiro 2002). While more conventional

approaches to public policy analysis are concerned with what governments do, a critical approach views what governments refuse to do or choose not to do to be just as, if not more, important (Bacchi 2000; Pal 2001). Critical analysis can show how people who are affected by policy changes experience these effects in their daily lives: ‘Policy then is a set of shifting, diverse, and contradictory responses to a spectrum of political interests’ (Edelman 1988, p. 16).

In this thesis, critical policy analysis is used to examine how government legislation and policy towards Anangu people changed over time, and how alliances were formed around conflicting interests, both within and between government/s and Anangu, and within and between Anangu organisations. In comparing statements on the public record from a range of actors in the policy process, this thesis reveals competing standpoints and interpretations of events. For example, the critical policy analysis approach is used to compare media discourse about petrol sniffing—which was used by the Government to justify an intervention in 2004—with sources that question the assumptions embedded in that popular discourse. Thus, alternative rationales for events are made visible.

Documents on the public record form the text—not for one dominant story to be *told*, but rather to reveal that many stories can *emerge*—from the same events during the same period. It is the web of meanings and perspectives generated between governments and Anangu people, or Fischer’s ‘policy storyline/s’ (2003, p. 86) that this thesis explores. It critically examines ‘whose interests’ were served by each interpretation of the policy issues, as well as what formed the ‘appropriate’ legislative response. This thesis explores the competing conceptualisations of the relations of power, citizenship and governance at play during this 25-year period, or ‘the shifting state constructions of Anangu Pitjantjatjara Yankunytjatjara’ referred to in the title.

Allison and Zelikow (1999) provide a pivotal exposition of critical policy analysis in their classic case study of decision-making under pressure in the Cuban missile crisis. They compare and contrast competing perspectives on what the ‘problem’ was represented to be—in this instance, a significant policy conundrum that challenged US foreign policy in the 1960s. They explore public policy decision-making by examining the same policy issue through three different lenses: the ‘rational actor’, ‘organisational process’ and ‘government politics’.

Drawing on ‘the garbage can model of organisational choice’ (Cohen, March & Olsen 1972) and notions of ‘bounded rationality’ (Simon 1991), Allison and Zelikow (1999)

suggest that bureaucracies often generate a self-serving repertoire of options that limit responses to problems to a pre-existing set of organisational solutions. They suggest that in the third lens - 'palace politics' - the cut and thrust of political leaders jostling for power and influence determines how problems are constructed, discussed and positioned, and how solutions are then perceived and enacted (Allison & Zelikow 1999, p. 294). They illustrate how pressure from incumbent leaders wanting to maintain their own position of power within a field of competing interests often drove governments into responding *to* the politics of a given situation rather than responding *from* informed and consistent policy principles (Allison & Zelikow 1999).

Although it dealt with a different time and context, Allison and Zelikow's (1999) case study nonetheless provides an interesting explication of what t'Hart (2008, p. 1) refers to, in an Australian Indigenous context, as 'crisis exploitation',⁹ whereby protagonists frame policy 'problems' as emergencies or 'crises' for what are primarily political purposes. t'Hart (2008, p. 160) argues that framing issues as crises enables political leaders to have their 'preferred frame accepted as the dominant narrative'. Grube (2010, p. 559), referring also to the Indigenous domain, characterises the strategic deployment of carefully crafted rhetorical framing as an emerging 'weapon' of choice in Australian Government policy interventions.

This thesis similarly argues that unequal power relations can be seen in the ways that governments and politicians used public discourse to construct issues such as petrol sniffing and socio-economic disadvantage to obfuscate their own responsibilities for APY Lands between 1981 and 2006. However, it also contextualises and tempers this assertion by arguing that simple binaries and assumptions of rights and wrongs are not accurate ways to analyse Anangu/government relations. This thesis argues that Anangu were always (and are still) agents in active pursuit of issues and constructions of events in ways that maximise their collective (and at times individual) agendas.

This thesis shows how problems were constructed and then responded to. In particular, it illustrates how petrol sniffing became conflated with questions of Anangu governance, and it explores how, why and in whose interests this occurred. It summarises and reviews public documents, minutes of meetings, correspondence, Hansard transcripts, speeches and debates in the Parliament, media reports and other commentary on the public record.

⁹ See also Boin, A, t'Hart, P, Stern, E & Sundelius, B 2006, *The politics of crisis management: public leadership under pressure*, which contains a broader discussion of the themes of the discursive power of conjuring a 'crisis' in policy, which t'Hart (2008) uses to critique the 'national emergency' in the Northern Territory.

There have been many parliamentary committees, government inquiries and debates, select committees and consultant's reports, as well as the 2002 and 2005 Coronial Inquest into Deaths by Petrol Sniffing on the APY Lands, each with associated verbal and written submissions and media discussion. They each provide rich insights into differing and often competing stances about Anangu governance.

A recorded history of the entrenched conflict that emerged between the Pitjantjatjara Council (PC), which predated the PLRA, and the AP Executive, which was formed by the Act, provides an insight into competing Anangu perspectives. Given the nature of the PLRA as the legislative provision of a State jurisdiction, this thesis also discusses the limitations of the Act and constraints on Anangu determining their own governance arrangements.

The embedded political perspectives contained in public record letters, government reports, minutes of meetings, interviews, ministerial statements and media releases are used as textual artefacts in this thesis to bring to life the events detailed, and to provide the body of literature from which the analysis is conducted. According to Yanow (2000, p. 27), the 'data' of interpretive analysis are 'the words, symbolic objects, and acts of policy-relevant actors along with policy texts, plus the meanings these artifacts have for them'. Like Flyvbjerg (2006, p. 238), this thesis aims to 'tell the story in its diversity, allowing the story to unfold from the many-sided, complex, and sometimes conflicting stories that the actors in the case have told'.

The political processes that lie behind policy can be experienced as an intensely personal, sometimes negative, sometimes persuasive, exposure to power. This thesis aims to reveal how policy-making processes can obfuscate, obscure and manipulate what is 'seen' to be occurring, yet simultaneously claim to be achieving agreement, compliance and support for a preferred outcome.

1.2.1 Personal location in thesis

While predominantly analysing documents on the public record, this thesis also draws at times on engagements I had with relevant people and events. Interpretive approaches necessitate an understanding of one's own embodied position within the research and a willingness to be reflexive and responsive to the opportunities and limitations of such connections. A critical approach extends this understanding by acknowledging that all knowledge is mediated by 'race, gender, time and space', and that the story we tell can only ever be 'a modest, relative, partial, relational, standpoint-based narrative...a story

with no claim of authority higher than the stories’ that researchers tell about themselves (Vannini 2008, p. 816). Politics, and our knowledge of it, is situational; our perceptions and interpretations of events are shaped by our involvement with, or position in relation to, them. As Haraway (1991, p. 192) suggests, ‘situated knowledges’ are like maps of consciousness, reflecting how and why we construct our interpretations of events and the meanings they hold for us. A reflexive approach appreciates that knowledge is partial, and not universal (Haraway 1988). Our *positionality* is contextual and the ‘place from which values are interpreted and constructed’ (Alcoff 1988, p. 434).

Like Wagenaar, ‘I argue for analytical heuristics that honour the messiness, situatedness and complexity of the world of public policy’ (2007a, p. 320). I place myself within the ‘story’ of this thesis in two ways: first, by identifying my ‘situatedness’¹⁰ as a non-Indigenous Australian seeking to understand the continued racism and exclusions that have denied Anangu and many Indigenous peoples both full citizenship and a unique status as the prior occupants and both traditional and continuing custodians of this continent; and second, by disclosing my engagement within some of the events occurring during the time of the narrative within this thesis.

My family history, like that of many Australians, stretches back to the invasion and convict *unsettlement* of this country. There is genealogical, colloquial and informal evidence of family intersections with Aboriginality on both sides of my paternal great grandparents, but such interconnection has been largely ‘whited out’ by the passage of time, movement of family and the mores of passing into mainstream Australia over generations (Ahmed 1999). This lingering consciousness of intersections with Aboriginality, either directly or through inter-marriage, in my family lineage is a ‘whispering’ in my heart—a sense of a distant but profound connection to Australia’s often violent history (Reynolds 1998).

My contact with Anangu organisations and leaders through various research projects took place in the more recent period covered by this thesis and played a direct part in determining the focus of the thesis. In particular, my early role in preparing a *Report to the SA Minister for Aboriginal Affairs on Community Responses to the Coroner’s Findings into Deaths from Petrol Sniffing on the APY Lands and Community Capacity*

¹⁰ ‘Situatedness’ in qualitative research refers to involvement within a context (Vannini 2008). For further discussion on its relevance to policy analysis, see Jensen and Glasmeier (2010), Wagenaar (2007a, 2007b), Clarke (2005) and Law (2004).

Building (Tedmanson & Maher 2003) provided opportunities for rare and privileged insights into events at that time.

This experience changed my life forever. It gave me exposure to particular political events at the time, an awareness of the diverse and often competing perspectives of Anangu in communities, and some insight into the perceptions and attitudes of policy-makers in Adelaide. It was a rich insider/outsider view that afforded me some access to how people perceived, and were perceived by, others (Moran 2010). At times, it provided me with access to a gaze from within this story as it unfolded; where appropriate, I reflect on this personal experience.

For example, on the day the Deputy Premier announced that ‘self-governance’ on the APY Lands had failed (15 March 2004), I was driving in the metropolitan area and heard the announcement on the radio. The then Chairman of the AP Executive, who was in Adelaide for meetings, called me immediately, having just heard the announcement himself. Neither the Chair nor other members of the Executive had received prior warning of the announcement from the South Australian Government that an Administrator was about to be installed on the Lands because, in the Government’s view, the self-governance of the PLRA had ‘failed’. The Chairman asked if I would meet with members of the Executive and various support organisations rallying to help Anangu source legal assistance in order to develop and communicate their response. Anangu Executive members felt that a ‘fight for survival’ had begun.

In the late 1980s and 1990s I had been involved in research, management and community development positions, including working as a tutor with the Aboriginal Task Force at the then South Australian Institute for Technology. For a time I was a public servant working in policy and research positions in both the South Australian and Commonwealth Governments, including nearly a decade working as a Policy Adviser/Private Secretary to Ministers in the Hawke and Keating Labor governments. This period included the ‘reconciliation decade’, when significant Indigenous policy debates took place, Mabo, Wik, the development of the Aboriginal and Torres Strait Islander Commission (ATSIC), Keating’s Redfern Speech, and the beginnings of the Council for Aboriginal Reconciliation.

In addition to these professional roles, I had been a political activist for most of my adult life. In the decade prior to some of the key events covered later in this thesis, I was President of the South Australian Labor Party, a member of the ALP’s State and National

Executives, an ALP Senate candidate and a regular delegate to ALP national conferences and other Labor fora. SA's Minister for Aboriginal Affairs and Reconciliation (2002–2006), Hon Terry Roberts MLC, was a personal friend for many years, until he became ill with cancer and died in 2006. The years during which the Rann Government's contentious approach to the PLRA came to a head were undoubtedly a challenging time for Terry, who was a progressive politician. Like many who respected and regarded Terry well, I grieve his death and believe he like others in this story, genuinely did his best for people on the APY Lands.

Politics is a complex and nuanced business concerning the engagement of people and power. Seeking to explore its structural twists and turns is not aided by simplistic moralising judgements about the 'good' and the 'bad'. In politics relating to Aboriginal affairs, there is the added imperative of finding ways to move beyond the 'drama of binary black/white relations' (Perera 2000, p. 12). Notions of policy 'success' and 'failure' serve to animate a neoliberal logic that belies the deeper issues of Aboriginal/state relations (Howard-Wagner 2012). Therefore, for critical theory understandings, it is important to consider how issues are constructed, framed and *misframed* in order to better map the 'political space from the standpoint of justice' (Fraser 2010, p. 6).

The early to mid 2000s were a difficult and challenging time both professionally and ethically. The South Australian Government changed its position on APY matters, partly as a result of shifts in Commonwealth policy and partly as responsibility for the Lands shifted from the Aboriginal Affairs and Reconciliation portfolio to the Department of the Premier and Cabinet. The extent of the divergence between what Anangu were being told at the time and what was on record or in preparation elsewhere as possible new policy directions was disillusioning. I spent time with some of the key Anangu individuals, groups and organisations throughout this period, along with a number of key stakeholders and protagonists outside the Lands in non-government and legal sectors who were engaged in advocacy or legal representation for a range of Anangu communities and organisations.

It was a volatile and impassioned period of public and private angst for both Anangu and non-Anangu people. There were also many inspiring people, politicians and government and non-government activists who engaged in debate about what 'self-determination' could or should mean. It was a turbulent time for Anangu leaders, communities, families and individuals. It was both humbling and instructive to witness how Anangu with divergent views interacted with one another and shared moments of great humour and

great disappointment with each other. Such moments endure as powerful memories and illustrate the strength of Anangu and their resilience in the face of complex divisive and unfair circumstances.

Insights into such events occurring in the latter part of the 25-year period will be commented on where appropriate. I wish to acknowledge from the outset the patience, generosity, good grace and good humour of the Anangu protagonists in this story, regardless of the ‘side’ or perspective they adopted regarding amending the Act or their relations with the government. It is to them that I dedicate my thesis.

1.3 Thesis Structure

This thesis explores and analyses the story of the PLRA between 1981 and 2006. Chapter 1 introduces the aims and method of the thesis, outlines its structure and provides a brief overview of the APY Lands as at 2006. It also provides some background context to the author’s deep, abiding and passionate interest in this topic and personal ‘situatedness’ as a witness to aspects of the story as it unfolded. It establishes the framework and context for this thesis.

Chapter 2 provides a brief history of the period leading up to the passing of the PLRA in 1981. It highlights the importance of Dunstan’s reform agenda and traces the etiology of the PLRA in the earlier ground-breaking reforms of the *Aboriginal Lands Trust Act 1966*. It analyses the PLRA’s significance as the first legal recognition of land rights for a specific collective of Aboriginal people in Australia. It also suggests the continuity of Anangu agency, from the mission days and formation of the North West Aboriginal Reserve to the rise of the PC and the campaign for the PLRA. The chapter explores the effect of Anangu input into government deliberations at the time, and how many of the concerns of elders about petrol sniffing and other social needs were overlooked by governments in the excitement of bipartisan support for such a significant advancement in Aboriginal land rights. It reveals the optimistic musings of the *Working Party on Pitjantjatjara Land Rights* about the ‘genius of the Pitjantjatjara epistemology’ (Pitjantjatjara Land Rights Working Party (PLRWP) 1978, p. 34) and the high expectations for land rights as a panacea for the ravages of ‘colonial’ contact. The chapter also outlines the protocols, responsibilities and governance arrangements codified by the PLRA 1981, as well as the associated Anangu bodies formed around that time.

Chapter 3 explores the first decade of the PLRA. It reveals how the aspirations of the Act were tested during its first years of operation by complex political and legal challenges

and debilitating social issues. The chapter details how, within months of commencing, the Act's collective rights provisions were challenged in the landmark *Gerhardy v Brown* case and eventually upheld in the High Court as a 'special measure'. The 1987 amendments to the PLRA are discussed as a response to Anangu concerns about deteriorating social well-being in their communities. The rise of petrol sniffing is explored, and several high-level reviews of the Lands are analysed, including one by Bonner, which recommended action on key governance and administrative priorities to increase Anangu control.

Chapter 4 argues that the Commonwealth became dominant in AP matters during the second decade of the PLRA. It suggests that attention to the Lands waned as ATSIC became an alternative regional focus for policy, resource allocation and governance issues. The continuing separation of the PC from the AP became a source of tensions in the complex array of Anangu governance and administrative arrangements, as rationalisation rather than recognition and representation became the mantra of governments. The chapter argues that efforts to designate the Lands as a local government area (LGA) during this decade were motivated in part by concerns over costs associated with the maintenance of remote infrastructure. A further escalation in petrol sniffing is analysed, along with the rise of regional Anangu organisations in what, by the 1990s, was becoming a political economy of competitive contracting for service delivery. The chapter concludes with an illustration of how increased mining interests in the region promoted conflict between Anangu organisations and leaders; as a further joint Commonwealth/state review of AP took place.

Chapter 5 charts the beginning of the third decade of the operation of the PLRA. It reveals how the conflict between PC and AP, which originated over mining exploration access on the Lands, escalated into a struggle for organisational ascendancy that destroyed a 30-year arrangement. Commonwealth and State governments increasingly pushed AP to liberalise mining access for the economic development of the Lands, and provided resources to encourage AP into more centralised unitary models of control and decision-making. The chapter explores the election of Rann's minority Labor Government and its renewed efforts to resolve the dispute between PC and AP. Professor Dodson's pertinent consultancy report, which comments on AP governance under the PLRA, is critically analysed. A major focus of this chapter is the continued prevalence of petrol sniffing in the Lands, and how ongoing efforts by Anangu leaders to address this issue led to the first

Coronial Inquest. The findings and policy implications of the inquest set the scene for the events that form the basis of Chapter 6.

Chapter 6 brings the previous two chapters together and maps the lead up to the crisis in Anangu–state government relations, which culminated in the events of March 2004. It analyses the contrived and politically charged ‘moral panic’ (Cohen 1972, p. 9; HREOC 2003) fostered at this time, and argues that the Premier’s office centralised control of AP policy issues in an effort to limit the political fall-out from intense media scrutiny over petrol sniffing. A critical lens is used to reveal how putative ‘failures’ of Anangu governance were discursively constructed and promulgated as the excuse, if not the focus of blame, for delays in Government funding and service delivery. The chapter then explores the roles of a succession of external administrators, consultants and advisers—including Lister, Collins, Costello and O’Donoghue—engaged by the Government in order to propose solutions to what it argues was purposively framed as an Anangu ‘problem’.

Chapter 7 critically analyses the 2004 and 2005 amendments to the PLRA by comparing and contrasting the new policy framing with that of the original 1981 Act. The chapter explores the 2004 *Report of the Select Committee on Pitjantjatjara Land Rights* and subsequent debate, and it identifies the political theory assumptions and framing embedded in the legislative and governance changes. It explores shifts in the representation of APY in the amended provisions of the PLRA and associated policies. It asks whether decolonisation is ever possible for Indigenous minorities ‘enclosed within the boundaries of the state that was the agent of their dispossession’ (Cairns 2003, p. 498). Drawing on work by Kymlicka, Tully, Taylor, Fraser and Watson on rights, recognition and *misframing*, the chapter brings the themes in this thesis together to analyse the limitations of state-controlled, legislative forms of ‘self-determination’. It considers Anangu ‘governance’ within the Australian context with reference to the work of Hunt, Sanders, Maddison and Altman. The chapter analyses how the construction of Anangu changed during the 25-year period covered by this thesis, from being a collective group entitled to just ‘restitution...to not only to own but to control their own land’ (Dunstan 1978, p. 2234), to being portrayed as people ‘unable to deliver civil order’ ...from ‘a part of our state that is, quite frankly, a disgrace in terms of governance’ (Foley 2004, p. 1).

Chapter 8 brings together the analyses of the preceding chapters into a composite synthesis about the shifting state constructions of APY from 1981 to 2006. This concluding chapter summarises challenges that Anangu communities and their unique

State-based Land Rights Act face within the context of state/Aboriginal and Torres Strait Islander policy-making in Australia.

1.4 APY Lands Context

The APY Lands comprise some 103,000 square kilometres of the north west of South Australia, originally designated by the PLRA 1981 (see Figures 1.1 and 1.2). The Lands are home to the Yankunytjatjara and Pitjantjatjara peoples and form part of a larger 350,000 sq. km 'tri-state cross-border region' that intersects the SA, Northern Territory (NT) and Western Australian (WA) borders. Yankunytjatjara people customarily occupied the area closest to the Musgrave ranges around the site of the Presbyterian Mission established in 1935, which later became known as Ernabella and is now incorporated as Pukatja. Further north, near Uluru, is the country of extended kinship groups of the Pitjantjatjara people, who moved into the south eastern Yankunytjatjara country because the Mission provided supplies and support after the period of early white contact, while further to the west is Ngaanyatjarra country.

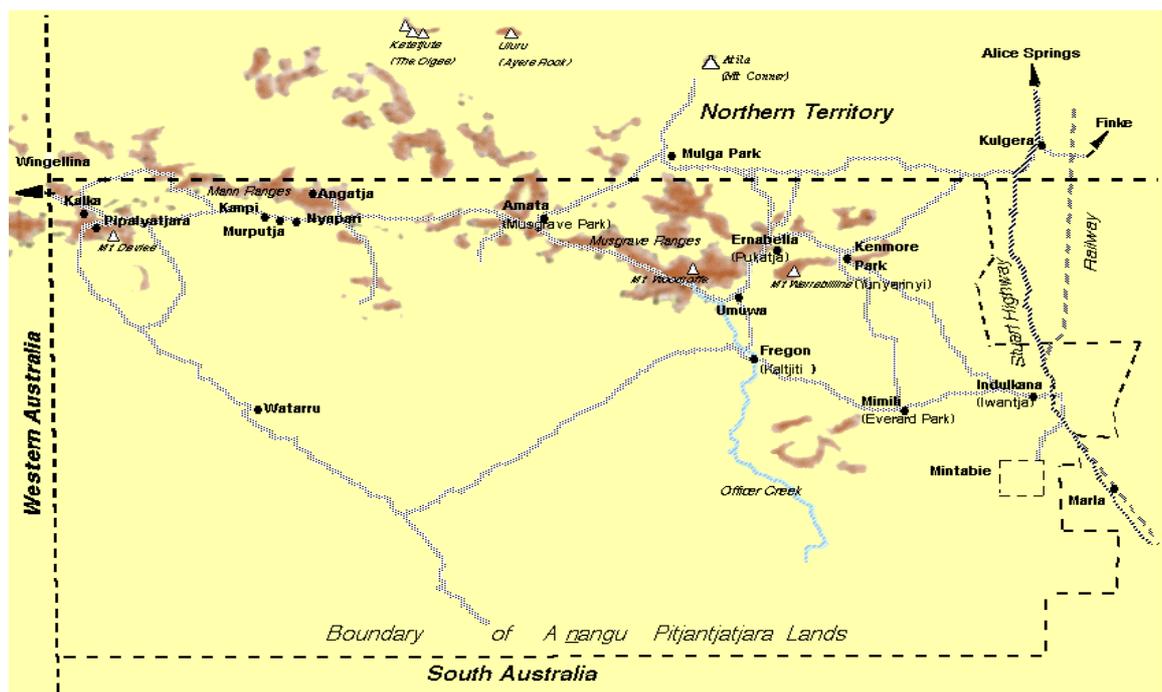


Figure 1.1: Map of Lands tri-State border modified, source APY Lands homepage (<http://www.anangu.com.au/>)

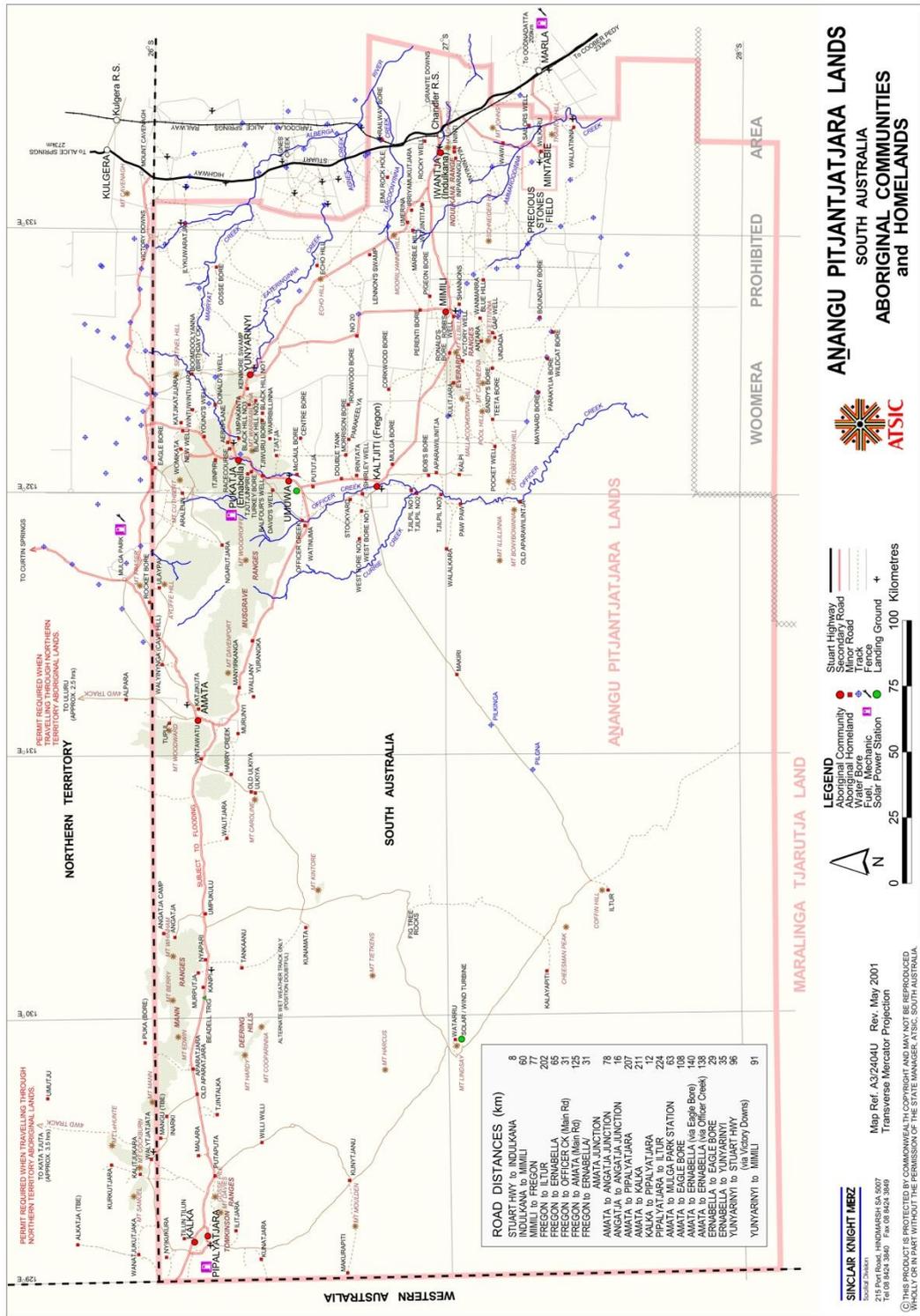


Figure 1.2: AP Lands map 2001 source, ATSIC and Sinclair Knight Mertz

While Yankunytjatjara is a distinct language, it is closely related to Pitjantjatjara, and speakers of each language generally understand one another. Kinship links and responsibility for the country for different extended family groups of Yankunytjatjara Pitjantjatjara (and also for some Ngaanyatjarra) affect internal politics across the Lands. All Pitjantjatjara, Yankunytjatjara (and Ngaanyatjarra) who are TOs¹¹ of any part of the Lands are members of the body corporate ‘Anangu Pitjantjatjara’ (AP from 1981) or ‘Anangu Pitjantjatjara Yankunytjatjara’ (APY from 2005), as incorporated by, and defined in, the Act. The construction of ‘AP’ (‘APY’ after 2005) as the body corporate under SA legislation codified the relationship between Anangu and between Anangu and one level of the Australian state. This thesis focuses on the implications of this legislative apparatus constructing Anangu TOs as a corporate body for the purposes of self-governance and control over development on traditional Aboriginal Lands.

Communities on the Lands include: Amata, Fregon, Iwantja (Indulkana), Kalka, Mimili, Pipalyatjara, Pukatja (Ernabella), Watarru, Watinuma and Yunyarinyi (Kenmore Park). Homelands (or outstation groups) on the APY Lands include: Anilalya, Irintata, Kaltjiti, Murputja, Tjurma, Turkey Bore and Tjutjinpiri. Since 1990, the administrative centre of the Lands has been Umuwa, which is close to Pukatja and has roads that radiate out, spoke-like, to other communities such as Fregon, Amata, Mimili and Indulkana. As discussed in Chapter 3, Umuwa was originally designed as a separate ‘neutral’ location where non-Anangu staff could reside away from communities at the Anangu people’s request. Under the 2005 amendments to the Act, the Executive Board comprises 10 members elected from across the Lands for a three-year term. Since the 2005 amendments, the Executive Board has chosen its Chairperson, whereas previously the Chairperson was elected directly by the APY ‘electorate’.

1.4.1 Demographics

Anangu are highly mobile across the region; they frequently travel and reside between communities, communities and homelands, and they often move to kinship groups and family links across the tri-state borders into the NT and WA. Consequently, population numbers in any one community and/or across the region are, at best, estimates.

However, according to the 2006 Census, there were 2,230 persons usually resident in Anangu Pitjantjatjara LGA (AP local government area): 49.4% were males and 50.6%

¹¹ The Act specifies that ‘Traditional Owner in relation to the Lands means an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic and spiritual affiliations with, and responsibilities for, the Lands or any part of them’.

were females. Of the AP LGA population, 84.5% were Indigenous persons, compared with 2.3% Indigenous persons in Australia and 1.7% in SA. The Lands comprise approximately 9.3% of the total Indigenous population of SA.

In the 2006 Census, 27.4% of the population usually resident in the AP LGA were children aged 0–14 years, and 11.7% were persons aged 55 years and over. The median age was 26 years, compared with 37 years for persons in Australia. For the APY region during the week prior to the 2006 Census, 844 people aged 15 years and over who were usually resident in the region were in the labour force. Of these, 35.3% were employed full time, 53.7% were employed part time, 1.7% were employed but away from work, 4.5% were employed but did not state their hours worked and 4.9% were unemployed. There were 692 usual residents aged 15 years and over who were not in the labour force.

1.4.2 Communities, councils and homelands

Given the mobility between communities and homelands, as well as in and out of the Lands itself across to the Northern Territory and Western Australia, the size of the communities varies greatly depending on the season, work available, access to services and other social and cultural factors. Pukatja (Ernabella), the site of the old Presbyterian Mission, is generally accepted as the largest (and oldest) community, with 400–600 residents in 2006. This is followed by Kaltjiti (Fregon) and Amata, with 250–300 residents, and then Mimili and Iwantja (Indulkana), with 150–250 residents. Pipalyatjara and Kalka have around 100–200 residents, and Watarru has fewer than 100 residents. Anilaylya Homelands and Turkey Bore Homelands have an estimated 150–200 residents each, Murputja Homelands has a little less, and Kenmore Park has 100–150 residents.

In 1987, the Australian Government's House of Representatives Standing Committee in Aboriginal Affairs published a report entitled *Return to Country: The Aboriginal Homelands Movement in Australia*, which defined 'homelands' as 'small decentralised communities of close kin established by the movement of Aboriginal people to land of social, cultural and economic significance to them' (HRSCAA 1987, p. 7). It suggested that homeland communities demonstrated the strong desire of Aboriginal people to return to country to 'undertake their customary responsibilities to their land' as 'a reaction to the stresses of living in settlements' (HRSCAA 1987, p. 257). According to Edwards (1992), since the 1970s, Anangu families had been moving away from the communities established around the old mission site at Ernabella and in other localities. By 2002, there were more than 110 homelands across the Lands, although some were only intermittently occupied (Habitat Solutions 2002).

The incorporation of local community councils on the Lands pre-dated the PLRA 1981. The first Anangu community councils were formed at Ernabella and Fregon in the early 1970s. In January 1974, the Presbyterian Church, which had operated the Ernabella Mission since 1937, gave administrative control of the communities at Ernabella to the newly incorporated Pukatja Community Council and at Fregon to the Aparawatatja Community Council (Edwards 1992). Community councils in Amata, Indulkana and Pipalyatjara were incorporated by the end of 1974.

Seven community councils had been incorporated by the time the PC was formed in 1976, five years before the PLRA came into effect. Over the 25-year period covered by this thesis, other communities and homelands were incorporated across the Lands. By 2002–2003, the region's then Nulla Wimila Aboriginal and Torres Strait Islander (ATSIC) Regional Council provided \$11.5 million to 16 community councils and homeland groups to deliver municipal services to Anangu on the Lands (ATSIC 2002/3, pp. 34–40). The communities identified and funded at that time were:

- Amata Community Inc.
- Anilalya Homelands Council Aboriginal Corporation
- Irintata Homelands Council Aboriginal Corporation
- Iwantja Community Inc.
- Kaljiti Community Aboriginal Corporation
- Mimili Community Inc.
- Murputja Homelands Council Aboriginal Corporation
- Nyapari Community Inc.
- Pipalyatjara Community Inc.
- Pitjantjatjara Homelands Council Aboriginal Corporation
- Pukatja Community Inc.
- Tjurma Homelands Council Inc.
- Turkey Bore & Tjutjunpiri Community Aboriginal Corporation
- Watarru Community Inc. Aboriginal Corporation
- Watinuma Community Inc.
- Yunyarinyi Community Inc.

Each community council was elected annually by their constituent communities. Each chose a representative Council Chairperson as their elected spokesperson; in most cases,

this position involved remuneration and enhanced local status.¹² Local community councils received funding to employ a Municipal Services Officer¹³ to oversee activities, manage local service delivery and provide advice and support to the elected body.

The PLRA legislated for the creation of an Executive Board to enact the will of TOs, the broader body corporate and the land holding group, which had the ultimate legislative right to determine matters pertaining to the Lands. This Executive was ‘s/elected’ in a general open meeting of all TOs from across the Lands that was held once a year over a day or more. The meeting also s/elected the AP Executive’s Chairperson for the year and discussed cultural issues for the Lands. There was no articulation in the PLRA between local community councils and the AP or its Executive Board—nor did the latter have any responsibility for municipal or other local service delivery. The resulting tension between local community councils, homeland groups and regional ‘governance’ arrangements such as AP and its Executive, as constructed by the PLRA1981, generated a complex interplay of local and regional politics that raised issues of representation and accountability during the period covered by this thesis. These tensions are explored in coming chapters.

1.4.3 Regional Anangu organisations

In 1976, representatives of the seven incorporated Anangu community councils met as part of a historic two-day mass meeting with Anangu TOs, which founded the Pitjantjatjara Council (PC) to act as a representative coalition of Anangu community interests ‘to relieve the poverty, sickness, destitution, distress, suffering, misfortune and helplessness of the inhabitants of the Council area’ (PC 1976), and to act as a political lobby group for land rights in the lead-up to the 1981 legislation. The agreed role of the PC after the advent of the PLRA was that it would focus on advising and supporting Anangu throughout the tri-state region on anthropological, environmental and legal matters. The conflict that developed between the PC and Anangu Pitjantjatjara (AP) in later years is explored in coming chapters.

Other regional Anangu service agencies were formed during the period of change between the mid 1970s and early 1980s, and were focused around ideas of independent

¹² Status within Anangu communities is primarily related to cultural standing; it is not an attribute of one’s role within white or ‘piranpa’ (Pitjantjatjara term for non-Indigenous persons) society. For an analysis of differential cultural role significance and the emergence of community councils, see Rowse (1992), Gerritson (1982) and Sanders (2002).

¹³ Municipal Services Officers (MSOs) were usually positions taken up by piranpa; however, by the early 2000s, the Puktaja Community Council had employed Anangu woman Makinti Minutjukur as its first Anangu and first Female MSO.

self-management. In 1980, Anangu women formed the NPY Women's Council, which expressed its aims to:

- promote women's membership of and participation in community councils, ATSI Regional Councils and other organisations
- help individual women achieve further training, education and employment
- assist in the establishment of appropriate health, education, cultural, artistic and social services
- promote and support the achievements and authority of women
- distribute information about issues of importance to women
- promote and encourage women's Law and Culture (NPY Women's Council 1980).

The governance of the NPY Women's Council included representatives from the Northern Territory and Western Australia, as well as South Australian Anangu communities. It remains a tri-state body representing Anangu women's issues across the region. After the PLRA 1981, the NPY Women's Council assumed an increasingly important and prominent role in service delivery and advocacy, particularly in relation to violence against women, substance abuse and the well-being of families, communities and children. The Council initially co-located its administrative office in Alice Springs with the PC and Nganampa Health Council as part of an Anangu resource agency precinct.

Nganampa Health, an AP-controlled health service, was formed in 1983. It took over responsibility for the region's health services from the South Australian Health Commission in 1985. Until 1992, when Nganampa Health based its administration on the Lands at the newly created government and services centre at Umuwa, it worked out of the Alice Springs resource agency precinct, which also housed the PC and the NPY Women's Council.

Like the NPY Women's Council, Nganampa Health has a tri-state presence and services Anangu communities across the NT, WA and SA. A focus on sanitation, infrastructure, housing, social and environmental planning, and community development was developed in 1987 through the *Uwankara Palyankyu Kanyintjaku (UPK)* public environmental health strategy, a community planning blueprint for the Lands. In Nganampa's early years, distances between Alice Springs and the Lands made liaison and communication difficult; as a result, it opened offices at Umuwa in 1993. On that occasion, Director Robert Stevens (Nganampa Health Council 1994, p.7) said:

This is a very important day for Nganampa health, and a very important day for Anangu. The opening of this office means that the administration of health services is now based on the AP Lands.... It means Anangu can easily come and have meetings and talk about problems with health services, and we are here on the Lands to fix those problems. Nganampa started ten years ago. When we started, Anangu said they wanted the kids to be healthy, and for sick people to be treated on the Lands. Now we have immunisation programs and screening for sickness. Babies are born on the Lands. ...Our health service is Anangu-controlled and we have Anangu Health Workers who are the first point of contact when people are sick.

Pitjantjatjara Yankunytjatjara (PY) Media is an Anangu media organisation. In the early 1980s, Ernabella Video and Television (EVTV) was formed in Ernabella as a way to curb the saturation of commercial TV due to the launch of the AUSAT satellite. EVTV became the place for Anangu to document or record culture. In 1987, members of the AP Executive determined to extend the services provided by EVTV to all communities across the Lands.

PY Media was incorporated as the regional body to assist communities to develop local media centres. In the mid 1990s, PY Media moved to Umuwa to set up a regional office to enable fair representation for all communities on the Lands. PY Media manages remote communications projects and new technology developments in the region.

Ernabella Arts celebrated 60 years of continuous operation in 2008. A craft room was set up in the Ernabella community in 1948 for Anangu women to apply traditional spinning skills to wool obtained from the sheep run on the Mission station. The traditional spindle became the logo for the organisation, which has since spawned a vibrant Anangu arts industry. It is the oldest continuing Aboriginal arts centre in Australia and has encouraged a range of Anangu arts enterprises that have successfully operated in the region for decades.

The Pitjantjatjara Yankunytjatjara Education Committee (PYEC) was established in the late 1980s to enable Anangu to provide input into education at the primary, secondary and tertiary levels on the Lands. SA Government primary schools were developed in the major Anangu communities from the early 1970s, while secondary schooling was conducted either in Alice Springs or through an annexe, termed the '*Wiltja Residential Program*', at Woodville High School and through billeting arrangements in Adelaide.

In the early 1980s, the predecessor of the further education institutions that now form the University of SA established a small campus in major Anangu communities to conduct the Anangu Tertiary Education Program (AnTEP).

The infrastructure of regional Anangu service organisations became stronger after the PLRA 1981 was enacted. Commonwealth and SA Government funding increased over

the next two decades for these agencies to assist in the delivery of health, social welfare, education, training and communication support services to Anangu communities.¹⁴ Anangu community councils received some funding for municipal services, and the PC received funds for anthropological and legal advisory support to AP.

The complex interplay of governance, representation, funding and service delivery issues in and between Anangu organisations and in and between regional and local levels blurred accountability and generated considerable political tensions in the years following the passing of the PLRA. The following chapters explore this story.

¹⁴ In addition to the above arts, media, health, women's and education services, an Anangu Land Management organisation formed in the 1990s to focus on land and natural resource management issues and later an AP Services organisation formed to provide additional accountancy, service and administrative support to Anangu communities.

Chapter 2: Recognising Anangu Land Rights

‘An act of simple justice...’
Don Dunstan (1978)¹⁵

2.1 Introduction

Conceptual roots of the PLRA can be traced in the continuum of policy reform that Don Dunstan forged during the 1960s and 1970s. For Dunstan, advancing Aboriginal social justice was a longstanding passionate and deeply felt commitment. While an Opposition frontbencher in 1960, Dunstan was elected President of the Federal Council for Aboriginal Advancement.¹⁶ Throughout the 1960s, he spent time visiting SA Aboriginal communities, consulting with Aboriginal leaders and elders, and formulating new policy approaches (Dunstan cited in NMA 2007).

This chapter argues that Dunstan’s suite of Aboriginal policy reforms in the 1960s laid the groundwork that enabled the PLRA to emerge from the 1970s pan-Anangu cross-border activism, and that forged the PC as its pivotal force for change. The chapter explores how such progressive legislation was conceived and then achieved in a period after the 1967 Referendum when policies favouring self-determination were not out of step with Commonwealth directions, and when they were strongly supported in SA, initially on a bipartisan basis.

This chapter also traces the emergence of a politically constructed singular AP identity, posited as a unitary polity and corporate focus for the purposes of the Act. The formulation of this new landholding entity, AP, met both government and Anangu interests by enabling the transfer of Lands. As suggested in this chapter, its establishment also created a basis for future tensions.

¹⁵ In introducing the Pitjantjatjara Land Rights Bill into Parliament in 1978, Dunstan referred to the Bill as both a ‘historic measure’ and ‘an act of simple justice’. For full reference, see Dunstan, HA Hansard, 22 November 1978, pp. 2235–2238.

¹⁶ The FCAA (which became FACAATSI in 1964) was formed in Adelaide in 1958 and was a coalition of Aboriginal and non-Aboriginal activists committed to an agenda of social and civil rights reform for Aboriginal Australians. Activists from all mainland states formed FCAA as a national pressure group to campaign for ‘equal citizens’ rights’ for Aboriginal Australians. The two goals of this new body were to: 1) repeal all legislation—federal and state—that discriminated against Aborigines; and 2) amend the Australian Constitution to give the Commonwealth Government power to legislate for Aborigines as with all other citizens. For more information on Dunstan and FCAA, see the National Museum of Australia’s website on Indigenous rights: <<http://indigenoustrights.net.au/default.asp>>.

2.2 Dunstan's Agenda

When Labor's Frank Walsh formed his government in SA in 1965,¹⁷ Dunstan became its self-styled 'activist' Attorney-General who was passionately committed to legislative reform (Dunstan 1981). Dunstan (cited in NMA 2007) stated:

The moment I got into office, I set about a preparation of an Aboriginal Land Rights measure and I had the Director look specifically—I sent him overseas immediately to look at the American legislation, and the New Zealand legislation—and he came back and we discussed it and said, 'We're not going to make the mistakes that those people did, which led to fragmentation of title and all sorts of difficulties. What we will do is to create', I told him, 'we'll create a trust for Aboriginal people. They will run the thing, but they will hold the land for all the Aboriginal people in South Australia. We won't have any fragmentation of title and it will be theirs in perpetuity'. And we announced in the first Governor's speech—as Attorney-General I had to prepare the Governor's speech—and we announced Aboriginal Land Rights in the first Governor's speech. It was headlined!

Three significant Aboriginal Affairs policy reforms followed in quick succession: the *Aboriginal and Historic Relics Preservation Act 1965*, which aimed to preserve and protect Aboriginal cultural sites and artefacts; the *Prohibition of Discrimination Act 1966*, which made it unlawful to discriminate against someone 'by reason only of his [sic] race or country of origin or the colour of his skin'; and the *Aboriginal Lands Trust Act 1966*, which recognised a form of collective Aboriginal land 'rights'. The move to establish an Aboriginal Lands Trust was radical and laid foundations for the PLRA 15 years later.

2.2.1 *Aboriginal Lands Trust Act 1966*

When the *Aboriginal Lands Trust Act 1966* passed in December 1966, SA's Labor government became the first in Australia to recognise an Aboriginal title to land (Peterson & Langton 1983, pp. 115–121). In what Attwood (2003, p. 269) would later describe as 'path-breaking legislation', the Act established the Aboriginal Lands Trust (ALT)¹⁸ with an all-Aboriginal board to take over the title of existing Aboriginal reserves for the benefit of SA's Aboriginal people. The Act also empowered the SA governor to transfer Crown land reserved for Aboriginal people to the ALT, which was to act on behalf of the TOs of land covered by the legislation.

The Act stipulated that if an Aboriginal council was already established for an area of Land, then the consent of that council was needed before a transfer of that land to the

¹⁷ When Labor, under Frank Walsh, took office in SA in 1965, it ended a historic 27 years of Thomas Playford's Liberal Country League rule.

¹⁸ The SA ALT is still a vehicle for Indigenous land control and socio-economic development in SA. In 2009, the SA Minister of Aboriginal Affairs and Reconciliation, Portolesi, announced a review of the *Aboriginal Lands Trust Act 1966*, which resulted in the passage of a new *Aboriginal Lands Trust Act 2013*. Information on this Act can be found at:

<http://www.austlii.edu.au/au/legis/sa/consol_act/alta2013237/>.

ALT could occur (see ALT Act Part IV:16 (1); Way 1999). The North West Aboriginal Reserve was specifically identified as a case where the transfer of Land to the ALT would not occur until a locally constituted Aboriginal council had been formed to consent to, or alternatively reject, such a proposal.

From a State Government perspective, for the title to be transferred ‘back’, there needed to be an entity or governance body to which land control could be ceded.¹⁹

2.2.2 Incorporating Aboriginal ‘collective’ identity

The passing of the ALT Act (1966) marked a turning point in the South Australian Government’s approaches towards its Aboriginal populations.²⁰ It was an attempt to accommodate Aboriginal sociality and connection to country in positive ways, albeit within a European-based system of governance and laws. For the first time in Australia’s history (Peterson 1981), it legislatively acknowledged certain qualified ‘collective’ rights for Aboriginal people as a ‘group’ of people deemed legally competent, active ‘stakeholders’ in their own futures (Kymlicka 1995a).²¹ Rowse (2012, p. 62) argues that for the first time:

an Australian legislature grappled with the problem of how to give legal form to a rights bearing Aboriginal collective—that is, to recognise Aborigines as a ‘people’ and to afford them institutions of collective deliberation and action.

The ALT was formed as a body corporate managed by a board of Aboriginal representatives appointed by SA’s governor on the recommendation of the government to manage the Aboriginal Lands transferred to it. Broader policy-making and discretionary administrative powers for the welfare of Aboriginal people were retained by the SA minister. The 1966 Act introduced the concepts of inalienability of collective tenure into legislation. Dunstan (1981, p. 109) sought a legal mechanism that was:

capable of dealing with the different ways in which Aboriginal groups now operated in relation to Land without repeating others’ mistakes in applying English common law of land

¹⁹ Here the Act states: ‘Provisions with respect to Aboriginal lands, 1966. Aboriginal Lands Trust Act, 1966 No. 87 493 PART IV.: 16. (1) Notwithstanding anything in the Aboriginal Affairs Act, 1962, or any other act contained, the Governor may by proclamation transfer any Crown lands or any lands for the time being reserved for Aborigines to the Trust:... Provided further that no such proclamation shall be made in respect of the North-West Reserve (referred to in subsection (6) of this section) until such a Reserve Council for that Reserve has been constituted and such Council has consented to the making of such a proclamation’.

²⁰ In terms of Sanders’ (2009) typology of ideological tendencies in Aboriginal Affairs, the new Act marked a shift away from ‘guardianship’ and towards a more positive understanding of difference.

²¹ Political theorist Kymlicka (1995) advances a notion of Aboriginal collective rights to self-determination within a liberal democratic rights framework consistent with the norms of valuing individual rights. He differs from Taylor (1992) and Tully (1995) in the extent to which his vision of collective group rights is compatible with concepts of liberal democracy. Hence, I argue Kymlicka’s take on Indigenous collective rights to be most relevant to the policy framing of this era in SA.

ownership...to a people whose relationship to Land could not encompass or be encompassed by English ownership practice.

The ALT Act proved to be a significant policy and legislative template for the PLRA to follow. With the retirement of Walsh, Dunstan became the SA Premier in June 1967—a position he held for only 10 months before the 1968 state elections resulted in a hung parliament (Parkin 1981). The appointment of Stott as Speaker delivered government to the Liberal Country League (LCL) under Steele Hall (Blewett & Jaensch 1971). In 1970, Stott withdrew his support for the LCL and Labor won the ensuing election. In June 1970, Dunstan resumed office as the Premier—a position he would retain until his resignation in February 1979. It is during what Parkin (1986, p. 1) characterised as the ‘Dunstan decade’ that Anangu claims for land rights would achieve political fruition.

The Pitjantjatjara campaign gained increasing traction throughout this decade, not only among Anangu communities across the Lands, but also in non-Aboriginal and non-government sectors, church organisations, and political and media circles, especially as the *Aboriginal Land Rights (Northern Territory) Act 1976* emerged across the border. The campaign’s origins lay in an interesting mix of political opportunities: the facilitative interest of a reformist Dunstan government; the post 1967 Referendum context sympathetic to new ideas about self-determination and self-management; the NT legislative initiative; and the ‘benevolent’ acquiescence of a rapidly withdrawing but still supportive Ernabella Mission. It was a historic and extraordinary moment of Aboriginal political action.

2.3 Pitjantjatjara Land Rights Campaign: ‘*Growing up the Country*’²²

Anangu control of their communities effectively began when Ernabella Mission handed control to the Pukatja (Ernabella) and Aparawatatja (Fregon) Community Councils in January 1974. These two Anangu councils had been established in 1973 under the SA *Community Welfare Act 1972* (PLR SC: 68 sub 288). As identified in Chapter 1, by the end of 1974, Anangu Community Councils were incorporated in areas previously controlled by the government at Amata, Indulkana and Pipalytjara. In 1976, more Anangu councils were incorporated at Mimili and Kenmore Park (Yungarinyi), although the SA Government kept overall administrative authority for the North West Aboriginal Reserve until the late 1970s.

²² Toyne & Vachon (1984) use this time as the title of their book chronicling the Pitjantjatjara land rights struggle.

When the Presbyterian Church started handing back control to Anangu communities, it shifted from being the provider of missionary care to a strategic ally in the fight for Pitjantjatjara land rights. Fuelled by what Toyne and Vachon (1984, p. 41) term ‘Christian humanism’, the Church actively supported Anangu claims for control of their Lands. Edwards (1986, p. 485) suggests that Mission overseers were convinced that:

the long history of dispossession of land [that] has taken place in Australia should be reversed and traditional Land Rights recognised.

Complex and deep relationships had developed through mission–community interactions in the preceding three to four decades, some of which were intergenerational. As a result, Anangu looked to the Church to advocate for their self-determination and to support their land rights campaign (Pybus 2012, p. 260). The mission’s prominent role of authority and control was still etched into the memories of many Anangu leaders. The role of the Mission had been, and would continue to be, an important resource for Anangu.

2.3.1 Ernabella Mission

The Presbyterian Church established Ernabella Mission in 1937²³ with a grant of £1000 from the South Australian Government,²⁴ primarily to shield Anangu from unregulated incursions into their Lands (Hilliard 1968, p. 84). In this period, surgeon Charles Duguid visited Ernabella and was disturbed at the level of abuse of Anangu women by itinerant ‘white’ men pursuing dingo scalps or pastoral work, as well as the exploitation of Anangu labour and potential for an epidemic of communicable diseases. As a result, Duguid lobbied the South Australian Government and Presbyterian Church for a medical mission on the North West Aboriginal Reserve.²⁵

Government support for the Ernabella Mission reflected anxiety in sections of the SA community in the 1930s and 1940s regarding the moral responsibility of Western society to preserve and protect Aboriginal people (Hilliard 1968; Shepherd 2004; Edwards 1983,

²³ At the time, growing public awareness and policy interest in, and concern for, Anangu was being fuelled by popular speculation that here lived, in the quaint, patronising words of the times, one of the few remaining ‘tribal groups, of truly primitive, untouched Aborigines’ (Hilliard 1976, p. 84). For example, anthropologist Cleland led a widely reported University of Adelaide scientific party to investigate Anangu society in 1933 and reportedly found Anangu to be politically sophisticated and: ‘a very delightful set of people with evidently a high moral code of their own’ (Cleland 1934, p. 840).

²⁴ The South Australian Government had originally proclaimed an area of 56,271 sq. km adjoining the NT as the ‘North West Aboriginal Reserve’ in 1921. However, in the ensuing years, various government expansion schemes meant that pastoral leases and dog scalp hunters made further inroads inside the borders of the Reserve. By the mid 1930s, much of the area around Ernabella was formally leased by the government to pastoralists, and the Ernabella rock waterhole had become the centre for the Ernabella Station, which operated by running sheep for wool and meat, as well as farming wheat.

²⁵ For more historical background to the establishment of the Ernabella Mission, see for example: Hilliard (1968), Shepherd (2004), Eickelkamp (1999) and/or the comprehensive detail in the Ara Irititja Project <www.irititja.com/sharing_knowledge/index.html>.

1986). Guardianship and government protectionism were dominant policy paradigms in Aboriginal Affairs at this time. As Sanders (2009, p. 8) suggests:

guardianship enters public policy when for one reason or another governments believe that particular people within their jurisdictions are not competent judges of their own best interests.

A mid 1959 report by the Aborigines Protection Board states that the Ernabella Mission gained the South Australian Government's support to 'act as an efficient buffer between the near-primitive natives and white civilization' (1960, p. 11). In the words of SA's Chief Protector of Aborigines, McLean (cited in Hilliard 1968, p. 86):

The aim [of the Mission] is to buffer the contact between the white and native races in such a way that the clash will not only be gradual but will be in the first instance with the people who have the welfare of the natives at heart.

This ethos of guardianship shaped Anangu–state relations from comparatively late 'first contact' through to the period of state paternalism²⁶ under mission administration, until the early 1970s. Such policies envisioned Anangu living on their traditional Lands in protected, safe and relatively 'purposeful' ways (Select Committee on Pitjantjatjara Land Rights (SCPLR) 2004, p. 29), segregated out and contained within²⁷ their Lands under forms of governance that differentiated them significantly from other South Australians.²⁸

Under the Mission, education initiatives, medical support, and employment and training initiatives were introduced, and sheep and horticultural enterprises were established.²⁹ The Mission became a hub for food and support for Anangu, not just in the surrounding

²⁶ See Rowse (2005) for a fuller discussion of the contested debates inherent in suggesting a sequential time-bound policy shift between the early colonial period of 'protectionism' and 'guardianship' and later mid-twentieth-century policy period known as the 'assimilation' era. Rowse's (2005) edited volume provides space for competing voices that debate whether a more liberal view of Aboriginal people as 'equal citizens' underpinned the shift towards integration in the 'assimilation' period of Indigenous–state relations, or whether this period was merely the logical continuation of an ongoing colonial project aimed at the elimination of Aboriginality from Australian society.

²⁷ Exemption certificates were required for people to leave the Lands, and while policies favouring removal of mixed-race children from their families and communities were not widely enacted in the North West region, Lowitja O'Donoghue, a Yankunyatjajara woman, tells of the harrowing effect of removal and upbringing in a Colebrook home in Adelaide during this era in Grattan (2000); see also Lowitja's story in Goold and Liddle (2005).

²⁸ Tindale (1941, p. 74) advocated the segregation of Anangu people, to 'give them a chance of survival' and suggested that they could 'live on their own foods' as 'permanent game wardens', which would then 'cost the State nothing more than the small amount needed to provide some medical aid and police patrols'.

²⁹ While Christian ministry was part of the Mission, historical records suggest it was a 'free' choice option. In the context of Christian missions of the time, Ernabella Mission has been held to be progressive, as it focused on working with Anangu leaders, maintaining and spreading the Pitjantjatjara language, and demonstrating respect for Anangu cultural mores. The Mission provided communal meals and free medical care, as well as shelter and support in lieu of wages for the Mission enterprises. This regime continued until 1966, when the conversion to a 'cash economy' took place in the lead-up to the 1967 Referendum and associated campaigns for equal wages and greater autonomy for Aboriginal people in Australia.

area, but also for Anangu throughout the region, whose socio-economic activities it influenced.

Family income and access to foodstuffs and resources were largely managed for Anangu by the Mission administration. While the Pitjantjatjara (and to a lesser extent) Yankunytjatjara languages were preserved and encouraged and Anangu cultural mores were respected, decision-making was generally centralised to the Mission hierarchy. Anangu witnesses to the 2002/44 SA Parliamentary Select Committee on Pitjantjatjara Land Rights (SCPLR) generally recalled the Mission years nostalgically—as a time when there were work opportunities and when substance abuse was comparatively unknown.

According to Edwards, the Mission ‘functioned for Anangu as a place of purpose and activity’ (SCPLR 2004, p. 29). Strehlow (cited in Hilliard 1968, p. 11) also paints a romanticised view of benevolent paternalism, while making a somewhat portentous observation:

The Ernabella Mission authorities have always realised that permanent segregation of the Pitjantjatjara folk from the world of white civilisation was impossible, and have done their best to deal with the educational problems of fitting the people under their care for eventual integration into the total Australian community. No social experiments are possible without mistakes, some of which may well have serious consequences, unintended by those who made them.

State ‘guardianship’ of Anangu through Ernabella Mission³⁰ continued largely uncontested until campaigns in the mid 1960s for greater Aboriginal self-determination galvanised Anangu into political action. Within two years of the disestablishment of the Ernabella Mission in 1974, the concerted APY campaign for land rights intensified as an increasingly politically aware Central Australian Aboriginal ‘public’ closely observed how Whitlam’s Aboriginal Land Rights Commission³¹ was opening the space for further land claims.

Anangu kinship ties are not confined by, or aligned to, State or Territory borders. To a people whose cultural, political and social ties spread throughout the tri-state region, the development of a specific campaign for land rights over the North West Aboriginal Reserve was integrally tied to, and informed by, the momentum for land rights taking place in the NT.

³⁰ Rowse (2012, p. 65) suggests that the North West Aboriginal Reserve was effectively outside the state government’s control at this time; however, as the Mission received funds from the state, I consider it still constitutes part of the apparatus of state guardianship.

³¹ Whitlam’s establishment in 1973 of the (Woodward) Aboriginal Land Rights Commission provided the Commonwealth with the policy mechanism to metaphorically and materially ‘shift ground’ on the issue of Aboriginal land rights.

2.3.2 Anangu leadership

Anangu inter-community dialogue traversed the NT border area and became increasingly focused on self-determination. Coombs³² (1977, 1994) argued that the emergence of an increasingly politically active and publicly vocal ‘traditionally’ oriented Aboriginal leadership in the central desert region was an essential pillar of the cross-border dialogue fostering both NT and SA Aboriginal aspirations for land rights. Coombs (1994) named Anangu leaders ‘Ivan Baker, Donald Fraser, Yami Lester and Albert Lennon’³³ as being central to the land rights movement of the previous two decades (Coombs 1994, p. 30).

Until this time, Anangu had been perceived as ‘a dependent and administered people whose lives were largely controlled’ (Summers 2004, p. 16). However, as Toyne and Vachon’s (1984, p. 41) account of the Pitjantjatjara land rights campaign vividly portrays, by the 1970s, Anangu were organised and organising—ready to seize the opportunity to transform their relations with the state:

Nowhere else in Australia had an Aboriginal group organized itself over such a vast area and involved so many communities, linked by a common culture and language, to fight for the land and political power.

Within a decade, Anangu came to be viewed as ‘independent political actors, with the capacity to operate in the wider political structures in Australia’ (Toyne & Vachon 1984, p. 41), and:

the relationship between Government and Pitjantjatjara changed from that of guardian and welfare recipient, to Government and pressure group (Hope 1983, p. 346).

2.4 Pitjantjatjara Council forms

At the invitation of the Amata Community Council, representatives from other Pitjantjatjara communities met at Amata for two days in July 1976 to ‘discuss affairs of mutual interest’ (PC Minutes 13–14 July 1976). This gathering of Anangu from both SA and the NT was regarded as a historic occasion by those who were interested in pursuing ‘ground-up’ self-determination. Attendees were listed in the minutes by place of residence, but ‘where appropriate the person’s traditional site affiliation [was] given in brackets’ (PC Minutes 13–14 July 1976). Representatives of the communities of Ernabella, Fregon, Indulkana, Pipalyatjara, Amata, Wingellina (Irantju), Blackstone

³² In discussing strategic campaigns for greater Aboriginal autonomy, Coombs (1994) also credits the homelands movement, which encouraged people to return to their traditional lands during the 1970s, as a significant spur to the aspirations of Aboriginal Australians for legislative recognition of land rights.

³³ As upcoming chapters of this thesis reveal, many of these same Anangu leaders and their younger political ‘apprentices’ were to become political activists again, but in different circumstances and different policy settings, in the early to mid-2000s.

(Papulankutja) and Docker River were recorded as attending. The meeting's first action was to 'name the body of people meeting: The Pitjantjatjara Council' and to elect inaugural office bearers (PC Minutes 13–14 July 1976).

The issues driving the formation of this pan-Anangu PC included both the quest for land rights and the goal of self-management. According to the minutes of the inaugural meeting, another key aspiration was to improve the health and well-being of all Anangu. Land rights were seen as a means of achieving improved well-being for Anangu rather than as an end in itself. With continued government (and other) support, Anangu wanted to work towards alleviating problems in their communities. The issues listed by Anangu for discussion at this 'inaugural meeting' included:

- community consultation processes
- representation and language issues regarding meetings in Adelaide or elsewhere
- land rights
- role of government departments
- human services
- ALT
- health
- radio and communications
- permits for entry into country/protocols
- roads and infrastructure
- self-help/community sustainability
- Pitjantjatjara community control over decision-making and services
- community councils
- governance and management
- young people and children
- decentralisation and homelands (PC Minutes 1976).

The meeting determined that all matters discussed would be 'taken back to each Community for further discussion before being discussed again at a further Council meeting' (PC Minutes 13–14 July 1976). It also agreed 'that each Community should contribute Ten Dollars towards the expenses of the Council' which was to comprise the

communities represented at the meeting. The assembled 56 Anangu representatives³⁴ decided meetings should be held in the North West region, asserting that there were problems:

associated with attending meetings in Adelaide and other centres because of language difficulties and problem of one or two people representing the Pitjantjatjara people. More meetings should be held in the area where people feel free to speak (PC Minutes 13–14 July 1976).

2.3.3 ‘We want the Land here’³⁵

After lunch on 13 July, Anangu representatives asked the non-Aboriginal people present to leave so that Anangu could discuss land rights on their own. This discussion was minuted as follows:

Land Rights. The Pitjantjatjara people claim all of the land from Indulkana to Docker River. Joseph Mamirnga from Docker River had said that they wanted a title to Mintankura (Blood Range) so that it could not be taken from them and tourists could not enter it. There was discussion on the boundaries of Pitjantjatjara land. The following places was (sic) suggested as marking the boundary: Wingellina, Docker River, Kulgera, Indulkana, Tjiwa Piti, Kalaya Piti, Kata ala. It was said we must decide on the Northern and Eastern boundary—we can sort out the Western boundary with the Warburton people. Some suggestion that Areyonga can be included. Others said this was Aranta land. Donald Fraser said that Ayers Rock should be included but not Curtain Springs as this was lease. There was a strong suggestion that the whole area to be regarded as a unit and not divided. Albert Lennon said that he needed more land for Fregon cattle and wanted to build the Western boundary fence from *Erlywanywanyu through kukariwata waranya*. This was agreed to by the meeting (PC Minutes 13–14 July 1976).

It was also agreed that land rights should be taken up directly with Premier Dunstan. The minutes state that ‘the problem of control of the North West Aboriginal Reserve by the Department for Community Welfare was raised and the opinion expressed that the reserve should be under the control of Pitjantjatjara people’, and that ‘[a] Pitjantjatjara Lands Trust should be established’ (PC Minutes 13–14 July 1976).

Anangu wanted the decolonisation of their region and a supported transition to self-determination. The minutes reveal a strong desire for formal recognition of Anangu land rights, and their desire to operate their community councils with strength and purpose, to understand the protocols of community governance, to have ‘Pitjantjatjara people working alongside’ medical and community adviser staff, and to establish training and support so that Anangu would eventually be able to take over these positions. In discussing the issues facing young people and children, the meeting identified self-determination as a priority in all phases of planning and responding to need:

controls should be exercised by local people rather than white authorities (PC Minutes 1976).

³⁴ Five non-Anangu community advisers were also in attendance at the inaugural PC meeting. They were witnesses and guests only and on request helped with for example minute-taking and organisational tasks.

³⁵ Baker cited in Toyne and Vachon (1984, p. 53).

2.3.4 Underlying tensions within an emerging unity

Some suggest that an outstanding feature of the Pitjantjatjara land rights campaign was its astute local leadership (Toyne & Vachon 1984; Coombs 1994), while others argue that it was the passionate ‘determination and unity of Anangu’ (Summers 2004, p. 18). Pybus (2012, p. 258) argues that the ‘fluid and contingent nature’ of Western Desert language groups like the Pitjantjatjara and Yankunytjatjara ‘allowed them to invoke traditional alliances across the North-West of South Australia’, from Blackstone in WA to Docker River in the NT, in order to found the PC to carry forward the Pitjantjatjara land rights campaign.

This ‘oneness with a focus on obtaining title to Land’ reveals a coalescence of once-dispersed kinship, family and even language groups—Pitjantjatjara, Ngaanyatjarra and Yankunytjatjara—into a ‘single political unit to express common interest’ (Vachon 1982, p. 482). Anangu wanted to strategically advance a collective position—as ‘one’ in relation to Land—for which inalienable communal rights and eternal communal obligations held a deeper cultural significance than Western notions of ‘ownership’ could convey. Yet this collective strategy to pursue land rights co-existed with the longstanding competitive dynamics of a localised and dispersed heterogeneity of family/kinship interests in the region (Yengoyan 1970; Vachon 1982; Edwards 1983; 1986; Sutton, 1998; Holcombe, 2004). For example, while interconnected and with extended familial ties right across the central desert region, Pitjantjatjara were more closely connected to the area around Uluru in the NT, and the related language group of Yankunytjatjara families more prevalent around the South Eastern Musgrave ranges, known as SA’s North West Aboriginal Reserve. However, Pitjantjatjara and Yankunytjatjara leaders put aside internal differences to work for their shared common goal of collective land rights.

Edwards (1983, pp. 296–297) suggests that an increase in mining exploration in the region in the 1970s also triggered Anangu to pull together to forge the PC as a unitary organisational structure:

in which traditional authority [would be] respected and through which they [could] interact authoritatively with modern political and bureaucratic bodies.

However, whatever its impetus, this unifying move also consolidated the prominence of Pitjantjatjara over Yankunytjatjara in the tri-state region:

a modern identity was being forged in response to the contemporary land rights movement. With the new Council named as the Pitjantjatjara Council and with Pitjantjatjara having become ‘lingua franca’, it appears that the Pitjantjatjara had become the dominant group in the area (Pybus 2012, p. 258).

National and local media attention directed towards the Pitjantjatjara land rights campaign also helped to galvanise public support for Anangu (Toyne & Vachon 1984; Summers 1980, 1981). Within two years of the first meeting of the PC, Dunstan's Bill was to be introduced.



Figure 2.1: Premier Don Dunstan (centre) and the Minister of Community Welfare, Mr Payne (far left) talking to Anangu leaders at a campfire conference to discuss land rights (*The Advertiser*, 7 May 1977, p. 3). Reproduced courtesy of the SA State Library.

2.4 Pitjantjatjara Land Rights Working Party

Dunstan established the *Pitjantjatjara Land Rights Working Party* (PLRWP) in March 1977 in response to persistent campaigning by the PC. It provided the intellectual and policy framework for subsequent bipartisan acceptance of legislation that acknowledged: a) the rights of Anangu as a cultural minority within SA to enact their culture on their own terms; b) that recognition of prior ownership (custodianship) and right to control of Anangu Lands was central to that culture; and c) that such land was not 'waste' but land occupied by peoples meaningfully engaged in their culture and livelihoods prior to European settlement.

Dunstan appointed Christopher (Chris) Cocks SM to chair the six-member PLRWP³⁶ with terms of reference:

to examine the feasibility of establishing by legislation a separate Pitjantjatjara lands Trust to cover the North West Reserve, Everard Park, Indulkana, Ernabella, Fregon, provided that the inalienability of the land is firmly established and the arrangements do not contravene the wishes of any of the Pitjantjatjara communities. In doing so, to have regard to the question of mineral rights; to consider the inclusion of Yalata in such an arrangement, should the Yalata community indicate its interest in such a proposal; [and] to propose such consequent amendments to the Aboriginal Lands Trust Legislation or the introduction of new Legislation as may be appropriate (PLRWP 1978, p. 2).

Kunmanara³⁷ Minutjukur, an Anangu elder and TO, was appointed ‘official’ observer for the PC. This formal inclusion of an elder was a radical step at the time.

The *Report of the Pitjantjatjara Land Rights Working Party*, given to Dunstan in June 1978, reveals much sensitivity in the committee’s engagement with, and deliberations about, Anangu cultural perspectives and context. This embracing of what the Working Party understood to be a Pitjantjatjara ‘world view’ is reflected in its subsequent recommendations for specific legislation to advance Anangu rights. The discussions and debates used by the PLRWP to illustrate and justify its recommendations provide insights into the policy rationale that underpins the framing and intent of the *PLR Act 1981*, as originally proposed by Dunstan.

The Working Party argued that for Western European culture, land ‘productivity’ had been an article of faith for several thousand years, reflecting a settler culture with its tenets of ‘sovereignty’, ‘commercial transactions’, ‘possession’ and wish to ‘accumulate consumerables’, ultimately legitimised by the ‘quintessential powers of the Crown’ (PLRWP 1978, pp. 22–23). The Working Party reported that one of the major issues faced in negotiating the land rights framework it proposed was the lack of visibility of Aboriginal culture and the widespread misunderstanding of the centrality of land to Pitjantjatjara peoples.

³⁶ The members of the PLRWP were HJ Copley, Regional Director, Northern Country Region, Department for Community Welfare; D Hope, Senior Lecturer, Aboriginal Task Force, SA Institute of Technology; R Howie, Solicitor, Central Australian Aboriginal Legal Aid Service; BC Headland, Aboriginal Advancement Committee Adelaide (Secretary); and E Johnston, Law Department, Adelaide (Consultant). HC Coombs, then with the Centre for Resources and Environmental Studies, and N Peterson of the Anthropology Department at the ANU, were invited to a meeting of Anangu and the PLRWP in October 1977 to assist their deliberations, as was J Long, the then Deputy Secretary of the Commonwealth Department for Aboriginal Affairs and Chairman of the Commonwealth Working Party on Uniform Land Rights and Uniform Services for the Central Australia Reserves. Former counsel assisting the Woodward Aboriginal Land Rights Commission, G Brennan QC, was also consulted on what form the Pitjantjatjara lands rights might take.

³⁷ ‘Kunmanara’ is a term Anangu use in place of a deceased person’s name, which is not to be spoken. See the Aṛa Irititja Project glossary for more common Pitjantjatjara words, <http://www.iriritja.com/sharing_knowledge/glossary.html>.

It argued that Western European notions of urban progress and ‘productive’ use of land resources had come at a high price for many, citing the practice of child labour, rural exploitation and poverty as examples that are often overlooked in the assumptions of the superiority of Western European culture (PLRWP 1978, pp.22-23).

Conversely, the Working Party eulogised what it termed ‘the genius of Pitjantjatjara epistemology’ and argued that if adequate access to shelter, food and health were not disrupted, then many Anangu were better served by their culture than in the mainstream in terms of ‘aesthetic satisfaction and individual equanimity’ (PLRWP 1978, pp. 33–34). The Report outlined aspects of Pitjantjatjara epistemological understandings of human relationships to country³⁸ and contrasted these to Western European traditions regarding knowledge, Christian beliefs, enlightenment and romantic vision:

The Pitjantjatjara have developed an intellectual position whereby knowledge of the land is a continuous verification of belief about it....

The genius of the Pitjantjatjara epistemology is that although there is a profound distinction between sacred and secular ritual and content, there is no special doctrine about the nature of the belief that has to be suddenly invoked in order to be able to cope with spiritual or ritual matters. As there is no need for a man (sic) to have to decide whether he will have faith in an unseeable and unverifiable mystery there is no agony of disbelief. The entire landscape contains the totality of simulacra which verify not merely some particulars then stop, but the whole cultural inheritance from the merest anecdote to the most profound ritual....

The European may be anxious to commence mining, but the Pitjantjatjara may be in a state of speechless panic not only is he unable to reveal its true nature to an uninitiated man, but even if he could what would he say? ...It is this context that we see an indisputable need for the Pitjantjatjara not only to own their own land, but to be facilitated to be in full control of access to it (1978, pp.33-34).

From this excerpt, it might be suggested that Kunmanara Minutjukur sensitised the (all male) members of the Working Party to Anangu cultural perspectives. This was likely reinforced by the Working Party having extended interactions with members of the PC.³⁹ It also reveals the depth of the Pitjantjatjara case being argued to frame legislation that would reflect an appropriate respect for the continuing culture of Pitjantjatjara.

The Working Party advocated policy change to enable Pitjantjatjara peoples to regain control, not only over their traditional lands, but also their lives. It recommended not only the transfer of the land title to the North West AAboriginal Reserve to the Pitjantjatjara peoples, but also that they should have ‘full powers of management of their Lands’

³⁸ For example, the Working Party referred to Indigenous sustainable farming techniques such as ‘firestick farming’ as a contrasting adaptation to land use, ‘where land was systematically worked for economic return by exploiting the seasonal potential of given areas of land by the controlled use of fire’ (PLRWP 1978, p. 21).

³⁹ Minutjukur ensured regular exchanges between members of the Pitjantjatjara Council and the Working Party.

(PLRWP 1978, p. 7). It argued for recognition of Anangu ‘ownership’ of their lands and rights to decide who could have access to their country and what could take place on it:

As a Working Party we wish to stress the need to accept that the Pitjantjatjara have a right to their land in any and every sense that we understand, and in many senses that we do not begin to understand (PLRWP 1978, p. 36).

That TOs would want the restoration of their rights over management and control of Anangu country is framed in the Working Party’s deliberations as uncontroversial; indeed, it is referred to as an ‘indisputable need’ (PLRWP 1978, pp. 34–35). The assumption that this was a widely accepted and uncontested policy norm remained a constant feature of discussions at the time of the Bill’s introduction into Parliament in 1978, and in its later passage to enactment in 1981.

2.5 Party Politics and Converging Opinions

When Dunstan introduced the Pitjantjatjara Land Rights Bill into the Parliament of SA in November 1978, he referred to it as a ‘historic measure’ (Dunstan 1978, p. 2235). Citing the PC’s representations to the government seeking ‘freehold title’ to their Lands, Dunstan stated that ‘they specifically requested the formation of a Pitjantjatjara land holding entity’ (Dunstan 1978, p.2235). He then explained how the Bill would ‘establish such a land holding entity, to be designated Anangu Pitjantjatjaraku—meaning simply the ‘Pitjantjatjara Peoples’’. Dunstan (ibid) framed the Bill as his government’s response to a resolute campaign by the Pitjantjatjara people for recognition of their land rights:

The Bill gives full support to the clear aspirations of the Pitjantjatjara, *not only to own but to control their own lands* (author emphasis).

Dunstan (1978, p. 2235) went on to describe the Bill’s provisions in terms of reasonableness and ‘restitution’:

I am sure that all reasonable South Australians would agree that after land alienation on the massive scale seen since first settlement, the restitution of the comparatively little land remaining to its original owners would seem the only principled course to adopt.⁴⁰

Recalling the Commonwealth’s Aboriginal Land Rights Commission⁴¹ and the *Aboriginal Land Rights (Northern Territory) Act 1976*, Dunstan described the Bill as ‘an act of simple justice’ (Dunstan 1978, p. 2236). He explained the PLRWP’s detailed recommendations for how the South Australian parliament could enact legislation to

⁴⁰ Moreover, the Bill was seen as a means of ‘rationalising the diverse forms of tenure attaching themselves to the lands scheduled in this Bill and at the same time providing a form of tenure consistent with that now being proposed in the Northern Territory as a result of Commonwealth initiatives’ (Hansard, 22 November 1978, p. 2235).

⁴¹ Aboriginal Land Rights Commission (1973) *First Report* and (1974) *Second Report* (Justice Woodward, Commissioner), commonly referred to as the ‘Woodward Royal Commission’.

transfer the land title of the North West Aboriginal Reserve back to the Pitjantjatjara people (PLRWP 1978, p. 7).

Dunstan's speech provides insights into the South Australian Government's policy thinking at the time. It reveals a government that was keen to develop a new cross-cultural policy paradigm, and that aimed to reconcile quite different conceptualisations of land ownership through legislation. According to Dunstan (1978, pp. 2235–2236), the Bill aimed to encompass, through a single Act, 'the diverse and sometimes novel considerations embodied in the reality of Pitjantjatjara ownership'.

First, Dunstan (1978, p. 2236) argued that the government accepted the 'traditional view of ownership...that the whole of Pitjantjatjara land belongs to all Pitjantjataras':

Given the acceptance of this notion by the Government, it would not have been sufficient simply to issue title under the real property Act as this would have left unresolved questions as to who was a Pitjantjatjara, and what, if any, special rights and responsibilities needed to be spelt out in order to render ownership as close as possible to the Pitjantjatjara notion and at the same time take into account the context of a modern, western State.

Second, he argued that the Bill provided for a new and specific form of land ownership, as well as new policy provisions targeted to a specific cultural and language group as an alternative to that provided by the *ALT Act 1966*. Dunstan (ibid) outlined how, in keeping with the recommendations of the Commonwealth's Aboriginal Land Rights Commission Second Report (1974), the Bill would help 'preserve' and 'strengthen' Anangu connections to country and thus support:

a scattered but culturally homogenous group; their remoteness and separation from urban interests, aspirations and cultures all [adding] credence to the need of creating a new land holding entity.

Third, Dunstan (1978, p. 2236) asserted that this act of 'restitution' was a 'principled' way for governments to recognise the 'fundamental and inalienable role' of Pitjantjatjara peoples in SA, and to 'provide a better basis for the future'. With an eye to history, Dunstan (ibid) claimed that his government was 'no smoother of dying pillows', and that:

[this legislation] will give South Australia an honourable place in international eyes with regard to the relation of government to the treatment and status of ethnic minorities.

Dunstan (ibid) also suggested that the Bill contradicted a 'widely held notion that the North West Lands were "wasted"'. The PLRWP had argued that the notion of 'waste' was a 'Western European' concept embedded in a culture 'with an urban, extractive and agricultural tradition' (PLRWP 1978, p. 21). Dunstan argued that anyone who assumed that Aboriginal people had failed to make good use of their traditional lands should carefully consider the Pitjantjatjara people's deep relationship with the land.

Sentiment in favour of the Pitjantjatjara Land Rights Bill introduced in 1978 was not confined to Labor; it was also shared by SA's opposition. Following Dunstan's first reading, debate on the Bill was adjourned until early 1979, when Shadow Minister Harold Allison (1979, p. 2507) outlined the Liberal party's response:

I support the Bill. The principle of land rights for Aborigines and in particular this legislation, the Anangu Pitjantjatjaraku is a principle which the Liberal Party has supported and one which the Federal Liberal Party has been exemplary in implementing legislation for example in the Northern Territory.... We recognise that tribal Aborigines attach a tremendous importance to land.

Allison (1979, p. 2508) argued that the Bill was a 'historic recognition of damage done over 200 years of occupation of Australia'. However, he expressed uncertainty as to 'whether the granting of land rights' would arrest this damage (ibid). Within a week of the Liberal party's response, and with the Bill still under active discussion, Premier Dunstan suddenly resigned in a dramatic televised appearance from hospital.⁴² Even this extraordinary turn of events did not derail the Bill's passage. The following week it was sent to a Select Committee with Allison's affirmation of its importance as a 'public Bill that affects a particular group's special rights' (Allison 1979, p. 2508).

While indicating that there would be debate on the details and amendments proposed through the Select Committee process, Allison (1979) declared the Liberal party's support for the policy intent of the legislation. However, with what might now seem like perceptive foresight, Allison (1979) identified a cluster of issues *not* settled by legislation.

First, Allison argued that the Act's relationship to the Commonwealth legislative and policy context might become an area of difficulty. Second, he suggested that issues of 'identification'—that is, who constituted the Pitjantjatjara body politic—might be an area lacking clarity, which could prove problematic. Third, he took issue with rights conferred regarding the control of access to the Lands on the basis that it might exclude other Aboriginal people not recognised as part of APY, and on the basis of mining or other commercial operations of significance to SA. Fourth, Allison (1979, pp. 2508–2509) highlighted concerns about implicit assumptions that the legislation could solve health and social welfare issues:

In health and education I hope to ask whether this Bill will improve the present standards of health and education among the Pitjantjatjara?... Among health problems that immediately spring to notice are the under nourishment among children, glue sniffing by young people in Aboriginal communities and the obvious problem of alcoholism. Whether this legislation will prevent or retard these diseases is open to question.... Will this legislation effectively bring

⁴² See recollections by Kelton (2006) for an account of Dunstan's televised resignation. This was a dramatic and memorable time and, due to political involvements at this time, I was personally privy to Dunstan's ill health and some of the events surrounding his resignation and its announcement.

those problems to a halt? If not, is there any improvement in the legislation that could be enacted in order to assist the tribal leaders and the Pitjantjatjara Council to tackle the problem head on...?

Hence, amid growing cross-party support for the recognition of land rights, there were also expressions of concern. Labor's Len King, Minister for Aboriginal Affairs in the early 1970s, had also urged caution with what he saw as a key policy dilemma:

how to enable Aboriginal people, if they wished, to retain their heritage and maintain a separate cultural identity and at the same time provide the educational opportunities necessary to take an equal place in the wider community (King 1970).⁴³

King's (1970) particular concern was the potential for unintended social and intergenerational consequences if land rights alone were relied on to ameliorate living conditions:

it is inevitable that as the children are educated many...will reject tribal conditions and practices and particularly tribal conditions. This will undoubtedly produce social difficulties...Government [will need to]...ease the pain of the tension which must necessarily develop (King 1970).⁴⁴

Interestingly, Allison (1979) and King's (1970) caution that land rights alone should not be assumed to be a panacea for social issues echoes that of Anangu at the inaugural PC meeting in July 1976.

2.6 The Act Passes through the SA Parliament under a Tonkin Liberal Government

The Select Committee on the Pitjantjatjara Land Rights Bill (1978) reported to Parliament in May 1979 and recommended only minor amendments to the draft Bill. However, before a vote could be taken on the legislation, an election was called by the new Labor Premier Des Corcoran, which Labor lost.

In September 1979, Premier David Tonkin and his new Liberal government took office. The PC and Anangu communities maintained their concerted lobbying for land rights. In February 1980, meetings about the future of the stalled legislation commenced between the Tonkin Liberal government, the PC and representatives of the incorporated local Anangu Community Councils of the time.

Mining interests pushed hard with the Tonkin Liberal government to weaken aspects of the proposed legislation, especially those relating to the royalties to be given to Anangu, the permit entry provisions and leasing arrangements for the mining of the opal-rich

⁴³ Also cited in Summers (2004, p. 18).

⁴⁴ Also cited in Hope (1983, p. 282).

Mintabe and other mining fields on the Lands. Attention turned to protecting mining by ensuring that the government could overrule the PLRA where it impeded mining or other non-Anangu community interests in the Lands. Anangu remained pragmatic in negotiations, intent on securing the best possible chance for a swift passage of the Act. Anangu were also strategic in seeking to avoid any fracture in bipartisan support for the legislation.

On 2 October 1980, the Chairman of PC, Kunmanara Thompson, and Premier Tonkin signed their historic agreement on the Pitjantjatjara Land Rights Bill. The new Bill, which only slightly lessened Anangu control over the circumstances in which mining exploration could proceed, was introduced to the House of Assembly later that same month.

Debate during the second reading of the Bill in November 1980 was both constructive and tense. Labor felt a sense of pique that Dunstan's Bill was now being hailed as a Tonkin government success, but at the same time they maintained a bipartisan spirit of cooperation to ensure the passage of the Bill. However, some differences were beginning to emerge between Labor and Liberal regarding the extent of self-determining powers afforded to Anangu by the legislation.

John Bannon, who had assumed parliamentary leadership of Labor after its defeat by Tonkin's Liberals at the election, was now the opposition leader. Bannon supported Tonkin on the importance of the Act, not just to Pitjantjatjara, 'but also because of the whole question of relationships with Aboriginals in this State' (Bannon 1980, p. 2184).

Bannon (1980, p.2184-5) charted Aboriginal–state relations in SA and paralleled aspects of the intent of the PLRA with the original vision of the 'Letters Patent'.⁴⁵

The issue of legally recognising the inalienable right of Aboriginal title to their tribal land was first raised here by European powers as early as 1835. In that year Lord Glenelg Secretary of State for the Colonies stated that the land rights of Australia's Indigenous people should be kept inviolate. He was referring particularly to South Australia in the context of the South Australia Act and the Letters Patent.

Bannon underscored Dunstan's record of establishing progressive legislation, including ground-breaking measures such as the *Aboriginal Lands Trust Act 1966*. He pointed to the continuities in the policy trajectory of the Dunstan government's legislation during

⁴⁵ Berg (2010) provides a full account of the Letters Patent in relation to SA Aboriginal land rights issues, which is also a useful guide to the historical context of Aboriginal–state relations in SA. Attwood (2013) provides a detailed analysis of conflicting interpretations of the Letters Patent.

this period, arguing that this composite policy platform had provided the foundation for the development of the PLRA.

In highlighting the work of the 1978 PLRWP led by Cocks, Bannon (1980, p. 2186) paid tribute to then Minister Ron Payne and Dunstan, suggesting that they had, along with Anangu leaders, been the architects of the legislation:

I believe that it will prove a culmination of Don Dunstan's initiatives going back as far as 1965. The Bill would not have been introduced had it not been for the work put in by former Labor administrations, together with the raising of public opinion and sensitivity which has been shown in this State.

After further debate between the self-congratulatory and the politically fractious, the Bill was referred to another SC in late November.⁴⁶ The Bill was subsequently passed by both the House of Assembly and the Legislative Council. On 19 March 1981, the *Pitjantjatjara Land Rights Act 1981* became law.

When the Act passed with the support of both the Labor and Liberal parties, major community celebrations took place on the Lands. Later that year, Tonkin travelled to the Lands for what the media reported as a 'historic handing over ceremony':

The Premier, Mr Tonkin, yesterday formally handed the title to a tenth of South Australia to the traditional owners of the area the 3 500-strong Pitjantjatjara community. In a simple ceremony at Ernabella, he presented the certificate of title to the Pitjantjatjara Council,⁴⁷ representing the Pitjantjatjara Aboriginal people. It is the first agreement of its kind to be reached in Australia. Yesterday's ceremony, which followed the recent proclamation of the Pitjantjatjara Land Rights Act, means that the Aboriginal people now have freehold title under Australian law to 102 630 square kilometres of the state. This area is equivalent to the combined area of Austria and Hungary.... [Dr Tonkin] paid tribute to former Premier Mr Dunstan for what he described as 'the kindling of interest of the people and politicians of [South Australia] in the lot of the Pitjantjatjara'. Replying to Mr Tonkin, a tribal elder, Mr Yami Lester, said the Pitjantjatjara people were happy with the agreement eventually worked out.... 'We will probably make some mistakes at first, but we want all white Australians to give us a go' (*Adelaide Advertiser* 1981, p. 1).

The foyer to the APY offices and meeting rooms in Umuwa are still decorated with a photographic display of scenes of celebration on the Lands at the time of the formal recognition of Anangu land rights.

⁴⁶ One point of difference was that the redrafted Tonkin Act provided for a 21-year Mintabe mining lease compared to the 15-year lease proposed by Dunstan and preferred by the PC. The final Act provided for a 21-year lease as preferred by the Liberal government of the day (see Part 3 Div iv 28 (1)).

⁴⁷ It is interesting to note here that this report suggests the title was handed to the PC rather than AP, although the photo suggests otherwise.



Figure 2.2: Premier David Tonkin with Chairman of the Pitjantjatjara Council, Kunmanara Thompson, signing the Land Rights Act agreement, 2 October 1980. Messenger Press collection (copyright). Reproduced courtesy of the SA State Library.

2.7 The 1981 Act

A short summary of the key provisions of the Act in its original form concludes this chapter.

2.7.1 Anangu as ‘body corporate’

In its original form, the *Pitjantjatjara Land Rights Act 1981* established a body corporate of AP that comprised all TOs, including Yankunytjatjara and Ngaanattjara people, within what had been previously designated as the North West Aboriginal Reserve:

Traditional in relation to the lands means an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic and spiritual affiliations with, and responsibilities for, the lands or any part of them (PLRA 1981, Part 1 Clause iv).

This definition is important because elsewhere in the Act, TOs comprise the body corporate, which owns and controls the Lands. In Part 1 Clause 6, the Act specified the functions of the body corporate as being:

- a) to ascertain the wishes and opinions of traditional owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions
- b) to protect the interests of traditional owners in relation to the management, use and control of the lands
- c) to negotiate with persons desiring to use, occupy or gain access to any part of the lands
- d) to administer land vested in ‘Anangu Pitjantjatjaraku’.

The 1981 Act empowered the body corporate of AP to grant a lease or licence, for any period it thinks fit, to a Pitjantjatjara person or an organisation comprising Pitjantjatjaras; to grant a licence for a period not exceeding 50 years to any agency or instrumentality of the Crown; and to grant a lease or licence to any other person or body of persons for a period not exceeding five years. It also gave AP the power to:

- appoint and dismiss staff
- enter into contracts
- receive and disburse monies
- acquire by agreement, hold or deal in or dispose of land outside their lands
- obtain advice from persons expert in matters with which they might be concerned
- establish offices
- make a constitution relating to the conduct of meetings of Anangu Pitjantjatjara; establish procedures to be followed in resolving disputes and any other matter that may be necessary or expedient in relation to the conduct or administration of the affairs of Anangu Pitjantjatjara.

2.7.2 Consultation and consent of traditional owners

On consultation with TOs, the 1981 Act specified in Part II Clause 7 that:

Anangu Pitjantjatjaraku shall, before carrying out or authorizing or permitting the carrying out of any proposal relating to the administration, development or use of any portion of the lands, have regard to the interests of, and consult with, traditional owners having a particular interest in that portion of the lands, or otherwise affected by the proposal, and shall not carry out the proposal, or authorize or permit it to be carried out, unless satisfied that those traditional owners—

- (a) understand the nature and purpose of the proposal
- (b) have had the opportunity to express their views to Anangu Pitjantjatjaraku and
- (c) consent to the proposal.

The Act also specified that an ‘annual general meeting’ (AGM) of AP would be held ‘once in every calendar year and not more than fifteen months apart’. It enabled a ‘special general meeting’ of AP to be called at any time if ‘not less than ten members of Anangu Pitjantjatjaraku make a request to the Executive Board’ for such a meeting.

2.7.3 Executive

The Act also established an Executive Board of AP (AP Executive) that comprised a ‘Chairman’ and 10 other members elected at the AGM. It specified that the people elected must be part of the TO group that comprised the ‘body corporate’ and would be part of the AGM. Part II of the Act specified that a person had to be a Pitjantjatjara person to be a member of the Executive Board, that the Board had to meet for the transaction of business at least once every two months, and that:

11. (1) The Executive Board shall carry out the resolutions of Anangu Pitjantjatjaraku

(2) The Executive Board shall act in conformity with the resolutions of Anangu Pitjantjatjaraku and no act of the Executive Board, done otherwise than in accordance with a resolution of Anangu Pitjantjatjaraku, is binding on Anangu Pitjantjatjaraku.

The 1981 Act also specified that the Executive Board should keep proper accounts for the body corporate of AP and be audited and reported on at each AGM. It required the Executive to generate a Constitution for the conduct of its own affairs, which would be submitted to the SA Corporate Affairs Commission for approval. Further, the 1981 Act gave powers to AP to propose amendments at any time to alter the Constitution by submitting it to the Corporate Affairs Commission for approval.

This nexus between the ‘Approved Constitution’⁴⁸ that AP was required to create and submit to the SA Corporate Affairs Commission, and the functions and powers of AP established by the Act itself, including the election of its Executive Board at an AGM,⁴⁹ is an important issue that will be returned to in the following chapters of this thesis. What appeared to be a small detail in 1981 became contentious years later, when the Constitution developed by AP and approved by the SA Corporate Affairs Commission became a point of bitter conflict with the Government.

The form of ‘self-determination’ codified in the 1981 Act occurred within a spirit of cooperation and shared purpose between Anangu and the government, and between the Labor and Liberal parties that comprised the successive governments of the time. The Act did not provide constitutional recognition of sovereignty, nor independent rights as in a

⁴⁸ See Part 2 Div V 14[1–5] of the 1981 Act.

⁴⁹ See Part 2 Div IV 9[4] of the 1981 Act.

treaty. While giving Anangu land rights through a major land grant held in a collective title through Anangu as a corporate entity—a radical decolonising move in itself—the PLRA was a legislative construct of a state parliament (within the Commonwealth of Australia) and subject to its edicts.

Governance arrangements on the Lands also informally included the PC, the pre-existing peak Anangu regional body; other regional Anangu organisations covering the Lands (such as the NPY Women’s Council, Nganampa Health Council and PY Media); and local Anangu community councils incorporated under state non-profit legislation (elected by communities and predating the PLRA). However, none of these were mentioned in the legislation, beyond a provision that the PC be enabled to act for AP until its Executive Board was established (at its first AGM) as the organisational entity advising and acting on behalf of TOs.⁵⁰ Questions of representation, relationships and leadership between a plethora of representative agencies and structures were to loom large in the future of Anangu polity, as will be discussed in coming chapters.

2.7.4 Permit access

The Act vested the North West Lands in AP as the body corporate and made special provisions for the area known as Granite Downs.⁵¹ All Pitjantjatjaras, including the Yankunytjatjara and Ngaanattjara people who were TOs, were to have unrestricted access to the Lands. It was an offence under the Act for any person who was not a Pitjantjatjara to enter the Lands without the permission of AP. Requests for permission to enter the Lands had to be made by application in writing to the AP Executive Board, setting out the purpose, period, time of entry and location of visit.

This provision did not apply if the person entering the Lands was a police officer acting in the course of their official duties, a Member of Parliament of the state or Commonwealth Government, a person accompanying a politician in the course of their candidacy, or a person ‘acting upon written authority of the Minister of Aboriginal Affairs who enters the lands for the purpose of carrying out functions that have been assigned to a Minister or instrumentality of the Crown or a Department of Government’ (PLRA 1981,

⁵⁰ Part 2 Div IV 9[6] of the 1981 Act stated: ‘Until the first annual general meeting of Anangu Pitjantjatjaraku, the body presently known as the Pitjantjatjara Council shall perform the functions and duties of the Executive Board’.

⁵¹ As part of the bipartisan agreement that saw the passing of the 1981 Act, amendments were made to Dunstan’s original 1978 proposed legislation to make specific provisions for Granite Downs and Mintabe areas where the (non-Anangu) presence for mining and pastoral ventures had long been established.

Part II Clause 19(7)). The permit provisions were soon challenged in the ‘test’ case of *Gerhardy v Brown*, which is discussed in Chapter 3.

2.7.5 Mining and development

Part II, Division III of the Act provides for mining operations on the Lands. It established that it is illegal for any person to enter the Lands to carry out mining operations or intent for that purpose without permission of the Anangu TOs and approval of the Minister. It specified that an application for permission to carry out mining operations could only be made by a person who had applied for a mining tenement in respect of the Lands and had been notified by the Minister of Mines and Energy that this was approved. Any such application had to be made in writing to the AP Executive, and detailed information had to be provided to the Minister of Mines and Energy in support of the application.

The Act [Part 11 Div 111] then specified that AP could:

- grant its permission unconditionally
- grant its permission subject to such conditions (which must be consistent with the provisions of this Act) or
- refuse its permission as it thinks fit.

The Act provided that once an applicant had been notified of a decision, AP needed to inform the Minister within seven days. If the applicant was not informed of a decision in a timely manner⁵² or was refused or placed under conditions they found unacceptable, the applicant could request the matter to be referred to an arbitrator, who would be a judge with the powers of a Commission of Inquiry under the Royal Commissions Act. In a strong directive, the Act specified that in arriving at a determination, the Arbitrator must consider the effect of granting the mining tenement upon:

the preservation and protection of Pitjantjatjara ways of life, culture and tradition; the interests, proposals, opinions and wishes of the Pitjantjatjara people in relation to the management, use and control of the lands; the growth and development of Pitjantjatjara social, cultural and economic structures; freedom of access by Pitjantjatjara to the lands and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with Pitjantjatjara traditions; the suitability of the applicant to carry out the proposed mining operations and his capacity, in carrying out those operations, to minimize disturbance to the Pitjantjatjara people and the lands; the preservation of the natural environment and the economic and other significance of the operations to the State and to Australia (PLRA 1981, Division III Clause 15):

Royalties paid in respect of minerals recovered from the Lands would be paid into a separate fund maintained by the Minister for Mines and Energy. Of these monies, one-

⁵² Specified in the act to be ‘one hundred and twenty days’.

third was to be paid to AP; one-third to the Minister of Aboriginal Affairs to be applied to the advancement of Aboriginal South Australians generally, and one-third to be paid into the general revenue of SA.

Another section of the Act dealt with issues relating to the precious stones mining field of Mintabie and the establishment of a Mintabie Consultative Committee comprising two Anangu nominated by AP as body corporate, a member of the Mintabie Progress Association, a person nominated by the Minister for Mines and Energy, and a member of the police force. These were to be appointed by the Governor, who would also nominate the Chair from among the two Anangu nominated.

2.7.6 Government access for the ‘advancement of Pitjantjatjara people’

The Act made explicit provisions for the Crown to continue to occupy parcels of land for the purposes of health, education, welfare or the ‘advancement of Pitjantjatjara people’, and to do so for up to 50 years without paying rent or compensation. In addition, the Act enabled the Commissioner of Highways to carry out road works and similar infrastructure services.

Finally, in Part IV, the Act specified a process for dealing with disputes between any Pitjantjatjara person and AP. A ‘tribal assessor’ would be appointed by the Minister for Aboriginal Affairs with the approval of AP and would hold office under terms determined by the Minister within the public service conditions of the Public Service Board (PLRA 1981, Part IV Clause 36). These provisions suggested that the South Australian Government was accepting, if not asserting, that it retained responsibility for the provision of state social services such as health, education, welfare and infrastructure to Anangu as citizens. State service providers and public servants could continue to ‘occupy’ and visit the Lands without permits.

Chapter 3: The First Decade: ‘*And Now We Live in Two Ways*’⁵³

‘Community control in the last decade has been characterised by two interrelated developments. These are the proliferation of Aboriginal organisations (incorporated) and the accompanying growth in the administrative class of outsiders to operate them’
Neville Bonner, 1988⁵⁴

3.1 Introduction

The *Pitjantjatjara Land Rights Act* (PLRA) came into operation in October 1981.⁵⁵ Within months, a legal challenge emerged to test its s19 permit provisions. The Supreme Court of South Australia initially upheld this challenge, before the High Court of Australia ruled in 1985 that these PLRA provisions were a ‘special measure’. The case, known as *Gerhardy v Brown*, became a test of ‘special measures’ under the *Commonwealth’s Racial Discrimination Act 1975* and an important affirmation of Aboriginal and Torres Strait Islander collective rights in Australia.

Meanwhile, in 1983, an area of land to the south was being prepared for Aboriginal ownership under the *Maralinga Tjarutja Land Rights Act 1984*. This gave Anangu in the Lands an opportunity to reflect on their own land rights and reiterate some outstanding issues while supporting the claims of Maralinga Tjarutja. Combined with a South Australian Government review of human services delivery to the Lands in 1986, this led to some significant amendments to the PLRA in 1987, which shifted its focus from corporate to more public governance.

A number of regional Anangu service organisations (see Chapter 1) came to prominence in the 1980s. They gained funding and status as demand grew for specialised services to deal with petrol sniffing and other problems. In the later years of the decade, two high-profile reviews of the Lands were undertaken at both the Commonwealth and state levels. These reviews are discussed in the context of various assessments of the first decade of the PLRA.

⁵³ Kunmanara (cited in Trudinger 1991, p. 48).

⁵⁴ See Bonner (1988, p. 21).

⁵⁵ Symbolically, the Act (which was assented to on 19 March 1981) took operational effect on the first anniversary of the day that Premier Tonkin and PC Chair Kunmanara Thompson signed the agreement to create the PLRA (2 October 1980). For more information, see ‘Documenting Democracy’ at <http://foundingdocs.gov.au/item-sdid-46.html> or Reynolds (1992).

These developments in the 1980s are discussed in this chapter as part of an ongoing quest by Anangu for greater certainty and stability under the PLRA, against the background of a shifting policy landscape at the state and Commonwealth levels.

3.2 *Gerhardy v Brown*: Private or Public Land? ‘Discrimination’ or ‘Special Measure’?

In February 1982, Robert Brown, an Aboriginal man from New South Wales, was charged with entering the AP Lands without permission (Rees 1983). In the ensuing court case, the prosecution, led by policeman Gerhardy, contended that the Pitjantjatjara Lands were like a ‘private house’, the ‘private property of the Pitjantjatjaras’ and that Brown had broken the law by entering the Lands without a permit (Rees 1983).

Judge Millhouse of the SA Supreme Court rejected this notion, arguing that whereas people buy private houses, the PLRA provides ‘that a group of people, on the basis of race, shall own a tract of land’, and that ‘everyone who is not a Pitjantjatjara (with some exceptions) needs written permission’ to enter under s19 (Rees 1983). Millhouse found this to be quite different to private ownership of land or houses, in which people are entitled to enter but might then be ordered to leave by owners, at which point they would become trespassers. Millhouse found that the AP Lands were actually ‘public’ lands given by statute to what, in his terms, was a ‘poorly defined’ racial group, and that every person outside that racial group was being discriminated against in contravention of the Commonwealth’s *Racial Discrimination Act 1975* (RDA).⁵⁶ Thus, in his view, the PLRA was invalid.

On appeal⁵⁷ in 1985, the full bench of the High Court⁵⁸ unanimously found that the PLRA including its s19 was valid as a ‘special measure’ under s9 of the RDA (*Gerhardy v Brown* (1985) HCA 11[51]; ALB 1985, 20, p. 3). In the process, they spelt out four criteria that must be satisfied for a law (or executive action) to be a valid ‘special measure’:

- first, it must confer a benefit on some or all members of a class

⁵⁶ The Australian Constitution holds that when a State law is inconsistent with a Commonwealth law, the latter shall prevail and the former shall, to the extent of the inconsistency be invalid.

⁵⁷ The matter was removed to the High Court when ‘the South Australian Attorney-General, the Commonwealth Attorney-General and the Anangu Pitjantjatjara intervened in the proceedings’ (ALB 1985, 20:2) pursuant to s40 of the Judiciary Act, re causes involving interpretation of the Australian Constitution. See Rees (1985) and HREOC summary <<https://www.humanrights.gov.au/publications/guidelines-understanding-special-measures-racial-discrimination-act-1975-cth-2011>>.

⁵⁸ Comprised of: Chief Justice Gibbs, and Justices Mason, Murphy, Wilson, Brennan, Deane and Dawson.

- second, the membership of the class must be based on race, colour, descent (national or ethnic origin)
- third, the sole purpose of the measure must be to secure the adequate advancement of the beneficiaries so that they may enjoy and exercise equally with others human rights and fundamental freedoms
- fourth, the protection granted by the measure must be necessary to ensure that the beneficiaries may enjoy and exercise equally with others human rights and fundamental freedoms.

In a lengthy judgment, Justice Brennan also determined that ‘a measure could not secure the advancement of its beneficiaries if it was not desired by them’ (*Gerhardy v Brown* (1985) HCA 11[51]; 20, p. 3). The judgment by Brennan in *Gerhardy v Brown* emphasised the importance of recognition being given to the wishes of members of specific population groups in determining whether a ‘special measure’ would secure their advancement (Burnside 2009).⁵⁹ Given how strongly Anangu campaigned to gain land rights, the PLRA (and its s19 permit provisions) was clearly something ‘desired’ by them to advance their collective human rights and freedom.

Gerhardy v Brown was later viewed as an important threshold case that not only tested the PLRA’s relationship to the Commonwealth RDA, but also established precedence about what constitutes a ‘special measure’ for the advancement of Indigenous peoples.

The High Court was not drawn into the issue of whether the Lands were public or private. It simply ruled that the PLRA and its provisions enabling Anangu to control entry to their Lands was valid as a ‘special measure’ in terms of the RDA. Millhouse’s original judgement had suggested that by defining all Anangu as the ‘body corporate’ for the purposes of enabling them to control who entered the Lands and what development took place there, the PLRA established a form of ‘corporate’ land and governance structure that was neither fully public nor fully private.

⁵⁹ Burnside (2009) has suggested that in some circumstances—for example, when initiated by Aboriginal communities—restrictions on alcohol can constitute ‘special measures’. The HREOC (1995) used the High Court’s ruling in *Gerhardy v Brown* to support this assertion. In response to concerns expressed by the NPY Women’s Council, among others, the HREOC considered issues of racial discrimination, human rights and restrictions on alcohol in some Aboriginal communities, concluding that the ‘longstanding policy of the Pitjantjatjara affiliated councils that alcohol should not be available to members living within communities’ was not unlawful (HREOC 1995; Burnside 2009, p. 3).

As the next two sections of this thesis demonstrate, this corporate land and governance structure had important implications for questions of social control on the Lands, which led to amendments to the PLRA in 1987.

3.3 Emerging Issues under the PLRA: 1983–1986

While *Gerhardy v Brown* was making its way through the courts, land to the south was being prepared for recognition as Aboriginal land by the South Australian Parliament under the Maralinga Tjarutja Land Rights (MTLR) Bill.⁶⁰

The AP Executive took this opportunity to make a submission to the Select Committee examining the MTLR Bill in which they not only supported the claims of the Maralinga Tjarutja, but also reflected on the two years' operation of the PLRA. Two issues in particular were raised—mining and social problems—one of which was reasonably simple and the other more complex.

In previous years, a company called Hematite Petroleum had been trying to obtain permission to look for oil on the Lands, but had thus far been unsuccessful (Chaney 1984, p. 468; O'Neil 1995). A number of other mining companies supported Hematite's claim, stating that while 'the mining industry supported the ownership of Aboriginal lands by the traditional owners', it considered the PLRA a 'disincentive for the proper growth and development of the mining industry in this State' (SC MTLR 1983, p. 8). The mining lobby argued against the right of communities to claim financial compensation at the exploration stage, and with the need to negotiate with communities at both the exploration and mining stages. As a result, the lobby argued that the Maralinga people should not be given the same powers over mining as Anangu had achieved under the PLRA.

The AP Executive strongly rejected this argument, arguing for the maintenance of their existing powers in relation to mining and stating in their submission to the SC that being able to control what occurred on their freehold land was a core tenet of Anangu land rights:

We are proud of our freehold land and have benefited greatly from taking control of it. We feel our future is more certain now than it was before when we lived on leases and reserves. You

⁶⁰ The *Maralinga Tjarutja Land Rights Act 1984* was modelled closely on the PLRA (1981), with the Select Committee noting that 'the principles laid down in that Act found wide acceptance by the Parliament, the Aboriginal people and the general community' (SC MTLR, p. 12). However, the *Maralinga Tjarutja Act 1984* was less stringent regarding entry to the Maralinga Lands, for example enabling Aboriginal people from other areas to enter without application for a permit, providing they were invited by a Maralinga Tjarutja TO, as defined in the Act. Unlike the PLRA, it also specifically required a confidential register of 'sacred sites' to be kept.

have recognised properly our ownership of our traditional land...we expect long term benefits from this (SC MTLR 1983, sub 12).

The SC reported that it had ‘spent much time deliberating on these issues’ and agreed with the PLRA’s mining provisions. The SC MTLR (1983, p. 10) also argued that the nature of the exploration activity meant that it was likely to cause even ‘greater disturbance to Aboriginal interests and way of life than the more limited mining operations’; thus, negotiation and recompense at the exploration stage was important. It stated that in all evidence from Aboriginal people:

the question of controlling access onto the freehold land was regarded as fundamental to the question of ensuring a ‘strong law’ over the land (SC MTLR 1983, p. 3).

However, the SC noted its concern about another issue that Aboriginal people raised in evidence to it: ‘the control of liquor on the land...and they have asked for strong and effective statutory powers for that purpose’ (SC MTLR 1983, p. 11).

While arguing for maintenance of the Act’s powers in relation to mining, AP’s submission to the SC flagged the urgent need for changes to the PLRA to strengthen AP’s ability to control and manage social order. Anangu expressed alarm about the over-consumption of alcohol and escalating incidences of petrol sniffing in their communities and explained that they were worried about how best to manage social order on the Lands. AP’s submission poignantly stated:

Not all problems are solved by granting a title. You will still see around you things that cause us unhappiness. Some children are sniffing petrol, some of the young men are being arrested and taken to gaol. We still have serious sickness and our kids have much to learn before they are able to properly deal with Europeans and takeover this country later on (SC MTLR 1983, sub 12).

Those framing the 1981 PLRA had not foreseen the need to give powers to regulate civic order to AP or its Executive. The Act was first and foremost a ‘land rights’ Act. It established that the Lands were under the control of AP for development and land management purposes, but was silent on what governance arrangement would control civil order on the Lands. That is, while clear on ‘outsider matters’, the 1981 Act was not clear on ‘insider matters’. It provided no guidance about what, in LGAs, would be deemed civic order or public offences, such as the handling of public drunkenness, civil disturbances and maintenance of good order. Although police could still enter the Lands if matters got out of hand, the Lands were in effect a non-regulated civic order environment.

The *Outback Areas Trust Act 1978* provided a framework for such issues in the unincorporated areas of South Australia’s ‘outback’. However, as PLRA architect

Dunstan was later to point out, this Act ‘specifically excluded application to Aboriginal reserves, the Maralinga Lands and the Pitjantjatjara Lands’ (Dunstan 1989, p. 17). The Lands therefore occupied an ambiguous position—neither fully private nor fully public, and without clear regulation of civic order. While AP could control who entered the Lands and for what purpose, and police could intervene on criminal matters, issues of basic civil conduct were left in a void.

In June 1983, a General Meeting of AP made the decision to pursue amendments to the PLRA to strengthen Anangu control over behaviour on the Lands (AP Executive Minutes 1983). Negotiations began with Bannon’s Labor government in relation to amending the Act to strengthen its provisions regarding the civil conduct of people on the Lands. These negotiations were part of ongoing efforts by Anangu to achieve more practical self-governance controls on the Lands and greater clarity about what assistance South Australian Government agencies would provide to help communities cope with burgeoning social issues such as the supply and use of intoxicating substances.

3.3.1 ‘Things that cause us unhappiness’:⁶¹ alcohol and petrol sniffing

Anangu continued to raise concerns about the supply and misuse of intoxicating substances with the government before, during and after the passage of the MLRA. As Anangu explained in their submission on the MLRA, despite pride in the PLRA and positive gains made, alcohol abuse and petrol sniffing were ‘things that cause us unhappiness’ (SC MLR 1983, sub 12).

The PC resolved at its General Meeting in 1983 to make the Lands a ‘dry area’. Accordingly, ‘roadhouses near the Pitjantjatjara Council communities and the Pitjantjatjara lands should not be allowed to sell grog to Anangu (Aboriginal people) for consumption on or off the premises’ (PC 1991; RDC 1995, sub 1.7, pp. 43–44).

In October 1984, the South Australian Government, ‘with the advice and consent of the Executive Council and upon recommendation of Anangu Pitjantjatjara’, recommended passage of the *Pitjantjatjara Land Rights (Control of Alcoholic Liquor) Regulations 1984* under the PLRA.⁶² This would ensure that ‘no person shall while he is on any part of the Lands bring, be in possession of or consume any liquor, nor sell or provide or supply liquor’. Given contemporaneous discussions about amending the PLRA to provide for by-law-making powers, this draft regulation was not proclaimed and thus lapsed after

⁶¹ AP Submission (12) to the Select Committee on the MLRA (1983).

⁶² Regulations under the *Pitjantjatjara Land Rights Act 1981*, No. 206, 25 October 1984.

three years. However, this lapsed regulation sought by AP is indicative of the collective intent by Anangu to find ways to prevent the harm caused by alcohol supply and use.⁶³

In addition to these attempts to make the Lands a 'dry area', another problem was the sale of alcohol to Anangu at Curtain Springs, just outside the Lands over the NT border. Despite the PC reaching an informal agreement with the Curtain Springs Roadhouse in 1985 not to sell alcohol to local Anangu, the supply of alcohol to people entering the Lands continued unabated.

Kavanagh (1999) later described Anangu efforts to restrict the availability of alcohol and manage petrol and other substance issues in communities throughout the 1980s as 'testament to their courage to persevere' and a 'bitter struggle' marred by 'frustration, legislative indifference and deep tragedy'.

Frustrated in their attempts to gain the voluntary cooperation of alcohol suppliers, Anangu persisted with efforts to gain formal regulatory control through amendments to the PLRA. They hoped that this would strengthen their power to stop the trafficking of intoxicating substances to their people. Petrol sniffing was of particular concern because of the fatalities and brain damage affecting young Anangu. While observed in communities as early as the 1960s and 1970s (e.g., Wallace 1977; Hope 1983; Brady 1992), petrol sniffing was gaining wider public attention and becoming more visible as an 'issue' in the 1980s.

Constructing 'petrol sniffing' as symptomatic of a decline of social order in remote Aboriginal communities, periodic media attention often sensationalised the issue in graphic ways. In December 1984, a series of articles in *The Advertiser* began with elder and TO Kunmanara Minutjukur (a former Pitjantjatjara Council Chairman) discussing programs he had initiated to support petrol sniffers. He also described how petrol sniffing was killing his son. The article detailed several deaths by petrol sniffing that had occurred during the year. Minutjukur described how he worked to find 'somewhere safe away from petrol sniffing' for young people from the local communities to recover: 'I wanted my son to stay alive' (*The Advertiser* 1984a, p.3).

A front-page article three days later reported on serious brain injuries and health issues confronting a young petrol sniffer from Indulkana, and others 'with no hope at all' (*The Advertiser* 1984b, p.1). Five days later, following more reports of local deaths from petrol

⁶³ The 1995 *Alcohol Report* by Australia's Race Discrimination Commissioner contains a detailed summary of PC's Submission, which chronicles the tireless efforts of Anangu to curtail alcohol consumption on their Lands.

sniffing, headlines on the front page of *The Advertiser's Saturday Review* claimed that many young Anangu were 'sniffing at death'. Describing such young Anangu as 'zombie-like with glazed eyes and numbed brains' rummaging around the 'homes of the Kunmanara, the 'no-name' people' the article was accompanied by graphic photographs and lengthy poignant accounts of desperate young people 'begging for food' and a mounting toll of death, misery and despair (*The Advertiser*, 1984c; Daly 1984).

Photos of children on the Lands sniffing fumes from cans generated a public outcry. The Department of Aboriginal Affairs announced support for the Healthy Aboriginal Life Team (HALT) program,⁶⁴ a community development-based response, immediately following this burst of media publicity, which received a further funding boost in the following couple of years (Burnett 1986; Franks 1989). SA's Health Minister, the Hon. John Cornwall, announced that the South Australian Government would build a rehabilitation facility for petrol sniffers on the AP Lands 'within twelve months' (Burnett 1986).

At the Commonwealth level, a 1985 Senate Select Committee produced a report entitled 'Volatile Substance Abuse in Australia (1985),⁶⁵ which highlighted petrol sniffing issues in remote Aboriginal communities during the early 1980s. The Inquiry emphasised the importance of the 'homelands movement'—that is, the return of people to their traditional country and away from crowded communities—as 'the only apparent solution to petrol sniffing in the long term' (Commonwealth of Australia Senate Select Committee on Volatile Substance Fumes 1985, p. 200). It also noted that there would need to be increased human service provision in primary health care and education facilities to accompany the homelands movement.

A Commonwealth House of Representatives Committee Inquiry into the homelands movement followed in 1987.⁶⁶ While it also called for improved human services delivery,

⁶⁴ Originating in 1984 in Yuendumu in the NT, and then spreading into WA and the SA APY Lands, the HALT program provided counselling support based on 'family mapping' and the engagement of 'traditional authority figures' to encourage local responsibility for sniffers (Franks 1989; HALT 1988).

⁶⁵ Two decades later, the final report of the National Inhalant Abuse Taskforce, *National Directions on Inhalant Abuse* (2006, p. 9), criticised the 1985 Senate SC for not recommending enough practical action and lacking in national leadership.

⁶⁶ In 1987, the House of Representatives Standing Committee on Aboriginal Affairs released the *Return to Country* Report (often referred to as the Blanchard Report). The Committee recommended: that government policies and service delivery (including the provision of infrastructure, education, housing and health) be revised to support homelands; the continuation of funding for the establishment of new homelands; funding for homelands resource centres to deliver services to homelands; and the extension of CDEP to all homelands.

responsibility for services such as education, primary health care and welfare lay primarily with the South Australian Government.

In 1987, the SA Coroner found that four Anangu men (aged between 17 and 30 years) had died in 1983–1984 as a direct result of petrol sniffing. This bore out concerns expressed by Anangu leaders and increased pressure for greater human services assistance for Anangu communities.

The SA and Commonwealth agencies' increased interest in substance abuse on the Lands introduced a new set of challenges. As analysis by Rowse (1992), Robbins (1993), Lea (2007), Dillon and Westbury (2007) and Austin-Broos (2011) suggests, government engagement in remote community contexts is a complex, if not fraught, process. Different Commonwealth and state agencies adopted differing approaches to engagement, with some preferring to work with regional Anangu organisations and others preferring to focus on direct service provision at the local level. As Robbins (1993, p. 71) points out, there were also:

differing interpretation[s] of agreed policy objectives by state and federal bodies [and the]...intrusion of a political imperative into the longstanding agenda of administrators.

Petrol sniffing, like alcohol supply, cut across state and territory boundaries (SA, WA and NT). With little to encourage intergovernmental or even interdepartmental cooperation, various Commonwealth, state and territory agencies acted independently of each other in a race for quick policy responses. d'Abbs and MacLean (2008, p. 125) observe that:

Prior to the beginning of the 21st century, governmental responses were largely restricted to making the occasional one-off grant to non-government agencies, often in reaction to a media-driven crisis.... Coordination between the Australian and state and territory governments was almost non-existent.

The era of self-determination in Aboriginal Affairs⁶⁷ also pressured government agencies to investigate community views and incorporate them in the design and delivery of services. Departments increasingly sent staff into communities to consult with community leaders on complicated issues in what were culturally unfamiliar settings. The intrusion of new visitors and services into the communities at times precipitated new tensions and uncertainties.

⁶⁷ A useful summary of the emergence of the concept of, and policies for, 'self-determination' in Australian Aboriginal Affairs can be found in Sanders (2002).

3.3.2 Proctor review of the delivery of human services

In May 1986, the South Australian Government established a review of the delivery of human services to Aboriginal communities with terms of reference were to:

examine aspects of the existing arrangements for the delivery of human services to the Aboriginal community in South Australia and to prepare recommendations on ways to effect improvements (Proctor 1987, p. 8).

The Review Committee was chaired by Treasury official Ian Proctor and comprised senior Aboriginal officers from across the SA public service, including Peter Buckskin, Paul Hughes, David Rathman, Les Nayda, Tim Agius, John Moriarty, Sandra Saunders and Marg Hampton.

The Review, which consulted widely and took public submissions, reported to the Hon. Greg Crafter, Minister of Education and Minister of Aboriginal Affairs, and the Hon. Dr John Cornwall, Minister of Health and Minister for Community Welfare. It made recommendations not only about the delivery of human services to the AP Lands, but also to communities under the MLRA 1984 and *Aboriginal Lands Trust Act 1966*.

The Proctor Review argued that three factors impeded accountability for effective public administration to Aboriginal communities: i) the relatively small number of Aboriginal voters and the ‘general lack of understanding in the bureaucracies of Aboriginal culture, preoccupations and capacities’; ii) the ‘blurring’ of financial and program responsibility for Aboriginal health, education and welfare issues across a number of state and federal government agencies; and iii) the ‘the inappropriateness of current underlying demarcations in the white bureaucracies for addressing the needs and concerns of Aboriginal people’ (Proctor 1987, pp. 10–11).

In relation to the last point, Proctor (1987, p.11) suggested that an example was the poor understanding of the interrelationship between people’s commitment to country and their health and well-being:

Perhaps the clearest example of this lies in the relationship between Land Rights and health, a relationship which is clearly interactive in the view of many Aboriginal people but which is addressed as distinct ‘legal’ and ‘health’ issues in government portfolios.

For example, the separation of legal issues from health issues was common to both the Commonwealth and state governments. Conversely, Anangu viewed land rights as intrinsic, if not vital, to social and emotional health and well-being. The Proctor Review’s analysis of the silo effect of portfolios provided insights into how the cultural context (and misunderstanding) could bedevil policy and program administration.

The large number of government agency dealings was a frequently raised issue of concern. This was particularly so for Anangu, who felt that respect for their rights, privacy and clearly stated visitor protocols was often lacking:

The Committee has been advised that there were approximately 3,000 visitors to the Pitjantjatjara Lands (total population 2,500) in 1986. The difficulties for the Aboriginal communities themselves occasioned by this pattern of 'consultation and co-ordination' have grown to the point where the Chairman of the Anangu Pitjantjatjaraku...has written to all relevant Commonwealth and State Departments and agencies requesting significant changes in the present approach to their dealings with the Aboriginal communities on the Lands (Proctor 1987, p. 41).

This letter from AP Chair Yami Lester,⁶⁸ cited in full in the Proctor Review report, strongly asserted AP's authority as the landholding body under the PLRA. Lester reminded Commonwealth and state agencies that AP 'is concerned with all matters that arise on the Lands...[and] has special duties and responsibilities in relation to the Land' (Proctor 1987, p. 133). Lester particularly complained of disrespectful practices by government visitors to the Lands:

Over the past couple of years there are increasing numbers of Government (both State and Federal) Departments and their employees visiting the...Lands. Many of these visits occur without notice to Anangu Pitjantjatjaraku. People arrive in communities, talk to the adviser or some Anangu who happen to be around and leave. They treat the communities as if they are a number of separate country towns that are not connected to each other. They ignore the existence and duties of Anangu Pitjantjatjaraku (Proctor 1987, pp.133-4).

In a rush to respond (or be seen to be responding) to escalating problems caused by petrol sniffing on the Lands, many government 'outsiders' visiting Anangu communities consulted service providers about Anangu, but by-passed AP and its Executive. Lester was keen to assert AP's authority as not just another Anangu service provider, but as the key representative body with responsibilities and duties under the PLRA.

What departments and public servants may have viewed as honouring a need to consult, Anangu perceived as disrespectful to their long-fought-for collective governance arrangements. The influx of 'outsider' officials appears to have caused concern, uncertainty and confusion in communities and, even worse in the view of the AP Executive, it flouted their authority.

The Proctor Review highlighted differences in approach to human service delivery between the state and Commonwealth governments, pointing out the latter's particular tendency to ignore the role of the AP Executive. It critiqued how both levels of

⁶⁸ The 1986 letter co-signed by then AP Chairman Yami Lester and AP Administrator Gray Lewis to Commonwealth and State agencies was dated 16 October 1986 and on AP's letterhead.

government approach service delivery to the Lands, describing it as a ‘poorly coordinated...fragmented...chaotic...patchwork of arrangements’ (Proctor 1987, p. 39).

Citing different departmental attitudes about whether regional Anangu agencies should act as coordinating ‘umbrella’ organisations,⁶⁹ the Review argued that competing policy objectives created service delivery tensions on the Lands. For example, Proctor (1987, p. 28) argued that the Commonwealth was concentrating its responses on ‘petrol sniffing’ in 1986 at the local community level and ‘precluded dealing with what are...termed “umbrella organisations”’:

In this State there has been a clear divergence in the view of the Commonwealth and State officers involved in developing the [petrol sniffing] program as to the appropriate program vehicle in the Pitjantjatjara lands as a result of the new policy on [against] ‘umbrella organizations’.

Conversely, the South Australian Government was promoting an ‘umbrella’ (or coordinating) role for AP and its Executive, and it contested the Commonwealth’s approach, which at the time focused on more direct engagement at the local or community level. However, the Commonwealth Government was exerting an increasing influence in Aboriginal Affairs both nationally and locally by strongly asserting its role to ‘exercise responsibility for policy, planning and coordination’ and expecting state government departments and local governments to implement ‘Commonwealth policies in the course of their functional responsibilities’⁷⁰ (Proctor 1987, p. 16).

The South Australian Government wanted the Commonwealth to assume increased responsibility for ‘financing such activities [which] are at present the responsibility of the States and their Authorities’ (Proctor 1987,p.17). The Proctor Review complained that the Commonwealth:

now provides the greater part of its financial assistance directly to Aboriginal people, communities and organizations rather than...through the States (Proctor 1987, p. 18).

In this tug of war between the Commonwealth and state governments, AP and other regional umbrella organisations were effectively sidelined. By sidestepping a structure that the South Australian Government had established through the PLRA, the Commonwealth was adding new layers of complexity and tension to governance arrangements on the Lands.

⁶⁹ The Proctor Review cited AP, the PC and Nganampa Health Service as examples of such general-purpose broad regional or ‘umbrella’ organisations.

⁷⁰ This refers to the demarcation of responsibilities struck in the Aboriginal Affairs’ *Arrangements with States Act 1973*, which followed the 1967 referendum and enabled the Commonwealth to legislate for Aboriginal people.

Calls for better planning and centrally driven coordination often mask thinly veiled issues about power, resources and control. The State Government's lament, as expressed in the Proctor Review, was that the Commonwealth was bypassing the State and the Aboriginal governance infrastructure it sponsored, as well as meddling locally without 'coordinating' with others. The Commonwealth was not only avoiding engagement with AP, its Executive and Anangu 'umbrella' bodies, but it was also sidestepping arrangements that the State government had created. It wanted to direct the South Australian Government.

When focused on the issue of 'poor coordination' of government service delivery, the Proctor Review cited the Miller (1985, p.25) Report's⁷¹ claims that 'a total lack of planning [is] occurring not just between the relevant agencies and departments (of government) but with the communities' in remote areas.

Miller was concerned about a lack of training in management, organisational and governance issues for Aboriginal people in remote communities, arguing that local Aboriginal community councils were 'overloaded' and local workers were 'overwhelmed' (p. 65). Drawing further on Miller, Proctor argued that, for remote communities to achieve a sustainable level of self-sufficiency:

it is essential that the extent of the responsibilities of existing Aboriginal Councils be acknowledged and that these Councils are provided with a legal and resource base from which to perform them.... The Miller report saw the solution to the problem in broader groupings of Aboriginal communities and in fact cited the Pitjantjatjara Council as a possible model.... Anangu Pitjantjatjaraku and Maralinga/Tjuruta are other possible models (Proctor 1987, p. 84).

Finally, the Proctor Review recommended a review of community management and an exploration of the benefits of introducing 'culturally appropriate' models of local government into the Aboriginal Lands (Proctor 1987, p. 4). The potential for AP to become a regional local government authority appealed to this Treasury-driven Review as a possible means of securing more stable governance and funding.

3.4 Pitjantjatjara Land Rights Act Amendment Bill 1987: Moving towards Public Local Governance

Labor's Minister of Aboriginal Affairs, Greg Crafter, introduced the Pitjantjatjara Land Rights Amendment Bill into the SA House of Assembly in March 1987 and tabled the *Select Committee Report on the Pitjantjatjara Land Rights Act Amendment Bill 1987* the next month.

⁷¹ The *Report of the Committee of Review of Aboriginal Employment and Training Programs* (1985) became colloquially known as the 'Miller Report'.

The SC proposed bipartisan acceptance of amendments to the PLRA based on the evidence of departmental officials, mining representatives and legal advisers, and on the advice of Anangu community and AP Executive witnesses. The input of AP's Gary Lewis (co-signatory to the Lester letter cited above) was noted and favourably acknowledged in the SC's Report.

Lester and Lewis, TOs who with others had been key protagonists in the original struggle for land rights, pushed hard to strengthen Anangu governance by extending the AP's role to regulating civic behaviour in communities. The Proctor Review had highlighted concerns about the Commonwealth bypassing the Executive and other regional umbrella bodies. Lester and Lewis had written to protest about Anangu being bypassed, arguing that the government should work closely with AP and its Executive. They advocated strengthening the Act to assist Anangu efforts to control substance abuse and improve Anangu governance.

The SC recommended a series of amendments to enable AP to make bylaws to control the entry, supply or use of proscribed substances onto the Lands, and to regulate other aspects of civic behaviour, such as prohibiting drunkenness when driving, and gambling or fighting in a 'public place'.

Other amendments also sought to: clarify the name from Anangu Pitjantjatjaraku to Anangu Pitjantjatjara (AP); make it an offence to breach permit conditions; establish a Pitjantjatjara Lands Parliamentary Committee; and specify that costs for anthropological and associated services incurred by AP in assessing mining applications would be borne by the mining company involved and later deducted from the compensation payable to AP if mining proceeded.

The bylaw amendments signalled a shift away from a form of corporate self-regulation towards more of a 'local government'⁷² style regulatory framework. The leader of the Opposition in the Upper House, Martin Cameron (Legislative Council 1987, p. 4049), noted this shift when he directly compared AP to a local government authority:

it is very similar to local government because in our society local councils make decisions for themselves. The introduction of legislation which empowers them to make by-laws is a very

⁷² Local government in Australia is conceived of as a third tier of government; however, it is actually legislated for and administered by state governments, which are defined within the Australian Constitution, while local governments are not. Local governments receive funding via Commonwealth and state governments, and also through raising their own revenue through rates, but always within legislative and administrative delegations of state governments. As a sphere of government, local governments have limited powers in their own right, but have referred or delegated powers according to specific state-based legislation. Attempts to galvanise sufficient support to include local governments in Australia's Constitution have been unsuccessful to date.

important matter which has our full support. I congratulate the Aboriginal people for seeking that right.

Australian Democrat Elliott (Legislative Council, 1987 p. 4051) also suggested that:

What we are seeing now is a progression towards a form of local government and I hope that trend continues.

As with the original PLRA in 1981, Parliamentary debate on the PLRA Amendment Bill in 1987 was congratulatory, non-partisan and amicable. All contributors praised the amendments as a reflection of Anangu commitment to good governance and self-determination on the Lands. For example, Minister Crafter (House of Assembly 1987 p. 3994) referred to the amendments to give bylaw-making powers as a:

very clear indication of the confidence of the Parliament in the ability of the people to make decisions with respect to such important matters as solvent abuse...control of alcoholic liquor and gambling.

Crafter (House of Assembly 19 March 1987, p. 3567) had earlier emphasised that the amendments to the PLRA 'do not change the general principles of the Act but...do make the Act more effective'. Interestingly, Crafter (*ibid*) also cautioned at this time against trying to manage difficult 'social issues', such as petrol sniffing, through 'what is substantially land rights legislation'. He spoke of the 'dangers' of including too many social measures to 'deal separately with this group of people living in our State' (*ibid*). He argued that other legislation, such as the *Controlled Substances Act* and the *Community Welfare Act*, should be used to help regulate substances in communities, and that engaging police and other government agencies to assist Anangu with problems caused by petrol sniffing were important elements of a long-term strategy. Crafter argued that petrol sniffing and related social issues were part of the state's broader mandate to support the well-being of all of its citizens, rather than something that the PLRA should be expected to resolve.

Others in the debate (e.g., Arnold House of Assembly 1987, p. 3624; Cameron Legislative Council 1987, p. 4049) also viewed petrol sniffing as a serious and 'intractable' problem that required concerted long-term government attention, while 'commending' Anangu efforts to manage such difficult problems. Both sides of the House praised AP leaders for being proactive in seeking amendments to the PLRA to better equip them to deal with substance abuse and social order in communities.

The establishment of a Pitjantjatjara Lands Parliamentary Committee (PLPC)⁷³ was also represented as a way for the parliament to more directly support Anangu efforts:

Too often we tend to act too remotely from the real issues that we debate in this House [so we will] create a committee so we can have direct dialogue with the *Pitjantjatjara Council*⁷⁴ and the people on an annual basis and report back to Parliament on any amendments and recommendations that they believe will enhance the operations of the legislation to the benefit of the whole community (Arnold 1987, p. 3624).

The PLPC was intended to ‘fulfil a most useful function [and] important role in the administration of [this] legislation’ (Gunn House of Assembly 1987, p. 3625). The Committee was discussed as a way for the parliament to ensure accountability from the ‘bureaucracy’ for progress on the Lands because, as Gunn (1987, p. 3625) claimed:

the bureaucracy, well-meaning as it may be, is usually slow to act and cumbersome, whereas members of Parliament are directly answerable to the people and can raise matters of concern.

A provision in the amendments specified that the functioning of the PLPC and the overall progression towards self-determination for AP should be reviewed after five years. The tenor of the parliamentary debate (SA Parliament House of Assembly and Legislative Council Hansards 8–9 April 1987, pp. 3994–4048) suggests a bipartisan awareness of the evolution of Anangu/state relations, and openness to the prospect that further opportunities might arise over time for staged amendments to the Act to gradually devolve more powers to AP.

Contributions to the debate by Cameron (Legislative Council 1987, p. 4050), for example, also reveal a view of the PLPC as formalising a ‘special’ relationship between Anangu and non-Anangu leaders so matters of importance could be discussed together through this forum, rather than politicians engaging in ‘fly in fly out...[where] we assume at the end...that we know what is best for them’:

an excellent group of people operate [on]the Pitjantjatjara Lands...members from both sides of Parliament will benefit from the discussions and the interest generated by their being members of the [Pitjantjatjara Lands] Committee and visiting the Lands.

⁷³ The PLPC, initially Chaired by Aboriginal Affairs Minister Crafter and comprising Liberal opposition MPs Arnold and Gunn and Labor’s Robertson, reported to parliament in 1988, 1989, 1990/90 and 1991/2; a fifth report for 1992/3 was prepared but never tabled, as Parliament was prorogued. In March 1992, both Houses of Parliament, pursuant to Section 42c (11) of the Act, resolved to continue the Committee’s operation for a further five years; however, the Committee ceased meeting, and this section of the Act expired on 18 June 1997 (Annual Report of the Aboriginal Lands Standing Committee 2003/4).

⁷⁴ The author’s emphasis points out the confusion of the speaker between the AP and the PC. This issue is explored further on the next page.

3.4.1 Confusion between PC and AP

Despite the positive approach by the South Australian Government and opposition, AP and its Executive were often spoken of interchangeably with the PC, as if they were all one and the same organisation. While the PC played a role in advocating for the 1987 amendments, they were formally negotiated with the AP Executive, and AP's powers under the 1981 Act's provisions were enhanced by the amendments. Confusion between PC and AP and its Executive, as illustrated by the quotation from Arnold above, was a worrying precursor to tensions between the two bodies, which intensified in the 1990s (see Chapter 4).

Conflating these two bodies was a common error made by politicians, bureaucrats and commentators alike from the outset. While the 1981 legislation envisioned that the PC would only act for AP *until* its Executive became operational as a governance body in its own right, many politicians confused Anangu governance arrangements from the Act's inception.

Speaking in the House of Assembly on 3 March 1981, then Premier Tonkin referred to the PC as that which would 'become Anangu Pitjanjatjaraku' (Tonkin, House of Assembly 1981, p. 3379). Despite the work of SCs and intense scrutiny of the PLRA, many in Parliament were still unable 'to distinguish effectively between the two bodies when the Act was amended in 1987'⁷⁵ (SC 2004, p. 20).

The PC had spearheaded the campaign for land rights and was the vehicle through which Anangu achieved their goal. Premier Tonkin handed the historic deed to the PC in 1981, as reported in media coverage of the day: 'in a simple ceremony at Ernabella, he [Tonkin] presented the certificate of title to the Pitjantjatjara Council, representing the Pitjantjatjara Aboriginal people (The Advertiser, 1981, p.1, 'Blacks given title to 10 % of SA: historic handing over ceremony' 1981, p. 1).

The PC also continued to have an influential role in Anangu politics after 1981 as a powerful tri-state organisation in its own right, receiving major funding to deliver services to communities in the tri-state region, including to continue servicing AP.

⁷⁵ For example, see comments made by Hon. PB Arnold (Hansard, House of Assembly, 31 March 1987, pp. 3623–3624), Hon. Gunn (Hansard, House of Assembly, 31 March 1987, p. 3635), Hon. GJ Crafter (Hansard, House of Assembly, 8 April 1987, p. 3994).

However, the PC was not mentioned in the PLR Act⁷⁶ and did not have any governance powers in relation to the Lands. Meanwhile, AP was steadily growing in stature in the years after 1981, as the legislatively recognised body corporate of all TOs of the Lands. The 1987 amendments further strengthened the powers and stature of AP and its Executive. However, many Members of Parliament, including Arnold (House of Assembly, 31 March 1987, pp. 3623–3624), Gunn (House of Assembly, 31 March 1987, p. 3635) and even Minister Crafter (House of Assembly, 8 April 1987, p. 3994), did not readily distinguish between these two bodies. This muddling of corporate identities by parliamentarians and others seemed to embed itself unchecked in subsequent discussions.

Compounding this predilection on the part of policy-makers for conflating Anangu representative bodies by using ‘PC’ as a generic term for all Anangu governance was the tendency for key Anangu leaders, who had been instrumental in forming the PC in 1976 and key figures in campaigns to achieve the PLRA in 1981, to be active in both the PC and AP (and its Executive). Anangu politicians understandably followed the money (and power) story and gravitated to the positions where they thought the decisions were being made about their communities.

People who were active across the organisational and public politics of the region included Yammi Lester, Kunmanara (Punch) Thompson, Gary Lewis, Donald Fraser, Owen Burton, Leonard Burton, Danny Colson, Lee Brady, Frank Young, Alec Baker, Ivan Baker, Kunmanara Minutjukur, Yanyi Baker, Kunmanara Wilson, Kunmanara Nyangu, and the de Rose and Singer families, among many others. Yankunytatjara and Pitjantjatjara family groupings sought ongoing active representation. They were agentic and engaged people.

While little different to most local, regional or state contexts, where political activists often occupy more than one sphere of influence, the political activism and often dextrous manoeuvring of Anangu in occupying different roles and positions and adopting different positions according to circumstances—for example, where governments were channelling funding and attention—may have confused those *piranpa*⁷⁷ who preferred to

⁷⁶ The confusion around the PC and APY Executive appeared to have taken hold in the minds of many SA MPs from the beginning. For example, on 3 March 1981, speaking in the House of Assembly on the PLRA, when Tonkin referred to the PC as that which would ‘become Anangu Pitjanjatjaraku’ (Hansard, p. 3379), it appears many Liberal and Labor members believed that the PC would become/act as the AP referred to in the legislation. However, the PLRA established a new and separate body for the Lands that would be linked in some ways to the PC, but that would be separate from it. It would have a different role, a different constituency and would be formed through a different nomination and election process.

⁷⁷ *Piranpa* is a Pitjantjatjara term for non-Indigenous, or ‘white’, persons.

simplify and unify Anangu diversity by rolling everyone up neatly into ‘the PC’. Others may have actively privileged the PC over AP, as the former was the more established, predictable and familiar body.

Another source of the confusion was that PC continued to be funded to provide legal, anthropological, and road and land maintenance services to AP throughout the 1980s. The Lands were becoming a crowded organisational space, with Commonwealth and state government officials working with some local and/or regional organisations and not others.

Confusion about the role of AP and its Executive, along with differing views about the extent to which AP was (or should be) the ‘peak’ representative body on the Lands (see detailed examples in footnotes above), would have ongoing and eventually more serious and damaging ramifications for the Anangu body politic. This was one of a number of concerns highlighted in two high-profile reviews of the Lands in the late 1980s.

3.5 High-profile State and Commonwealth Reviews in 1987–1988

Much was happening in, on and about the AP Lands during 1987–1988, at the cusp of the national ‘bicentennial’ celebrations of Australia’s white settlement.⁷⁸ The Proctor Review was published in March 1987, and the *Pitjantjatjara Land Rights Act Amendment Act 1987* was assented to in April 1987 and became operative in June, just before the ‘Committee of Review on Environmental and Public Health on the AP Lands’ provided its report, entitled ‘*Uwankara Palyanky Kanyintjaku (UPK): A Strategy for Well-being*’,⁷⁹ to the SA Minister of Health, Hon. John Cornwall.

Early in 1987, the Commonwealth Department of Aboriginal Affairs (DAA) commissioned former Queensland Aboriginal Senator Bonner to conduct a ‘strategic review’ of the AP Lands, which he reported in early 1988. In June 1988, the South Australian Government commissioned former Premier, and originator of the PLRA,

⁷⁸ 1988 was colloquially termed the ‘year of mourning’ by many Aboriginal commentators. For example, see Editorial, *Sydney Morning Herald*, 19 January 1988, and ‘Indigenous protest’, Museum Victoria, <<http://museumvictoria.com.au/collections/themes/2835/indigenous-protest-1988-australian-bicentenary>>.

⁷⁹ *The Committee of Review on Environmental and Public Health on the AP Lands*, which became known as the ‘UPK Report’, was an important public health, housing and social planning project jointly conducted by Nganampa Health and the SA Health Commission. The UPK Report remains a powerful community development resource for Anangu. For more detail, see <<http://www.nganampahealth.com.au/programs/upk.html>>.

Dunstan, to consult with Anangu⁸⁰ communities about the ‘development of culturally appropriate local administrative structures’ (Dunstan 1989, p. 5).

Reviews and committees of inquiry have a long tradition in public policy. As a well-used ‘familiar policy technology’ (Colebatch 2009, p. 34), they are part of the armoury deployed to collect, sift, sort, classify and order the putative ‘facts’ in the rational problem-solving sequence that is characteristic of normative policy-making. In this rational problem-solving normative approach to policy, teams of ‘experts’, such as academics and senior, well-respected administrators, are regularly enlisted by public policy-makers into reviews or asked to comment on pre-selected (and often sensitive or contentious) policy issues. Heclo (1974) suggests that a form of ‘collective puzzling’ animates the normative policy-making process (Heclo cited in Colebatch 2009, p. 30):

What is of collective concern? What is known about it? Who are the experts? What is normal and what is deviant? What is an appropriate response? What is the place of public authority in bringing this response to bear?

An instrumentalist conception of policy as a top-down, technical, rational and action-oriented tool that assists (government) decision-makers to ‘solve’ problems and effect change (Shore & Wright 1997) is simplistic in its pursuit of both problems and solutions. It belies the complexity and multi-layered intersectional dimensions of policy-making and the plurality of ways of conceiving of the policy-making process (e.g., Shore & Wright 1997; Fischer 2003; Considine 2005; Colebatch 2009; Fischer & Gottweis 2012; Bacchi 2012).

As Edelman (1988, p. 12) suggests, problems find their way into discourse and gain life as policy ‘issues’ that need attention because they reinforce ideologies—not simply because they exist or are important to social welfare. The development of the PLRA, its subsequent amendment in 1987 and the issues of governance, relationships, power, representativeness and complex social problems that began to surface in the mid to late 1980s necessitated a ‘collective puzzlement’ (Heclo 1974, p. 305) well beyond the scope of most commissioned inquiries.

Colebatch (2009, pp. 24–30) points to a typology of three broad approaches to the analysis of policy-making and clusters them under the headings of ‘authoritative choice’, ‘social interaction’ and ‘social construction’. He suggests that most public inquiries and reviews fit the ‘authoritative choice’ account of policy-making by acting primarily as an aid to

⁸⁰ Dunstan’s brief included making recommendations regarding local governance arrangements for the areas covered by the PLRA, MTLRA and ALT.

government decision-making, and they are preoccupied with sifting information to identify *the* problem, and then recommending what is perceived to be the ‘right’,⁸¹ or preferred, course of action to correct, manage or respond to the perceived ‘problem’. Reviews and inquiries can also provide opportunities for competing, and even conflicting, perspectives to be aired, new voices to be heard and alternative scenarios, options and a diverse range of possible responses to be explored.

The various inquiries on or about the Lands in the late 1980s generally fit the ‘authoritative choice’ approach. For example, the Proctor Review had a Treasury official and other senior departmental ‘experts’ assessing the efficiency and effectiveness of governmental service delivery, while the Dunstan Review had a well-regarded past Premier consulting on governance models to recommend government action on what he perceived to be the best options. However, the Commonwealth’s Bonner Review is perhaps better understood when viewed as a mix of Colebatch’s (2009, p. 30) ‘structured interaction, policy-making as negotiating’ and ‘social construction, policy making as collective puzzling’. In this review, policy-making is tempered by reflections about the Anangu social and cultural contexts in ways that distinguish it from other reviews of or about the Lands at that time.

Bonner (1988, p. i) summarised the terms of reference he was given as a broad brief:

to radically examine the system through which external resources are provided to [AP] communities and report on the effectiveness of its contribution to Aboriginal self-determination.

Bonner first engaged respected Anangu elder Andrew Japaljarri Spencer as his cultural adviser. He also engaged with a key group of tjilpi and pampa tjuta (elder Anangu men and women) and the ‘special contribution’ of younger men and women he named as ‘Kunmanara George, Kunmanara Fraser, Gary Lewis, Yami Lester, Ms Tjikali Collins, Ms [Kunmanara] Wilson, Mr Frank Young, [Kunmanara] Thompson, Mr Ivan Baker, Mr Kunmanara Stevens and Mr Shannon Lester’ (Bonner 1988, p. iv). Bonner then set out to consult by travelling around communities with the HALT⁸²—funded by the government to work with communities on HIV/AIDS, petrol sniffing and alcohol abuse issues—and undertaking direct discussions with Anangu in communities. By seeing how a community

⁸¹ Colebatch (2009, pp. 24–29) provides a useful schema of three types or ways of giving an account of policy-making: the ‘authoritative choice (policy making as deciding)’, ‘structured interaction (policy making as negotiating)’ and ‘social construction (policy making as collective puzzling)’, and suggests that most accounts of policy-making are a mix of these types to varying degrees.

⁸² For more information on this program, see HALT (1991) and Divakaran-Brown and Minitjukur (1992).

development program was received ‘on the ground’, Bonner was looking beyond second-hand accounts of life on the Lands.

While recommending courses of action, in the normative ‘authoritative choice, policy making as deciding’ (Colebatch 2009, p. 24) style, Bonner did more than this; he nuanced his policy advice with comments about Anangu culture and his awareness that local context influences implementation. Bonner (1988, p. i) described his main aim and guiding overall priority as focusing on Anangu concerns and ‘the problems *they* raised’:

I learned that poor health remained endemic within communities; that the level of literacy and numeracy remained too low for people to effectively administer their life needs in the contemporary economy; that resources were not deployed and managed in accordance with authentic decision-making processes; that outsiders exerted an extraordinary degree of control over the current infrastructural development and way of life; that economic life was almost entirely reliant on the proceeds from government welfare or community development programs and that petrol sniffing and alcohol abuse are chronic and entrenched forms of dependency in these communities.

Critical policy theorist Bacchi (2012, p. 1) suggests that policy-making is about ‘making politics visible’. Similar to Colebatch (2009), Bacchi’s (2009) Foucauldian approach asserts that the social construction of problems and the socio-political context in which they are played out are key elements of the policy-making process: ‘What’s the problem represented to be?’ By understanding how problems are ‘produced’, it is possible to view the policy-making process as one that makes certain issues more ‘visible’ than others—a process that is always taking place within a contested and politicised context in which the dominant voices are those that are more often heard (Bacchi 2009, 2012).

Of the AP Lands reviews and inquiries occurring at this time, Bonner’s is most notable for its sensitivity to differing perceptions of what constituted ‘problem/s’ on the Lands, and for noting that different types of ‘policy interventions’ and ‘policy instruments’ are advantageous for different groups depending on the ‘rhetorical elements of problem construction’ (Linder 1995, pp. 208–230).

Bonner (1988) dealt with a number of key themes and issues. One was petrol sniffing and the spectre of potentially tragic intergenerational issues he saw resulting from this problem. Another was Anangu governance and the lack of external support available to assist Anangu with issues of self-management. Bonner (1988) analysed the vulnerabilities in Anangu governance arrangements arising from what he perceived to be inherent tensions between the mores of collectivist desert cultures and the contemporary demands of hierarchical and institutionalised politics.

In Bonner's (1988, p. ii) view, Anangu faced an ongoing 'social trauma associated with the transition from nomadic to settled life'. He suggested that the mores that sustained past 'traditional' lifestyles were not easily adaptable or 'designed to stabilise a permanent settlement'. Citing Myers (1986, p. 260), he argued that Anangu sociality was traditionally geared towards dispersed 'regional system[s] through time', and that the 'executive decision-making necessary for the effective management of centralised resources has no cultural basis' for Anangu (Bonner 1988, p. ii).

Contrary to 'romantic' notions of Aboriginal communality as simplistically all-sharing, Bonner (1988) suggested that for central desert communities in particular, 'relatedness' is a strong cultural value necessitating family groups to responsibly provide for their own. He argued that a complex intersectionality of a need for both 'relatedness' (within families and between clan groups) and 'autonomy' (resource independence of extended family groupings) coexisted in balance in collectivist desert cultures.⁸³ Reciprocity of exchange was of course key to maintaining this balance. Bonner (1988) argued that tensions between closeness and autonomy shaped the dispersed nature of Anangu political life,⁸⁴ and that these qualities were not easily reconcilable with Western political models of governance, which were linear and more based on control than reciprocity. In appraising Anangu governance in the first decade of the PLRA, Bonner (1988, p. iii) argued that:

the authentic political organizational structure of [Anangu] communities has not adapted itself to effectively transact business in the contemporary economy and society.

Bonner (1988) highlighted that institutional governance arrangements were not working well for Anangu. He recommended that both the Commonwealth and South Australian Governments provide more governance and operational support to Anangu to help realise the 'self-determination' intended by the PLRA.

Bonner (1988) recommended that each family group, skin group and clan be viewed as a 'unit' that could be 'heard' within a modified democratic system of suffrage so that each family grouping had a 'vote' or say in whatever was established to enable all kinship voices to be heard in decision-making. He recommended that the powers and role of AP and its Executive be clarified, that the functions and accountabilities between levels of AP governance structures be established in ways that would also take into account the views of elders—the 'tjilpis and pumpas' (old men and old women)—as 'they are the

⁸³ 'Ngapartji Ngapartji' is a Pitjantjatjara expression meaning 'I give to you, you give to me', which captures the key cultural principle of reciprocity and interdependence.

⁸⁴ Sanders (2004) provides a useful discussion of the benefits of 'dispersed' governance.

holders of knowledge enshrining the values of Aboriginal culture’, which underpin ‘authentic community control’ (Bonner 1988, p. 19).

Bonner’s (1988) views largely reflected those of AP leaders Lester and Lewis, who advocated for a strengthening of AP’s role and greater recognition by governments of the importance of Anangu involvement in all levels of decision-making. However, Bonner was also concerned with internal AP governance—particularly the roles and responsibilities of regional organisations such as the PC, Nganampa Health and the NPY Women’s Council, as well as the relationship between these ‘umbrella’ organisations and the body corporate AP and its Executive.

Tri-state Anangu bodies such as the NPY Women’s Council⁸⁵ and Nganampa Health Council,⁸⁶ which formed in 1980 and 1983 respectively, had become influential in social well-being, health and welfare and had assumed new service delivery roles in addition to advocacy work. Meanwhile, the Ernabella Video and Television Service, which was founded in the early 1980s in Pukatja, grew into a major regional media organisation and was incorporated as PY Media in 1987:

Hence in a period of seven to eight years, Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara people had built structures which would allow[ed] them to manage their Lands (Last 2001).

The NPY Women’s Council, Nganampa Health Council and PY Media joined the PC and AP to form a burgeoning institutional infrastructure that increasingly mediated government–Anangu interactions. This growth in regional Anangu service organisations marked both a maturing and diversification of Anangu self-management and the emergence of a crowded and increasingly competitive organisational field on the Lands during the 1980s.

Bonner (1988) emphasised minimising the number of external government agencies interacting with Anangu communities, and he recommended the provision of specialist support to assist Anangu to develop capacities in administration, community development and community safety. In particular, Bonner (1988, p. 27) recommended that governments urgently consult with Anangu ‘on the development of a culturally appropriate local government model’.

⁸⁵ As outlined in Chapter 1, the NPY Women’s Council was formed in 1980 to represent the interests of Anangu women across the tri-state region (SA, NT and WA).

⁸⁶ Nganampa Health was formed in 1983 and took over responsibility for the delivery of health services on the AP(Y) Lands from the South Australian Health Commission and the Pitjantjatjara Homelands Health Service in 1985.

Just after Bonner provided his Report to the Commonwealth DAA and the Hawke government, Bannon's state government appointed Dunstan⁸⁷ to consult with Aboriginal communities on the 'development of culturally appropriate local administrative structures' in the areas covered by the ALT—that is, the Maralinga Lands and the Pitjantjatjara Lands (Dunstan 1989, p. 5).

Dunstan (ibid) noted how diverse concepts such as 'local government', 'community', 'self-management' and 'self-government' raised many questions about 'cultural match':⁸⁸

No matter how 'culturally appropriate'...[will] community government...result in a departure from [Aboriginal] traditions and be an imposition of white values and notions of administration? How much autonomy could realistically be provided [to Aboriginal communities] given bureaucratic requirements for accounting and audit? Are Aboriginal communities in SA ready for self-management and 'Aboriginalisation' of their administrative structures? Or [will] community government mean a continuation of reliance on or even proliferation of white advisers?

Dunstan (1989, p. 6) suggested that while the answer to these questions was 'unpredictable', 'experience has tended to show that Aboriginal communities work best when decisions are made locally'. He recommended the introduction of a limited form of 'community government' in close consultation with those affected that would be flexible enough to accommodate the different circumstances of communities.

Dunstan (1989, p. 6) also recommended that change be introduced slowly, with adequate financial, training and personnel support, and he cautioned that 'communities and government must understand that mistakes will be made'.

In his Report in July 1989, Dunstan (1989, p. 7) observed that 'Land Rights alone will not result in any real economic betterment'. He highlighted the deteriorating socio-economic situation facing Anangu communities near the end of the first decade after the enactment of Land Rights:

One can only unhappily note that the physical condition of the Pitjantjatjara people living on the Lands...has if anything deteriorated since 1979...rather than improved. The situation on the Lands detailed in the Bonner and UPK Reports can only give cause for dire concern. Land rights are essential to Aboriginal culture. Economic betterment, however, is another and in most cases separate question, and there the provision of training (in management, accounting, marketing, technical expertise relevant to the enterprise) and the provision of discretionary capital are fundamental requirements (Dunstan 1989, p. 7).

⁸⁷ Government official Sue Briton-Jones, who had also served as a South Australian Government representative on the Bonner Inquiry, which was conducted one year before Dunstan's consultancy Report, served as Dunstan's key research assistant and policy adviser (for this task) during this time.

⁸⁸ 'Cultural fit' is one of the principles used by the Harvard Project on American Indian Economic Development; see <<http://hpaied.org/about-hpaied/overview>>. For further discussion on the links between the Harvard Project's findings and issues of Australian Indigenous governance, see Sullivan (2006, 2007).

Dunstan (*ibid*) observed that ‘solutions so far have often emanated out of competitive bureaucracies which are remote and unco-ordinated’. Like Proctor (1987, p. 46), Dunstan (1989, p. 7) also argued that the complex, chaotic and poorly coordinated state of government service delivery and resulting interagency tensions were hindering rather than helping Aboriginal communities:

Until such time as rationality can be introduced into the division of responsibilities between the Commonwealth and State, the problems of lack of co-ordination, overlapping and duplication of functions and inability of communities to manage their affairs effectively will continue.

Echoing Proctor (1987), Dunstan (1989, p.7) argued for ‘a clearer delineation of Commonwealth and state government responsibilities in Aboriginal Affairs’. He recommended more flexible funding arrangements by Commonwealth and state agencies, as well as block grants and three-year funding cycles to better ‘enable Aboriginal communities to devise their own solutions’ (Dunstan 1989). This seemed to be a ‘rational choice’ if sustainable outcomes were to be achieved.

Like Bonner (1988) and Proctor (1987), Dunstan (1989, p. 7) mirrored Miller’s (1985) earlier view that self-sufficiency and independence would improve if Aboriginal communities were given ‘access to the financial, administrative and professional resources of the kind available to local governments’.

Each review believed that devolving a range of powers to AP by establishing it formally as a local government was a way to overcome the confusion surrounding state and Commonwealth services and lines of accountability, while simultaneously enabling AP to exercise more local authority in their own right.

Dunstan (1989) was also particularly concerned about the lack of a focus for policy-making at the state government level. Further, there was a lack of clarity about the roles of the Commonwealth and state governments, and workers within one community were at times working to different and even competing policy objectives.

He also identified that the office of AP, based in Alice Springs, had approximately five people employed for the purposes of administering the PLRA, whereas the co-located PC had 16 staff (Dunstan 1989, p. 16). This stark difference in the resourcing of PC compared to AP will be returned to later in this chapter in a discussion of AP’s eventual shift to its purpose-built premises on the Lands.

Dunstan (1989, p.26) was also concerned about what he perceived to be a proliferation of ‘white advisers’ in Aboriginal Affairs, and he was sceptical of the tendency to overlay

local Aboriginal decision-making mores with bureaucratic demands. He commented on the presence of many non-Indigenous staff, or *piranpa*, in influential positions in communities, and he recommended increased support for Aboriginal training and employment as a priority for realising self-determination on the Lands (Dunstan 1989).⁸⁹

In his report, Dunstan (1989, p.27) described attending a General Meeting of AP at Pipalyatjara on the Lands, where those present indicated that they did not want to be consulted any further on ‘community government’ because they were ‘presently preoccupied with [discussions about] ATSIC and the Treaty’.⁹⁰ Dunstan (1989, p. 27) argued that communities were poorly represented at this meeting:

The influence of white advisers from AP and the Pitjantjatjara Council on the debate at that meeting was obvious. Thus the views expressed by AP are not necessarily indicative of a consensus of opinion of community members. Permission to discuss the issues with individual communities was not forthcoming.

Bonner (1988, p. iii) had signalled similar concerns about the number of *piranpa* external advisors taking up positions in Anangu organisations since the advent of the PLRA, arguing that:

as a consequence, control of resources and the political decision-making associated with their distribution has continued to reside in outsiders who are employed by community-based organizations.

Government staff often turned first to such professionals for advice or links when looking to engage in the region, as they spoke English, understood bureaucratic policy contexts - and they were familiar as *piranpa* too. However, Dunstan’s (1989) comments above illustrate a further level of frustration about what he perceived as an increasing ‘gate-keeping’ role being assumed by some advisers and workers on (and off) the Lands. All of the reviews at this time commented on the increasing level of external pressure on the Lands (and the growth of influential government advisers) in ways that resonate with the letter earlier cited, by AP’s Lester and Lewis.

Equally mixed feelings were expressed in the reviews about the rapid development of ‘umbrella’ organisations. One of Bonner’s (1988, p. vi) terms of reference asked him to comment on ‘the degree to which self-management by communities is being achieved including the appropriate role in this process for Community Advisers funded by DAA’⁹¹

⁸⁹ Here, Dunstan (1989, p. 49) cited a positive example of how ‘the provision of police aids, nominated by the local community, trained by...the Police Force has proved a successful and useful development in the Pitjantjatjara Lands’.

⁹⁰ The ATSIC was established by Hawke’s Labor government through its *ATSIC Act 1989*, which came into effect in March 1990.

⁹¹ The DAA was the Commonwealth agency that commissioned the Bonner (1988) Review.

and “umbrella organisations”. Bonner (1988) saw potential for tensions to emerge between Anangu regional ‘umbrella’ organisations and locally elected community councils, which were effectively pitted against one another in pursuit of government funding. He argued that such tensions were exacerbated by the lack of clarity of the respective roles of Anangu-controlled regional ‘umbrella’ organisations such as Nganampa Health, the NPY Women’s Council, PY Media, and particularly AP and the PC. Bonner (1988, p. 47) highlighted that:

The role of AP is ambiguous...and the Review has framed recommendations on the basis that the role of AP remains confined to co-ordinating regional policy without eroding community autonomy.

He recommended that AP assume the coordinating role for all essential services delivery, play a key role in education policy development, and assume responsibility for the regional coordination of health supplies and related support. His plan was for AP to be the key regional policy body, with Anangu organisations such as Nganampa Health, the NPY Women’s Council and PY Media being the ‘service delivery’ bodies operating within policy settings established by AP.

As different family or kinship groups were associated with different organisations, such a normative and hierarchical ‘rationalisation’ would alter the internal power balances and (informal) resource sharing between communities and clans. Bonner (1988) was aware that such a unified structure of governance would need to be phased in over time.

Bonner (1988, pp. 48–49) recommended that the PC be renamed to better reflect its tri-state specialist services role. He suggested that the name ‘council’ was misleading, as the organisation was basically a resource agency rather than a representative ‘governance’ council, which he argued was AP’s role. He recommended that the PC move towards a model of charging a fee for service to provide support to regional and local community organisations.

With respect to the NPY Women’s Council, Bonner (1988, p. 57) recommended amendments to the PLRA to formally acknowledge the role of women in Anangu life and ensure their representation in regional decision-making on the Lands, asserting that:

many external funding agencies and some advisers do not understand the dimensions of the role of women in traditional Aboriginal communities...it is imperative that the system through which resources are provided allow women to realise their potential as resource managers and nurturers of community well-being.

While recommending ways to strengthen the influence of women, Bonner (1988) also suggested that Anangu women should consider whether the resources available to the

NPY Women's Council were being effectively utilised. Bonner recommended that both AP and the NPY Women's Council should employ their own female staff to ensure the employment of Anangu women in positions of influence across the Lands and especially in key governance structures. He argued that specialist regional coordinating positions for women in *each* [my emphasis] body would maximise Anangu women's voices in policy (Bonner 1988, pp. 57–58). He favoured strengthening women's voices in all fora rather than channelling support for women through a separate regional body.

However, the NPY Women's Council had formed with the specific aim of ensuring Anangu women's voices were heard through their own tri-state organisation that operated separately from, but parallel to, the PC. As Nganyinytja⁹² explained:

So I said to the women, 'Eh, we should become separate'. I suggested this because we had been told to be quiet and leave. We all had something to say, about caring for our children and families, about our aspirations to have good lives. We wanted to talk about issues to the government. We wanted to talk together to give a strong message. That's why we formed Women's Council (NPY 2010, p. 2).

During the 1980s, the NPY Women's Council had grown considerably, not just in budgetary terms, but also in status and influence, largely due to its proactive role regarding alcohol and other substance abuse issues. Bonner (1988) argued that a tri-state body that was based in Alice Springs and employed mainly piranpa was no longer the most effective option for women on the Lands. He suggested that the interests of AP women would be better served through the employment of Anangu women, the formal integration of Anangu women's issues into regional governance arrangements, and the encouragement of their own local income-generating activities.

In what was a forward-thinking but likely (sadly) unrealistic suggestion at the time, Bonner argued for a form of affirmative action in which Anangu women's roles and status would be 'identified' in the PLRA and all associated community council legislation (Bonner 1988, p.58).

Unlike Bonner's (1988) radical approach to internal governance issues, SA's Proctor Review was more concerned with creating a more orderly and streamlined bureaucratic service system. The South Australian Government supported a stronger coordinating 'umbrella' role for AP operating among, rather than substituting for, other powerful service-specific tri-state Anangu bodies such as the NPY Women's Council and

⁹² Information on the early days of NPY and the role of senior Anangu law woman Nganyinytja (OAM) is available at <<http://www.npywc.org.au/about-npywc/history/>>.

Nganapma Health. Conversely, the Commonwealth did not fund ‘umbrella’ organisations—only projects in individual communities.⁹³

The 1980s policy climate was shifting towards an increased Commonwealth presence, which further complicated an already complex policy and service delivery environment. Proctor’s Review argued that a ‘chaotic’ state of service provision was impeding Aboriginal community advancement. It identified three ‘urgent’ areas for the SA Government’s attention: first, the developing role of the Commonwealth and changed Commonwealth–state relations with respect to service provision; second, the changed role of the state government and growth in the number of South Australian Government departments providing services; and third, a growing public policy emphasis on changing ‘the nature of the relationship between Government Departments and agencies and the Aboriginal community for whom services are being provided’ (Proctor 1987, p. 13).

Dunstan (1989) also focused on lines of accountability rather than Bonner’s (1988) suggestions for building Anangu capacity through developing new cultural modes of governance. Dunstan considered it inappropriate to have multiple communities on the Lands—all with separate local government status (Dunstan 1989, p. 19). Instead, he favoured a regional model that would recognise AP as a substantial local government.

Dunstan (1989) advised the Bannon government that: i) Aboriginal communities under the ALT, MLRA and PLRA were not receiving local government services comparable to other members of the SA community, ‘nor in accordance with need’; ii) self-management structures were unsatisfactory, and additional funding, bylaw-making powers and support for enterprise development through CDEP was required; and iii) the South Australian Local Government Grants Commission should establish a government system based on the discrete, regional or mainstream options discussed in the report, ‘ensuring that the system take into account disability factors and properly applies the principle of horizontal equalisation’. Dunstan (1989, p. 64) also recommended that legislation be prepared to enable communities to ‘opt for...local government in a manner and at a pace which...best suited their needs and aspirations’.

The Dunstan (1989) Report was a further stage on from the earlier Proctor (1987) and Bonner (1988) Reviews. It articulated some similar concerns about a lack of policy coordination and the chaotic, ‘maze’-like nature of government service delivery to the

⁹³ See Robbins’ (1993) study of petrol sniffing Commonwealth/state ‘coordination’ issues in Central Australia in the late 1980s for detail on how divergent approaches impeded service delivery at this time.

Lands. But while Proctor (1987) argued for Commonwealth/state rationalisation and Bonner (1988) pushed for culturally appropriate governance to enhance self-management, Dunstan (1989) canvassed practical options for the introduction of a form of Aboriginal local government within the SA policy context.

3.6 AP's Response to the Dunstan Report

The Commonwealth was becoming increasingly influential in the Lands in the 1980s, as evidenced by the Bonner Review. However, it was the Dunstan (1989) Report that AP gave a written response to. Dunstan was an important figure as the PLRA's instigator, and in the 1980s he was still a 'king maker' in SA politics.

In May 1990, AP indicated that it welcomed Dunstan's (1989) recommendations. They argued that 'various local government type options put forward in the Dunstan Report... in some respects [coincide with] the present and pre-existing policy of AP in relation to local government'; however, AP also pointed out the danger they perceived in 'self-determination being confused with self-sufficiency' (AP 1990, p. 1).

They also argued for stronger, more 'cohesive' and ongoing funding to support the service delivery and governance needs of Anangu communities and homelands (AP 1990). AP pointed out that, following the 1987 amendments, bylaw-making powers had been made available for the control of alcohol consumption and gambling on the Lands, which could readily be expanded to include other local government-type functions.

AP's response drew heavily on its prior contribution to the 1987 Committee of Review on Environmental and Public Health on the AP Lands Report to the SA Minister for Health—'*Uwankara Palyanyku Kanyintjaku (UPK): A Strategy for Well-being*'—which recommended the expansion of AP's role to enable it to become:

- a) a coordinating and resource body to Anangu communities in housing, essential services, health, education, welfare and other services on the AP Lands
- b) a regional management body for the AP Lands in administering and provision of services....[responsible for] health, welfare, education and TAFE, building and public works, air transport, enterprises, legal and anthropological services; the planning, provision and maintenance of all housing and permanent structures on the AP lands; essential services, water, sewerage, electricity and refuse disposal; the operation and management of all community stores (UPK 1987, p. 3).

AP's response can be considered a bid to become a peak governing 'umbrella' body on the Lands, not only for land management and permits, but also for human services, as Bonner had also advocated. At the time, these services were being managed by other 'umbrella' Anangu bodies, such as NPY and Nganampa Health, which were not accountable to governance structures established by the PLRA.

AP (1990, p. 4) argued that it was already performing many of these local government functions and that, in the Executive's view, the PLRA 1981 made it clear that:

AP is the body designed to have control over the AP lands [and that] any derogation of that control by way of imposition of a separate local government body with the consequent potential conflict of powers would not be in the best interests of traditional owners.

This accorded with Dunstan's (1989) view that AP was in effect a regional local government, but one without the formal status and funding of a local government. AP argued that while there was a 'proliferation of Aboriginal groups and service providers operating on the AP Lands', this was in fact a demonstration of 'a very important part of self-determination' and a response to the need for autonomy and flexibility, as well as being symptomatic of the many sources of funding available from Commonwealth and state governments for various service functions (AP 1990).

In a subtle and nuanced way, AP argued that it did not want to take over other Anangu regional organisations; rather, it wanted to act as a means of bringing the dispersed governance of the Lands together: 'AP is certainly the most appropriate body on a regional level to coordinate this flexible arrangement' (AP 1990).

By referring to the PLRA's empowerment of Anangu decision-making regarding development on the Lands, along with the range of Anangu organisations that had grown up around the same period, the response paper argued that:

by increasing its [AP's] local government type functions and powers...great flexibility would be achieved and maintained [in ways] totally consistent with the ideals of Anangu self-determination (AP 1990, p. 5).

The response paper reveals AP's increasingly assertive claim to being the 'peak' Lands governance body. Both the Bonner (1988) and Dunstan (1989) Reviews added weight to the perceptions of AP as the key regional Anangu entity on the SA side of the tri-state border, separate from the PC. The response paper also emphasised that the planned relocation of the AP office onto the Lands—for which the Commonwealth had promised funding—was a key part of AP separating out in order to no longer be a cypher of the PC, but a key Anangu regional body looking to work closely with its constituency:

The proposed relocation of the AP office away from Alice Springs to a more central location on the AP lands by August 1990 should enhance the responsiveness of that office to local needs and ensure a sufficient degree of control at a local community level (AP 1990).

3.7 AP Moves to the Lands: Tensions with the PC Emerge

Relocation to Umuwa and away from Alice Springs and the PC was nevertheless a big step for AP, which until this time had enjoyed an almost symbiotic relationship with the

PC—the crucible in which it grew (SC 2004, p. 17). For more than a decade, the PC had been AP’s organisational arm, acting for and on behalf of Anangu on the Lands. When co-located with the PC in its Wilkinson Street, Alice Springs compound, AP was also in close proximity to Nganampa Health, the NPY Women’s Council and a range of other Anangu services.

Despite its unique legislative status, AP was effectively embedded as part of the PC’s stable of serviced and resourced agencies. Despite its separate role and organisational presence, it had continued to be dependent on the larger resource agency it had grown from. During the first decade of the PLRA, there was no funding from the Commonwealth or state governments for AP to operate separately from the PC; thus:

Pitjantjatjara Council staff administered the granting of permits to enter the AP Lands. In addition, the Council’s lawyers and anthropologist continued to act for Anangu Pitjantjatjara, including overseeing negotiations between Traditional Owners and mining companies (SC 2004, p. 17).

Dunstan (1989) had highlighted the disproportionate level of staffing provided to the PC, which had over three times more staff than AP. While the PC had a larger tri-state area to cover, its superior level of Commonwealth funding secured a burgeoning legal and anthropological team which meant it dominated AP’s capacity to support Anangu regarding development matters on the Lands. However, by 1989, the Commonwealth had agreed to provide enough funding to enable AP to ‘employ a secretary and senior project adviser and to assume, among other things, responsibility for the permit system’ (PLPC 1989/90, p. 6). The following year, the Commonwealth delivered on its promise to fund offices for AP to be built on the Lands (PLPC 1990/91, p. 2).

Colloquially referred to as the ‘Canberra of the Lands’,⁹⁴ Umuwa⁹⁵ was selected by Anangu as the site for the new purpose-built AP administrative offices that were intended to co-locate major service providers and corral outsider piranpa visitors away from communities. The new AP offices were established on an independent site in a location that was easily accessible to most of the main communities, but that was also separate from where Anangu families lived, so communities continued to have some privacy away from an influx of piranpa outsiders.

⁹⁴ Reference to ‘Umuwa’ as the ‘Canberra of the Lands’ or APY ‘capital’ is common in local community discussions and is an expression frequently used by locals—both Anangu and piranpa, in personal communications with the author.

⁹⁵ Umuwa was built in 1991 and AP moved there in 1991. Next, PY Media moved from Ernabella (Pukatja), and Nganampa Health established an office there in 1993. APY Land Management services and a range of government offices have since been established at Umuwa, which is a central point or ‘capital’ for governance and service providers on the Lands.

Mission days were in living memory for elders; hence, a purpose-built administrative base or hub that was away from communities was preferred. Umuwa was considered a 'neutral' place where people from every community could join together, and/or meet visitors, without any community or kinship group being favoured or people intruding on others' customary Lands. Managing any potential local community or kinship rivalries through creating 'neutral' places for meetings has a traditional basis in Anangu culture. Although situated closest to the largest community of Pukatja (Ernabella), Umuwa was accessible from every direction and to every community on the Lands.

The PLPC⁹⁶ suggested that this relocation of AP onto the Lands was 'in line with objectives set at the time of the land handover in 1981' (PLPC 1991, p. 2). As the PLPC's 1990/91 annual report to parliament explained:

Currently the Director and Administrator are in residence at Umuwa and other staff including the Administrator of the Nganampa Health Service plan to transfer to the lands, during 1991/92. Your Committee believes that this move will bring about more effective oversight of the lands and will become the focus for planning and co-ordination of services (PLPC 1991).

Anangu sought to consolidate their advancement by bringing regional Anangu agencies and AP together in a new administrative capital at Umuwa, located closer to communities and thus might be more likely to enact their wishes as envisioned by the PLRA.



Figure 3.1: Offices of Anangu Pitjantjatjara Yankunytjatjara at Umuwa. Source: APY Lands (<http://www.anangu.com.au/>)

However, while day-to-day relationships between key players began to gradually change after AP relocated to Umuwa as an independent identity *for* the Lands *on* the Lands, AP's structural dependence on the PC remained much the same. AP's reliance on the PC and its staff was not easily disaggregated when the legal, administrative and anthropological

⁹⁶ The PLPC was established by the *PLRA Amendment Act 1987* to monitor progress under the PLRA. The PLPC was chaired by the Minister and included two MPs from the government and two from the opposition. Its operations were to be reviewed after five years.

expertise to manage applications for mining exploration remained with the Council based in Alice. Even after AP's relocation to Umuwa and its assumption of the role of managing general permit requests:

the Pitjantjatjara Council continued to service Anangu Pitjantjatjara with respects to its legal and anthropological requirements, in particular the processing of applications for mining exploration licenses (PLPC 1991/92, p. 2).

3.7.1 From open to closed communication

However, at the everyday level, the move altered how Anangu in AP and PC interacted:

The establishment of the administrative centre inevitably affected the ease with which Anangu Pitjantjatjara staff could communicate with the Pitjantjatjara Council on a day to day basis (SC 2004, p. 18).

Insights into how the shift changed dynamics between key Anangu individuals are obtained by reflecting in more detail on the changes to the communications environment after the move to Umuwa. The original means of communications between organisations in Alice Springs, Anangu leaders and other local people on the Lands was CB radio, which enabled open and instantaneous discussion: 'day-to-day communication with the AP Lands was maintained via the use of a sideband high frequency radio system'⁹⁷ (Rainow, pers. com. 2006):

Anangu have long recognised the importance of being able to communicate effectively over vast distances (Nicholls 2009).⁹⁸

Radio enabled Anangu communities 'to monitor regional negotiations and encouraged transparency in matters of governance'. As PY Media (2006, p. 10) observed:⁹⁹

This broadcast made their work public. Everyone knew what the workers on the Land were involved with. This allowed all community members to be informed of the decisions being made about services.

During earlier decades, two-way high-frequency (HF) radio, known as the 'Pitjantjatjara bush radio', enabled people to converse over long distances. Discussions were publicly available and widely accessible—everyone knew what everyone else was saying. Decision-making and dialogue, including conflicts and disagreements, were all largely played out 'in the open',¹⁰⁰ and Anangu could talk among themselves, spread news and share decision-making processes, even across long distances.

⁹⁷ Pers. comm. with Stephan Rainow, Public/Environmental Officer UPK, Nganampa Health Council, 20 March 2006, Alice Springs.

⁹⁸ See Anangu paper tracker at <<http://www.papertracker.com.au>>.

⁹⁹ For a summary of PY Media and others' reports of the effect of HF radio and its loss when telephone replaced radio as the key medium of Lands communication, see *Report of the Select Committee on Pitjantjatjara Land Rights* (2004, pp. 36, 218).

¹⁰⁰ See PY Media (2005) and Sidey (1986).

Nicholls (2009) suggested that the use of the ‘bush radio’ played an important part in the campaign for land rights.¹⁰¹ As Anangu leader and TO Owen Burton (2006, p. 9) recalled in a submission to a Commonwealth Inquiry into community broadcasting:¹⁰²

Every morning everyone would get up and turn on the HF radio before they did anything else. They would tune in to any number of the conversations taking place. If someone were sick they would listen and then pass on the information to the doctor or nurse.... When discussions about land rights began...[HF] radio was already there. We started using the radio to send out messages to everybody...Donald Fraser started using the radio to broadcast news when he was chairperson of Anangu Pitjantjatjara Council. Later, Yami Lester, a Yankunytjatjara elder, became the chairperson of the Council and took over the radio responsibilities. He delivered the ‘Pitjantjatjara News’ every morning. Radio gave out news across the land. People across the Lands were listening to the news, and public discussions about Freehold Land.

Through such open communication across wide distances, Anangu could speak in their own language/s (Yankunytjatjara/Pitjantjatjara/Ngaanyatjarra and other Western desert dialects) and decipher what was going on and what decisions they wanted to make through regular, inclusive multi-layered discussions (Burton 2006).

The roll-out of telephone connectivity replaced the HF public ‘bush radio’ network by the beginning of the 1990s. Along with the physical shift of AP away from the PC and its Alice Springs resource base, it disrupted relational dynamics and altered how business was conducted and how people communicated to make decisions.

One commentator later summarised that:

We really ran into trouble with this telephone. Because Anangu cannot read or write, everything is through the mouth. When the radio stopped and everyone was one-to-one on the telephone, people suddenly did not know what was going on any more (SC 2004, p. 37).¹⁰³

The telephone individualised communications that were previously conducted *en masse*, openly and communally. As later suggested by PY Media citing Scales,¹⁰⁴ an anthropologist with the PC, this shift in communication contributed to a growing tension between protagonists in the various Anangu regional organisations:

Anangu culture is an oral culture. HF radio broadcasting suits an oral culture. The biggest thing about the HF radio was that it was public. There were not misunderstandings. Information was not kept privately. It was disseminated out there-whether it was public or private information.... The telephone stopped that totally...everyone became a lot more private and held on to information usually for reasons of power. Radio is democratic; the telephone and fax are autocratic. People could gain power by holding information back, information that was only learnt if you were holding the telephone receiver cited in (PY Media 2006, pp. 10–11).

¹⁰¹ Establishing a ‘radio link-up’ was discussed at the inaugural meeting of the PC (PC Minutes, 13–14 July 1976).

¹⁰² Burton (2006, Sub 51).

¹⁰³ Scales (cited in Parliament of South Australia 2004).

¹⁰⁴ Scales (cited in PY Media 2006).

Personal relationships between Anangu leaders shifted as people gravitated more towards one or the other organisation. In contrast, the role of *piranpa* staff—especially those with professional law, administration, community work or anthropological qualifications in the PC—remained relatively constant as an influential source of advice for Anangu. Despite the advent of AP as a creation of the PLRA, PC remained the dominant agency, as a pivotal hub for Anangu relationships and caucusing on critical policy and political issues across the region.

It is relatively easy to see how and why the Anangu initiated and well-established tri-state resource body, the PC, comparatively well funded (primarily by the Commonwealth) and with a strong record of representing the interests of Anangu from WA, NT and SA, remained influential. The PC had after all been the driver for the PLRA whereas AP was a top-down construct of the State-based PLRA and hence reliant on the SA Government for its existence. In comparison, the PC grew out of grassroots Anangu action, had a long history in the region and a team of influential and well-qualified *piranpa* staff.

Dunstan (1989) had also identified the inequities in power and resources between AP and the PC, and the potential for difficulties to arise from AP's continued dependence on anthropological and legal advice provided by the PC. While the pursuit of organisational clarity can be critiqued for being simplistic, normative and functionalist, analyses in both Bonner (1988) and Dunstan's (1989) Reviews pointed to the emerging imbalance of power between these two key Anangu organisations, as inequities in resourcing and recognition promoted the PC's role and tended to stymie AP's growth. The conflation of the PC and AP created ambiguity for some Anangu, public servants and politicians, and it continued to do so long after AP's shift to Umuwa.

3.8 Reflecting Back on the First 10 Years

3.8.1 Celebrating the first decade: Anangu aspirations for the next decade

Critical issues regarding substance abuse, AP's developing role in governance and funding for basic services on the Lands were simmering just out of sight as major celebrations took place to mark the 10-year anniversary of the PLRA at the end of 1991. During the celebrations, TO Gary Lewis, AP's Director since 1985, spoke of the growth in administrative demands on Anangu since the passing of the Act:

I receive mail from eighty different government departments...and an uncountable number of individuals and other organizations wanting to deal with AP in one way or another' (Lewis cited in Trudinger 1991, p. 63).

Lewis had worked with others to see AP's administration shifted from Alice Springs to Umuwa on the Lands in time for the celebrations. He reflected as follows:

Now the office is situated close to the people where it is easy for people to come together to discuss business and for the AP Office to serve the people.

For the future 10 years I'd like to see more Anangu working in their own organization to work for their own people. We already see old people going back to their own country to look after their land. Anangu are already working in their offices without white advisers in some homelands. In ten year's time the AP office should have more Anangu working like this. We can do this if we work together and support each other for the next 10 years like we did when we fought for the Land Rights (Lewis cited in Trudinger 1991, p.63).

Elder Kunmanara Nyaningu (cited in Trudinger 1991, p. 46) echoed the need for continued development of Anangu administrative and financial governance:

In the years back then we were continually speaking to the Government and to lawyers and initially...the government were handling all our finances. But later on the communities and the councils became established, and the council, the Pitjantjatjara Council which had by then started, was planning how Anangu Maru were to handle their own financial affairs...because of that the Government drew up the Land Rights Act and it was given back to the Anangu Pitjantjatjara. So now the AP looks after the Land. And now it is 10 years on.

So what do we see for the future?...everyone keep up the good work...for the next 10 years you can continue to develop...in a similar way as to how a football player learns to play the rules of football...and AP that is, us, are like a government.

All the small councils make up one big one. And that is how we are like our own Anangu Government. It has a lot of responsibility for many things and we from big communities and from homelands have many, many things we want to hand down for our children, that the men, women, old men and old women want to remain protected.

Themes about the protection of the Lands, the development of self-governance and the continuity of Anangu custodianship featured strongly in the 1991 celebrations, which reflected on the first decade of the *Land Rights Act* and contemplated the next decade. Tjikalyi Colin (cited in Trudinger 1991, p. 48) also expressed pride in the progress that 'pumpas' (women elders) had made since the passing of the Act:

I'm thinking about this lovely land of ours. When the people live on their own land they are happy, strong and healthy. In the olden days the government held the whole of this land and kept it as if it was their own. But no it was our land, the Pitjantjatjaras and Yankunytjatjaras. A long time ago it belonged to grandparents and further out than that to their fathers, mothers and children. These people were without the Government and without Whites [stet] and they were happy.... Recently Whites came on to the land of the Anangu and they established large settlements and did all sorts of activities for the Anangu to stay here...that was the Whiteman's way and now we live in two ways. The Government, having said it was theirs, sent a lot of whites into the Lands. They came to set up all these activities and look after Anangu. The Pitjantjatjara Yankunytjatjara people strongly thought about and wanted to get their own land back. Having talked about it a great deal we got it. And then we were happy. Now we, Anangu are happy to be living on our own land. In order to get the land we set up the Pitjantjatjara Council. We appointed Anangu bosses to look after this land of the Anangu. Also to speak with a loud voice to the Government.

Then we set up the Anangu Pitjantjatjara and similarly put Anangu Executives into position. They, those good people, now work hard strongly and well...after us in years to come the children can live in their own land and work strongly and happily...I believe that the land of the

Chapter 4: The Second Decade

‘We took our eye off the ball for a while and problems emerged again’.¹⁰⁵

4.1 Introduction

As the second decade of the PLRA was dawning across the Lands, what some called a ‘revolution in Aboriginal Affairs’ was taking place at the national level¹⁰⁶ (Pratt 2003, p. 3). Aboriginal leaders and Commonwealth Government officials were preoccupied with the establishment of ATSIC, a statutory body designed to bring together representative and executive functions in Indigenous policy.

This chapter argues that ATSIC’s layered governance arrangements, including regional and zone elections, iconic personalities and complex administrative machinery, sucked energy away from remote regions like the Lands. The level of the South Australian Government’s interaction with Aboriginal communities decreased during this time and attention to the escalating health and social well-being issues on the AP Lands suffered.

This chapter reveals how ATSIC and the Commonwealth assumed greater influence over the Lands, as the main funders of services in the region. Meanwhile, the South Australian Government was preoccupied with the fall-out from the collapse of its State Bank in 1991, the resulting resignation of Labor Premier Bannon in 1992 and the electoral defeat of Labor in December 1993. The State Bank collapse was one of the biggest events in SA’s history and left the state with billions of dollars in public debt. This chapter argues that the associated political and economic instability in SA, coupled with a protracted dispute over the Hindmarsh Island (Kumarangk) Bridge, all but erased the grander social reforming ideas of the Dunstan era.

¹⁰⁵ See reflections of the SA police (SAPOL) regarding the late 1990s in evidence summarised in *Report of the Select Committee on Pitjantjatjara Land Rights* (2004, p. 41).

¹⁰⁶ Here, Pratt (2003, p. 3) draws on a contemporaneous article written by Rowse (1990). However, the extent to which the coming of ATSIC marked a significant shift in Commonwealth policy is a contentious issue. When signalling his intent to establish ATSIC, Commonwealth Aboriginal Affairs Minister Gerry Hand called it ‘the most far reaching and innovative reform in Aboriginal policy since the Commonwealth became involved’ (Parliament of Australia House of Representatives, 11 December 1987, p. 3152). However, when later discussing how ATSIC would consolidate a number of the functions of precursor bodies into one, Labor Prime Minister Hawke suggested that it was simply ‘the logical and appropriate next step for the advancement of both the great principles of self-management and ministerial accountability’ (Parliament of Australia House of Representatives, 15 August 1989, p. 42). For discussion on the policy continuum leading up to, and including the establishment of ATSIC, see Sanders (1994).

In the second half of the 1990s, petrol sniffing again escalated on the Lands, resulting in trauma for Anangu families and social distress in communities. This chapter shows that as a result of the sudden increase in attention to petrol sniffing in Central Australia at this time, tri-state Anangu organisations such as the NPY Women's Council and Nganampa Health grew steadily in stature and funding through working with the Commonwealth Government on substance abuse and related health and welfare issues.

Recognition of AP's local government status reached another level in the 1990s, but this was insufficient for helping AP to cope with escalating social problems, as it had no brief or resources for managing social issues. While bylaws were utilised and Avgas and other solutions were trialled, social problems resulting from petrol sniffing became still more entrenched. Despite a lack of cooperation by local alcohol supply licensees, an important report by Australia's Race Discrimination Commissioner affirmed Anangu rights to alcohol restrictions on their Lands (HREOC1995).

With its brief to act on behalf of TOs, AP was weakened by external pressures and deepening internal tensions and uncertainties regarding the role of the PC, and mining issues exacerbated tensions between and within these two peak Anangu bodies. This chapter reveals how 'pro-mining' and 'pro-PC process' groups emerged within the AP Executive at the end of the 1990s.

The latter part of the 1990s saw the end of the Hawke/Keating Labor era (1983–1996), and a Howard coalition government was elected to national office, heralding a shift in policy away from self-determination towards 'practical reconciliation'. An 'operational review' of AP, which was funded by the Commonwealth Government and conducted jointly with the South Australian Government, made recommendations for the empowerment of AP at this time, which closely echoed those of the Proctor (1987), Bonner (1988) and Dunstan (1989) Reviews a decade earlier (see Chapter 3).

This chapter argues that during the second decade of the operation of the PLRA, the South Australian Government, then challenged by financial and other pressures, took its 'eye off the ball' (SC 2004, p. 36) in relation to petrol sniffing and other challenging issues, and it failed to heed AP's continued appeals for assistance.

4.2 ATSIC Takes Centre Stage

After more than two years of consultations and negotiations with Aboriginal people, including those on the AP Lands, ATSIC became a reality in March 1990.¹⁰⁷ ATSIC's structure involved a network of 60 elected regional councils. Between 1990 and 1993, one of these councils (Indulkana) corresponded well with the AP Lands (Sanders 1994; Pratt 2003; Pratt & Bennett 2004).

Initially, there were two ATSIC Councils—the Indulkana (Ngintaka) and Leigh Creek Nulla Wangaka Tjuta—covering the Lands, as well as the wider North Western region of SA. In the first ATSIC elections in 1990, 12 Anangu representatives, including one woman, were elected in the Indulkana ATSIC electorate.

Changes to the ATSIC legislation in 1993 reduced the number of regional councils from 60 to 36, and Indulkana (Ngintaka) and Leigh Creek (Nulla Wangaka) Tjuta were amalgamated under the new banner of the Port Augusta (Nulla Wimila Kutju) Regional Council of ATSIC, which covered a much larger area and did not correspond as well to AP's boundaries.

Within the larger regional electorate, two AP areas denoted as Indulkana and Amata were initially entitled to elect six representatives (four and two respectively) in 1993 (see Table 4.1). This dropped to only four (two in each) in 1996, 1999 and 2002. While the first council included an Anangu woman (Sylvia de Rose) among its 12 elected representatives, when the number of positions to be elected was reduced in 1993, no other Anangu women were elected.

TO and Anangu elder Lester, who had been instrumental in the formation of the PC and a driving force behind the PLRA campaign, was a South Australian Zone Commissioner for the area from 1990 to 1993 (ATSIC 1995). While active together with Thompson, Lewis, the Burtons and others in the early PC and AP councils, Lester was also preoccupied with ATSIC matters during this decade. The Lands' representation on the Regional Council decreased from 12 to four between 1990 and 1996; however, the locus of ATSIC's regional power became concentrated around the Port Augusta and (inner)

¹⁰⁷ The Hawke government's intention to establish ATSIC was announced in December 1987 in a statement entitled *'Foundations for the future'* by the new Minister for Aboriginal Affairs, Gerry Hand. An SC inquiry into the proposal and Aboriginal Development Commission dismissals followed. Passage of the ATSIC legislation was delayed until after the SC reported in 1989. It eventually passed the Parliament of Australia in late 1989 and became operational in March 1990.

Northern country areas, while its influence in policy, administration and funding was consolidated in metropolitan Adelaide.

Table 4.1: ATSIC AP Lands’ Representatives 1990–2002

1990	1993	1996	1999	2002
Indulkana Punch Thompson Sylvia de Rose Gerry Moody Donald Fraser Arthur Stewart Ivan Baker Wilton Foster Colin Brown Danny Colson Tjampu Smith Lee Brady Leonard Burton	Indulkana Yami Lester Gary Lewis Punch Thompson Danny Colson Amata Wilton Foster Leonard Burton	Indulkana Yami Lester; Punch Thompson Amata Lee Brady Tony Adamson	Indulkana Bernard Singer Donald Fraser Amata Leonard Burton; Frank Young	Indulkana Bernard Singer, Donald Fraser Amata Leonard Burton; Frank Young

Source: *ATSIC Electoral Newsfiles* No. 11, December 1990; No. 39, February 1994; No. 60, December 1996; No. 93, December 1999; No. 108; April 2003.

The Port Augusta Nulla Wimila Kutju Regional Council covered a large area of diverse contexts and needs, from country to regional to remote, and from the West Coast to the ‘iron triangle’ to the more remote Maralinga and AP Lands. Those who were fluent in English and familiar with government bureaucratic and administrative processes and the politics of ‘grantsmanship’ were more likely to exert influence in the region than others (Burgoyne pers. com. 2012).¹⁰⁸ More importantly, there was no formal link between the Nulla Wimila Kutju Regional Council of ATSIC with its Anangu representatives and AP or its Executive. The Lands felt increasingly marginalised.

In a submission to a 1993 Review of ATSIC, AP pushed for an accountability link to be established between the Lands and ATSIC, suggesting that an AP Commissioner was essential to creating greater alignment between the self-determining powers of ATSIC and those envisaged for Anangu under the PLRA (ATSIC 1993, p. 60). Anangu argued that they were not receiving their fair share of funding and support from ATSIC, and they wanted their authority under the PLRA to be formally acknowledged (ATSIC 1993).

Looking back at this 1990s period, it appears that over time, Anangu, who had been major players in the 1980s as creators of the bold and historic PLRA and who were used to

¹⁰⁸ Peter Burgoyne was the regional councillor for ATSIC Ceduna (Wangka Pulka South) from 1996 to 1999 and an experienced administrator as CEO of the Port Lincoln Aboriginal Community Council. He completed a Masters in Aboriginal Studies in 2004 and examined ATSIC voting patterns and resource distribution in regional SA.

enjoying a unique dialogue (mandated by legislation) with the South Australian Government, became comparatively minor players in the complex machinery of the national ATSIC, overshadowed and outvoted by other voices and other localities.

The emergence of ATSIC as the major player in Aboriginal Affairs drew attention away from state-based issues and local concerns and consumed the energy of many local leaders and communities. State government bureaucracies tended to withdraw from their previous, more direct, engagement with AP issues, as the Commonwealth and ATSIC loomed large. ATSIC's increasing dominance added to what was already becoming a crowded governance and service delivery field.

Having a national Aboriginal-controlled organisation through which to voice issues and obtain support was consistent with Anangu aspirations for self-determination; however, in effect, ATSIC's dominance through the 1990s created yet another regional body with different dynamics, politics, goals and accountabilities for Anangu to navigate. Without any acknowledgement of the PLRA or structural interface with AP, the ATSIC Regional Council formed yet another layer of governance for Anangu to negotiate.

4.2.1 Politically engaged Anangu—same people, different organisations?

The complex articulations between AP, the PC, the ATSIC Regional Council and Anangu-controlled regional service provider organisations—some tri-state and some SA-specific—created many opportunities for misinformation, misunderstandings, confusion and tensions, but also continuities and collaborations. This complex context produced an effective, active and adept Anangu leadership elite that operated in what was becoming an increasingly crowded and competitive space, as well as an increasingly Commonwealth-dominated one.

Many of the same Anangu leaders who were active in the 1980s PLRA campaign—the PC and AP—reappeared as elected ATSIC representatives in the regional councils covering the Lands in the 1990s (see Table 4.1 above), and many also played key roles in developing and managing the increasingly sophisticated network of Anangu regional service providers that emerged during these two decades. The names of prominent Anangu regularly reappeared in the political life of the Lands, with particular family/clan or language groups congregating around the specific key agencies they had contributed time and support to building. For example, as illustrated by Table 4.1 Thompson, Lewis, Fraser, Singer and Burton were names recurring across the years as ATSIC representatives for the Lands. People closely related to each of these family groups tended

to cluster together around not only ATSIC, PC and AP structures but also key Anangu agencies - such as the Singers with their long history with Nganampa Health and the Frasers with PY Media for example. It was customary for family and kinship groups to work hard to secure resources for their immediate clan while then also sharing a distribution of excess resources equitably across Anangu communities. Such customary resource sharing along familial lines was continuing to play out subtly as new power bases around Anangu organisations took shape on the Lands.

This was an informal proportional representation or sharing of positions along cultural and kinship lines that was not necessarily visible to 'white fella' outsiders, but that was characteristic of a preferred dispersed local governance network of leaders and key families (Smith 2008, p. 212). It is also not uncommon in other localities,¹⁰⁹ especially in rural and remote contexts, for active leaders to be engaged in multiple roles in multiple organisations, some voluntary and some paid (Hunt 2008; Smith 2008, 2010). Sanders (2004, p.15) suggests that 'power sharing, responsiveness and autonomy' are often a preferred mode of dispersed community governance in remote community contexts. Sanders argues this may reflect the 'value placed on autonomy within Aboriginal society' (ibid). As Rowse (1992, p.89) observes 'self-determination' in this context may be as much about autonomy from each other, as from non-Indigenous people and governments.

Anangu remained persistent and ingenious at locating as many different vantage points as possible from which to engage in political advocacy. Communities were engaged in local politics and were politically active, as illustrated by the high voter turn-out of approximately 34–48% of the eligible Lands population in the five regional ATSIC elections that took place between 1990 and 2002, compared to an estimated 11–14% for the metropolitan area during the same period.¹¹⁰

This high voter turn-out for the Lands in ATSIC regional council elections indicates that there was no lack of interest by Anangu in governance issues or funding and policy concerns of importance to their region.

¹⁰⁹ See also Bern's 1989 analysis of comparable inter-family politics in the NT.

¹¹⁰ The high participation rate in regional ATSIC elections compared to the much lower turn-out for metropolitan Adelaide was based on Australian Electoral Commission (AEC) data provided for ATSIC regional elections taken and extrapolated from AEC *Newsfile*, No. 39, February 1994 (ATSIC elections 1993).

4.2.2 Growth in regional organisations—crowded and competing

Added to the mix with ATSIC, the PC and AP was the rapid growth in the 1990s of the specialised regional Anangu service provider agencies—each with an elected Anangu Board and often piranpa staff working closely with an elected Anangu chairperson. As discussed in Chapters 1 and 3 of this thesis, the NPY Women’s Council, Nganampa Health, PY Media and later AP Services were all powerful examples of the proactive drive of Anangu towards self-determination and self-efficacy. These Anangu-specialised regional service organisations grew in experience, funding, prominence and power during the 1990s, and joined the PC and AP as parts of a dispersed local governance network on the Lands.

Mike Last, who was closely connected with the PC for many years, documented the rapid growth in Anangu service agencies during this period—some with a tri-state brief and others focused on AP Lands. He argued that the rapid expansion of Anangu-run service organisations placed pressure on the PC not only organisationally, in terms of the PC’s early efforts to house multiple Anangu agencies co-located as part of a Pitjantjatjara resource centre precinct, but also politically, as agencies moved towards independence and away from their reliance on the tri-state PC that had spawned them:

During the 1990s, the number of resource agencies stayed much the same, however many experienced large expansions. Adjoining properties were purchased to house Anangu Winkiku Stores, Ngaanyatjarra, Pitjantjatjara, Yankunytjatjara Women’s Council and Anangu Pitjantjatjara. The expansions in Aboriginal Airlines resulted in it finally moving to nearby premises in Wilkinson Street. Anangu Pitjantjatjara moved onto the Lands when the Resource Centre at Umuwa was completed in 1991.... In the latter part of the 1990’s, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council experienced the most expansion. As a Council they successfully obtained funds for many high priority programs for the benefit of people on the Lands. Hence more advisory personnel were required, which increased the need for office space (Last 2001, p. 10).

At this time, major Anangu organisations continued to attract Commonwealth or joint Commonwealth/state funding to deal with social issues in communities. For example, the NPY Women’s Council received \$280,000 of Commonwealth funds as one of five remote area organisations chosen to roll out a national pilot program that aimed ‘to assist women and children living in rural and remote areas to escape domestic violence’ (Parliament of Australia, 16 March 1994, p. 1760).

Around the same time, Nganampa Health attracted a major share of new multipurpose Commonwealth/state funding to roll out new aged care facilities and provide support to homelands. Armitage, then SA Minister of Health (and Aboriginal Affairs) explained to

the SA Parliament's Estimates Committee that the South Australian Government would 'fund Nganampa about \$1 million annually and ATSIC contributes some \$3.4 million':

The Commonwealth Department of Human Services and Health will contribute \$1 million in one-off capital and \$.44 million recurrent [of] new aged care money...[this] will be the first multipurpose service in Australia with an Aboriginal community-controlled health organisation, and it will certainly be the first aged care service on the Pitjantjatjara lands.... If ATSIC becomes a signatory...Nganampa Health, will have a single three-year funding and service agreement with all its major funding bodies. The agreement will detail services to be provided and total funds to be supplied by the funders (SA Parliament Estimates Committee 15 September 1994, p. 106).

The expansion and growth of specialist Anangu agencies reflect the increased attention to social issues in Central Australia in the late 1990s. While ATSIC was generally a loyal annual grant funder, a move towards the outsourcing of human services was slowly gathering momentum in the late 1990s.¹¹¹ After the demise of ATSIC under Howard's coalition government, quasi-markets in the health and welfare sectors were established, and funding was diverted towards large, strategically placed non-government regional organisations (Ohlin 1998; Jamrozik 2001; Quiggin 2005; Considine, Lewis & O'Sullivan 2011).

Organisations such as Nganampa Health, the NPY Women's Council, PY Media, AP Services, local community councils (and AP and the PC) were increasingly pushed to do more with less, and in some instances they had to compete with other Anangu regional organisations. Like others in the sector across Australia, Anangu organisations became preoccupied with the delivery of projects and the pursuit of grant funding. The survival of Anangu organisations increasingly depended on their ability to win government grants, and later 'service contracts', to deliver what were usually predetermined and specific outcomes. Organisations that were previously collaborators in the common cause of self-determination gradually became competitors in funding processes based on economic rather than emancipatory values.

Signalling this policy shift at the local level, the piranpa who were previously employed by the Commonwealth Government in Anangu communities in support roles such as 'Community Adviser' and 'Community Development Officer' gained new titles and roles

¹¹¹ The National Competition Council was established under the Keating Labor government in 1995 through an agreement of the Council of Australian Governments (COAG). Momentum for microeconomic form through competition policy was driven by the 1993 National Competition Policy Review, known as the Hilmer Report. One key principle of competition policy is the belief that competitive markets best serve the interests of consumers and the wider community. See Smith (2001) and Jamrozik (2001) for more details on the effect of competition policy and the marketisation of welfare in Australia.

such as ‘Community Manager’ and ‘Management Adviser’ during this period.¹¹² The emphasis for Commonwealth Government, was now on funding positions in communities which were tasked with managing government interests in the region, focusing more on top down direction than local level ground up community development. Instead of local piranpa playing roles as collaborating supporters, trusted outsiders and agents of social change (Moran 2010), many were reinvented, or rather repositioned, as ‘managers’ of agencies or ‘supervisors’ who were accountable for grants, as the era of self-determination was transitioning into one of competitive survival. This shift posed new complexities for Anangu and piranpa staff alike.

4.2.3 AP seeks to limit the piranpa and PC’s influence and develop its own role

Proctor (1987), Bonner (1988) and Dunstan (1989) commented on the tendency of non-Anangu (piranpa) staff to influence Anangu administration and politics (see Chapter 3). With the physical move of the AP office to the Lands, AP leaders wanted to build the capacity of Anangu in order to carry out jobs and functions that were previously undertaken by piranpa outsiders, as well as demonstrate greater organisational independence from the PC.

However, the prominence of piranpa staff continued after Anangu organisations moved to the Lands. AP’s Executive raised concerns about this with the PLPC:

The Executive raised issues concerning Community Administration by non-Aboriginal advisors. [The] Committee was told that fifteen years ago the Aboriginal people were told that white advisors/administrators undertook to work themselves out of a job, however they are still there.... It was stressed that education programs of both, Education Department and Department of Education, Technical and Further Education, should be more specifically based on self-management concepts (PLPC 1991, p. 3).

The PLPC responded that the employment of advisers was in ‘the hands of AP and the communities’ and was not imposed by governments or other outside groups (PLPC 1991, p.3). The Executive parried by asking the government to invest in training and support to enable Anangu to assume the governance, management and administrative roles for self-management that the PLRA envisaged and that they were entitled to (PLPC 1991).

As Chapter 3 shows, Bonner (1988) had highlighted a lack of delineation between the duties and responsibilities of the PC and AP. Further, Dunstan (1989) had identified that PC received Commonwealth funding and had a budget some three times larger than AP which was primarily reliant on State Government funding. Such inequities in resources

¹¹² Personal communication with Stephan Rainow, Public/Environmental Officer UPK, Nganampa Health Council, 20 March 2006, Alice Springs.

meant AP had less capacity to service Anangu needs and less power and influence than the more established PC. Dunstan had also identified the potential for difficulties around State interests vs tri-State regional interests to arise from AP's continued dependence on the anthropological and legal advice provided by the PC. AP sought to establish a more independent and stronger role for itself, however, while the NPY Women's Council and Nganapma Health understandably gained increasing levels of Commonwealth funding due to their tri-State reach on petrol sniffing and related social issues, AP lacked the support required to train and develop Anangu staff or build its governance capacity and skills. The Commonwealth had a strong and increasing influence in the Lands through a whole of region footprint matched with a considerable funding allocation to Anangu tri-State organisations. The PLRA and its AP Executive Board remained primarily the responsibility of the SA Government which had yet to match its progressive legislative with appropriate resourcing.

While the pursuit of organisational clarity can be critiqued for being simplistic, normative and functionalist, analyses by both Bonner (1988) and Dunstan (1989) had aptly predicted the emerging political economy and battle of power between these two Anangu peak organisations, as inequities in resourcing and recognition increasingly promoted the PC's role and stymied the growth of AP.

4.3 Changing Commonwealth/State Balance and Other Policy Developments

The coming of ATSIC was not the only significant Commonwealth policy shift in the 1990s. Another was the MABO High Court¹¹³ decision in 1992 and subsequent Native Title legislation. In addition, the Council for Aboriginal Reconciliation was established by the Hawke government as a statutory body in 1991¹¹⁴ and spawned a populist movement that delivered its 'Declaration towards Reconciliation' at the end of the decade. The 'Royal Commission into Aboriginal Deaths in Custody' was reported in 1991, and the HREOC's 'Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families: *Bringing Them Home*', was published in 1997.

¹¹³ The MABO High Court decision took place in 1992, the passage of the *Native Title Act* occurred in 1993 (and commenced in January 1994) and the High Court's adjudication of the WIK claim followed in December 1996.

¹¹⁴ On 2 September, under the *Council for Aboriginal Reconciliation Act 1991*.

The pace and breadth of Commonwealth Indigenous policy change was vast, rapid, far-reaching and often controversial. Policy that had enjoyed bipartisan support during the 1980s¹¹⁵ was now increasingly polarised along party lines. The Commonwealth's large array of policy activity during the 1990s also signalled the gradual demise of State Government leadership on AP matters¹¹⁶. The SA Government acquiesced to an increasingly assertive Commonwealth, dominating the policy field through ATSIC, native title laws and major national inquiries. This is perhaps best illustrated by the SA Parliament's abandonment of its Pitjantjatjara Lands Parliamentary Committee (discussed below) and the lack of Parliamentary discussion or debate on the Lands evedicent in Hansard during this period.

Bannon's Labor government had also fallen into crisis with the collapse of SA's State Bank in 1991. Having had a reputation for 'good housekeeping frugality' in the 1980s, Bannon was engulfed in a storm of controversy when the State Bank of SA over-reached its commitments and financially collapsed (Parkin 1992, p. 15). The Bank was underwritten (debts guaranteed) by the South Australian Government, hence Bannon as Premier was popularly portrayed as placing SA into many billions of dollars of debt.

An Auditor General's Inquiry and Royal Commission into the relationship between the Bank and the South Australian Government apportioned primary responsibility to the Bank's Board and its Managing Director, Tim Marcus Clark.¹¹⁷ However, Bannon was unable to recover his standing after the Bank's collapse and resigned as Premier in September 1992. Labor's Lynn Arnold was briefly the replacement Premier from 1992 to 1993 and held the first Cabinet meeting on the AP Lands during his term (House of Assembly, 8 September 1994, p. 481). Arnold was then replaced by the Liberal's Dean Brown at the December 1993 elections.¹¹⁸

4.3.1 Pitjantjatjara Lands Parliamentary Committee is abandoned

Despite rhetoric suggesting otherwise, interest in the AP Lands waned. The PLPC, which was created for five years in 1987,¹¹⁹ was extended for another five years in March 1992

¹¹⁵ See Chapter 2 for an example of the more bi-partisan nature of policies for the Lands in the 80s.

¹¹⁶ See Chapter 3 (in particular the Proctor review) for a discussion on the changing nature of Commonwealth/State relations regarding Aboriginal Affairs.

¹¹⁷ See McCarthy (2002) for a detailed analysis of the State Bank's collapse and its effect on South Australian politics.

¹¹⁸ The 1993 elections resulted in a significant defeat for Labor, which was left with only 10 lower house seats out of 47.

by both Houses of the South Australian Parliament under Section 42c (11) of the PLRA; however, in reality, it lapsed at this time and never met again.

The PLPC provided annual reports to parliament for 1988/89, 1989/90, 1990/91 and 1991/92. A fifth report (for 1992/93) was in preparation, but it was not tabled by the time parliament was prorogued for the 1993 state elections. Despite being given a five-year extension to continue monitoring progress on the Lands, the PLPC ceased meeting after Dean Brown's Liberal government took office. No further reports to Parliament were tabled, and Section 42 of the PLRA quietly expired on 18 June 1997, thereby formally extinguishing the Committee.

The abandonment of the PLPC by the incoming Liberal government illustrated a general retreat of the South Australian Government from earlier, more active, engagement in the Lands. The PLPC's later reports were also generally brief and bland. The last PLPC Report was one and a half pages in length and summarised the Anangu 10-year celebrations of the PLRA in just six lines. It then reported that Minister Rann's:

tidy towns competition [had been] embraced with enthusiasm by the major communities and homelands! (PLPC 1992, p. 2).

Earlier PLPC reports had been more substantial and made stronger recommendations. The 1991 annual report to parliament conveyed by the then Aboriginal Affairs Minister Rann urged:

that State Aboriginal Affairs develop a co-ordinating strategy for service and program provisions for the Anangu Pitjantjatjara Lands (PLPC 1991, p. 4).

Despite successive reviews over the previous decade arguing the same need for better coordination of government efforts, such recommendations were not acted upon. The South Australian Government's role in Aboriginal Affairs was increasingly caught up in, if not driven by, the Commonwealth's policy leadership. The South Australian Government looked to ATSIC and the Commonwealth for funding for community support initiatives or found itself responding to national agendas driven by Commonwealth policy or legislative initiatives.

The PLPC had urged the South Australian Government to pursue Commonwealth funding for homelands, the further development of AP's administration centre at Umuwa, essential services and road maintenance, and health and welfare support for petrol sniffing and alcohol issues, which Anangu leaders and Anangu organisations steadfastly sought on behalf of their communities (PLP 1988, 1989, 1991, 1992). As the funder, the

Commonwealth was now setting the over-arching agenda on issues, and the South Australian Government had little political or policy traction.

This is not to say that some Aboriginal Affairs matters did not preoccupy the State Government in the 1990s. One of the most protracted and difficult controversies in the State's history involved the building of a bridge on traditional Ngarrindjeri land at Hindmarsh Island (Kumarangk) as part of a state government-sponsored private development. This began to unfold around the time of the State Bank collapse and the subsequent election of the Brown Liberal government and was not resolved until more than a decade later.¹²⁰

While primarily a dispute under the Commonwealth's *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), the South Australian Government was also caught in the Kumarangk dispute through development approval processes (Clarke 1996; van Krieken 2011). A Federal Court case and subsequent Royal Commission enmeshed not only the SA, but also Keating and Howard governments, for many years. The policy and judicial complexities of this case undoubtedly contributed to diverting State Government attention away from what was happening on the AP Lands.

4.3.2 Anangu voices get action on asbestos

One small cameo illustrates a breakdown in what had previously been more bipartisan approaches to the Lands and resulted from Anangu concerns about asbestos in a building provided to the Mimili community in the mid 1990s. After lobbying the government for better school buildings and facilities, the Mimili community was given a transportable classroom in 1996. Mimili's Community Council, supported by Nganampa Health, complained about the asbestos in the building to AP Services, a regional body established in 1993 with responsibility for Lands maintenance and infrastructure. AP Services 'ordered that the building be removed and the site be cleaned by 18 October 1996' (Legislative Council 5 November 1996, p. 299).

Labor's Ron Roberts claimed that this decision was ignored by the Brown (and subsequent John Olsen) Liberal governments.¹²¹ Roberts argued that 'instead of taking notice of this legal order from AP Services...the Minister decided the classroom would stay at Mimili...regardless of the wishes of Mimili Community':

¹²⁰ See Clarke (1996).

¹²¹ Olsen replaced Brown as SA Liberal leader and Premier on 28 November 1996.

I wonder what would have happened had these asbestos buildings been placed in one of the schools in the leafy suburbs of Burnside or Kensington Gardens (Legislative Council 5 November 1996).

Education Minister Lucas retaliated by accusing Labor of stirring up issues in the Lands for political reasons. Lucas accused a local community development officer of deceitfully obtaining Anangu signatures on a Mimili Council letter of complaint about the ‘asbestos’ building:

The community development officer at Mimili wrote a letter and got two Anangu to sign it but apparently did not explain what the letter was about. They did not know what they had signed (Legislative Council 5 November 1996, p. 300).

Lucas tabled a letter from the PYEC,¹²² signed by its Director Kunmanara Minutjukur, arguing that the PYEC wanted the building to stay:

We wish the Minister to know: PYEC is the group responsible for education issues on the Anangu Pitjantjatjara Lands. The Mimili Community know this, are represented on PYEC and take information back to the Mimili Community Council. All letters and concerns raised by a community should be sent to PYEC to discuss and solve first...chose to go straight to the press and radio instead of doing this. Mimili Community members have confirmed at a special meeting that they want this building to stay and are happy for the cement/asbestos sheeting to be removed on site.... The claim in the letter...for removal of the building is not true.... Anangu members of PYEC have checked with signatories to Mimili Community Council Incorporated letters. They have said that they were not sure what they were signing (cited in Legislative Council 5 November 1996, p. 300).

The letter¹²³ went on to state that the ‘Chairperson of AP wants the building to stay and be fixed on site’ and listed contact details for ‘Donald Fraser, Chairperson of AP’ to support this claim. Positioning PYEC and AP as desperate to secure an additional building, and caught up with negotiations with the Minister, Roberts argued that Minister Lucas was insulting Anangu by suggesting that an asbestos-contaminated classroom would be acceptable.

Roberts tabled a copy of another letter signed by the Mimili Community Council, which he argued had also been sent to the Minister, but this time to complain about him:

Dear Minister, We are writing with some concern about comments you made in the Legislative Council...making reference to a letter from the Director of PYES [sic]. In this letter, it is apparently stated ...that our Community Development Officer had written letters that were not known to, or expressing views other than those held by Mimili Council. We consider this an insult to the intelligence and capabilities of our Councillors and incorrect to suggest that the council at Mimili would allow its senior administrative officer to operate outside of their directions...we, the Council, are the only spokespeople for matters concerning the Mimili community...the real issue [is] the right of this community to object to the unreasonable placement of an old asbestos building in our community. As we previously stated, the health

¹²² The PYEC was established in the late 1980s to provide Anangu input into education at the primary, secondary and tertiary levels on the APY Lands. It has representatives from each community and works closely with the Government and other education providers. Further, it is an Anangu-controlled regional organisation and also works closely with other regional Anangu organisations and the AP(Y) Executive.

¹²³ See also Hansard Legislative Council, 22 October 1996, p. 203, and Hansard Legislative Council, 5 November 1996, pp. 299–301, for the letters.

risks associated with asbestos are well documented and any further health risks to this community are unwanted...once again [we] state our firm position to have this building removed (Legislative Council 5 November, 1996, p.300).

The dispute about Mimili's temporary school building continued for some time; it split along Party lines in the Parliament and initially caused stress between the PYEC and Mimili Council, as well as with the piranpa community worker and other Anangu.

The PYEC was in a difficult position because it was in an ongoing relationship with the South Australian Department of Education over Anangu education matters. In contrast, AP Services, Nganampa Health and the Mimili Council, or at least their piranpa employee, appeared to have open communication channels with the opposition.

The substance and process of this debate illustrated the diversity of Anangu politics. It revealed an increasing tendency for politicians to politicise AP issues to suit particular causes and tactics. Anangu were also adept at using the political sphere to draw attention to issues that might otherwise remain invisible—'out of sight, out of mind'.

The asbestos in the building was subsequently stripped on site, and Mimili received a temporary building to ease the overcrowding occurring in their school. The multiplicity of local Anangu advocacy worked, and the people received their asbestos-free building.

4.4 *Mayatja Manta Nyangaku Kutju*: Local Government for Anangu Communities?

Local government is a recurring theme in discussions about Anangu governance throughout the 25-year period from 1981 to 2006. In its reply to the 1990 Dunstan Report, AP asserted that the PLRA enabled it to function in a manner equivalent (indeed, superior) to a local government authority. AP did not want any other body recognised as a local government within the Lands or to be imposed on them from outside. They argued that this would lessen the self-determining powers already afforded to them under the PLRA (AP 1990, p. 9).

AP's views about the potential for the pursuit of local government status to conflict with their existing rights under the PLRA were repeated in 1994 in the Commonwealth's *'Our Future, Our Selves'* report:

Anangu Pitjantjatjara rejected the proposals for legislation put forward in Mr Dunstan's report arguing that the *Pitjantjatjara Land Rights Act* already enabled their body to perform local government functions (House of Representatives Standing Committee 1994, p. 36).

AP argued that they needed to gain access to roads and other financing provided to local government bodies¹²⁴ without compromising their other rights to control development under the PLRA. AP was also concerned that the local government model might imply an expectation that they raise rate revenue from within the Lands, which they felt was both inappropriate and unrealistic (AP 1990, p. 10).

In response to a 1991 'Let's Work Together' Conference Report, which recommended greater liaison between ATSIC, state governments and local governments with respect to Aboriginal people, the South Australian Local Government Association (LGA) formed a reference group to explore Aboriginal local government relations in SA and commissioned Morton Consulting to undertake consultative research.

The Morton study, funded by ATSIC, presented a report entitled 'Local Councils Belong to Aboriginal People Too' in 1994. Morton highlighted that SA received Local Government Grants on a population basis that included Aboriginal people, but that Aboriginal South Australians continued to receive an inequitable share of local government funding and services (1994, p. 8).

Morton also acknowledged that the AP Lands presented a unique circumstance because they already had the power to develop bylaws (after the 1987 amendments to the PLRA) and functioned in relation to development issues in ways similar to a local government authority. A separate project was therefore established to provide advice on the local governing potential and mechanisms for AP and other legislated Aboriginal Lands, such as Maralinga (1994, p. 3).

ATSIC provided funding to the PC to conduct *Mayatja Manta Nyangaku Kutju: Local Government for Aboriginal Communities* (Parliament of Australia House of Representatives, 7 September 1993, p. 572). A Steering Committee chaired by Lester was established, along with representatives of the Commonwealth and state governments (Office of Local Government and Division of State Aboriginal Affairs), the SALGA and ATSIC. Lester occupied his chair position not as a representative of AP, but as a member of the Walatina Aboriginal Corporation.^{125, 126}

¹²⁴ The AP Lands were not only unable to access local government funding, but they were also specifically excluded from coverage in the legislation for the Outback Areas Trust, which covered unincorporated areas of the state.

¹²⁵ The Walatina Aboriginal Corporation was the governance arm of Lester's homeland, and he was effectively the appointed adviser.

¹²⁶ It is interesting to note here the inclusion of Yankunytjatjara TO (and PC leader) Lester as the key adviser (and not AP).

When *Mayatja Manta Nyangaku Kutju* reported in 1994, it repeated what AP had articulated in its response to the 1990 Dunstan Report. It ‘recommended against the creation of a new local government body for the Pitjantjatjara lands’ (PC 1994, p. 9). As a result of both the Morton and *Mayatja Manta Nyangaku Kutju* Reports, the SA LGA admitted AP to its membership in 1994 and supported its recognition as the local governing body for the purposes of funding under the *Commonwealth Local Government (Financial Assistance) Act*.¹²⁷

Keen to facilitate AP access to Commonwealth funds, the South Australian Government proposed a regulation (No. 111) in late 1994 to recognise AP as a local council for the purposes of the *South Australian Local Government Grants Act 1992*, thereby making it eligible for funding if recommended by the SA Local Government Grants Commission. In preparation for this development, the government provided funding to support the 1993 separate incorporation of a new independent regional Anangu body—AP Services—to assume responsibility for ‘road works, basic essential services, some basic housing repairs, aerodrome construction, waste management and the maintenance of bores’ (SC 2004, p. 54). AP was assuming more local government operations and new functions, as well as some that were previously within the PC’s remit.

AP Services was located on the Lands and was closely linked to Nganampa Health, which retained leadership of environmental management and public health matters, including housing, dust alleviation and dog control (through the UPK, 1987 Wellbeing Strategy). AP Services was also linked to the PC, which continued to provide some maintenance and general works on the Lands, primarily for homelands. While housed along with AP at Umuwa, AP Services was an independent and separate new regional Anangu organisation, thereby adding to the already crowded and complex local governance environment.

Over time, most road works, essential services and support for homelands also passed to AP Services. However, those funds were only for the SA portion of the region, and the focus shifted away from the PC to AP Services to deliver this work. The PC continued to provide legal and anthropological support to AP and its Executive, but this was increasingly conducted on a contract or fee-for-service basis.

¹²⁷ In addition to AP, regulation No. 111 of 1994 recognised the Gerard Community Council Inc., Maralinga Tjarutja, Nepabunna Community Council Inc. and Yalata Community Council Inc. as being eligible for annual grants from the South Australian Local Government Grants Commission.

4.5 Petrol Sniffing Persists

Despite AP enacting bylaws that enabled strict control of the sale of petrol, as well as banning petrol sniffing on the Lands, it remained a constant source of tragedy and worry for Anangu throughout the 1990s. The profile of chronic sniffers changed during this decade from young, uninitiated men to older, fully initiated men (Divakaran-Brown & Minutjukur 1993; Shaw, Armstrong & San Roque 1994).

A comprehensive report into petrol sniffing on the Lands, entitled 'Children of Dispossession', which was published in 1993 by the state's Aboriginal Affairs Department and co-authored by respected Anangu elder Minutjukur, called for urgent community support. The authors observed that many Anangu they interviewed:

were disillusioned by the extent of discussion on this topic and yet the sparse support for Anangu initiatives to take control of the situation. Some said this would be the last time they are sharing their ideas for a solution (Divakaran-Brown & Minutjukur 1993, p. 3).

Following this report, and in the closing days of the Arnold (Labor) government, commitment to a more sustained and better-coordinated state government response was outlined in Parliament:

Petrol sniffing on Aboriginal lands is a serious problem. Cabinet as a whole was made aware of that during its recent visit to the Pitjantjatjara lands. In July, Cabinet endorsed a coordinated strategy for the problem of petrol sniffing on Anangu Pitjantjatjara lands, including endorsing the AP Law and Trouble Committee as the local reference group for petrol sniffing rehabilitation program implementation; and with the Law and Trouble Committee to report to the Social Development Committee of Cabinet, the Department of Family and Community Services, the Health Commission, the Drug and Alcohol Services Council, and the Department of State Aboriginal Affairs, to implement the recommendation of the AP report 'Children of Disposition' [sic], in conjunction with the Law and Trouble Committee (South Australia, *House of Assembly*, 17 September 1993, p. 190).

In 1992–1993, the South Australian Department of Family and Community Services allocated \$137,000 for local projects to provide alternatives for young petrol sniffers (House of Assembly, 17 September 1993, p. 201). These small-scale initiatives had little time to demonstrate success before the Liberals took office in December 1993 and decided to direct their focus towards working with ATSIC and other Commonwealth agencies in the cross-border region.

A Commonwealth-backed 'Petrol Link-up' initiative was introduced into Central Australia on a trial basis between July 1994 and March 1995. This initiative encouraged Anangu communities in the cross-border region (NT, WA and SA) to adopt Avgas¹²⁸ to reduce the availability of petrol. During 1994, more than 20 Anangu communities

¹²⁸ Avgas was an aviation fuel that was not volatile enough to be sniffed for intoxication. It could be used safely in motor vehicles and other engines as an alternative to petrol in communities battling petrol sniffing.

switched to Avgas as part of this regional strategy (Shaw, Armstrong & San Roque 1994). The project was widely considered to have been successful in reducing access to petrol and discouraging sniffing. According to the then SA (Liberal) Minister for Aboriginal Affairs, Armitage, in 1995:

all the figures show that the number of petrol sniffers is basically static or decreasing...the number of young Aboriginal people, particularly in the tribal lands, who are now starting petrol-sniffing is absolutely minuscule. There could be a number of reasons for it... It may also be that...petrol sniffing has lost a bit of its appeal...the role model now is, 'Don't do this or you will die' (House of Assembly, 21 March 1995, p. 2031).

A 1996 evaluation of the switch to Avgas (Roper & Shaw 1996) suggested that petrol sniffing declined after its introduction in 1994. However, within two years, Nganampa Health was again warning about rising levels of petrol sniffing and a likely further increase in morbidity and mortality over time (Nganampa Health Council 1996/97; Roper 1998).

However, as Avgas was considered an effective deterrent, local community and youth development services—many of which had been funded by small state government grants for diversionary programs to assist petrol sniffers—were reduced in the late 1990s. Meanwhile, Brown's Liberal government was pulling back from direct engagement with the Lands, aiming instead to secure agreements with the Commonwealth that would lock the Commonwealth into an ongoing funding relationship with key tri-state regional bodies such as Nganampa Health Council and the NPY Women's Council.

In 1999, the NPY Women's Council received a further \$800,000 from the Commonwealth for a four-year 'Petrol Sniffing Support Project',¹²⁹ as noted in the SA Parliament (*Legislative Council*, 9 March 1999, p. 838). Commencing in May 1999, this project aimed to take a 'regional approach' to petrol sniffing in 26 communities¹³⁰ serviced by NPY (D'Abbs & MacLean 2008, p. 66; Shaw 2002).

The Commonwealth provided these and similar funds to the major Anangu-controlled organisations in the region—namely Nganampa Health and the NPY Women's Council—as its means for delivering health and welfare services to the Lands. This was both strategic and economic; by supporting these tri-state regional bodies, the Commonwealth could cater for both the Lands and other areas in the Central Australian cross-border region of SA, NT and WA. This also worked for the South Australian Government,

¹²⁹ This ~\$800,000 was an allocation through the *National Illicit Drug Strategy*.

¹³⁰ Only two AP Lands communities were included in this regional project which also covered communities in the NT and WA.

because while Nganampa Health and the NPY Women's Council, like the PC, were not focused on SA alone, they were nonetheless Anangu-controlled and connected in the Lands. In addition, they attracted Commonwealth funding, which was always an attractive option to a small state like SA.¹³¹

All indicators were consistent in suggesting that the regional Anangu service providers could deliver the support the Lands needed. In 1999, for example, ATSIC commissioned an independent organisational review of the Nganampa Health Council, which reported that it was:

providing a high quality service which has been sustained over a long period of time and had made a demonstrable difference to the health of Anangu in central Australia and on the APY lands (SC 2004, p. 37).

The NPY Women's Council received many awards—including the National Violence Prevention Award 1994 and 1995, Best Practice Award for the Child Nutrition Project 1997, and Outstanding Contribution to Australian Culture in 1999—from the Commonwealth Government in recognition of its contribution to Anangu advancement.

The capacity, voracity and credibility of the NPY Women's Council is further highlighted by its success in working with HREOC to gain a Special Measures Certificate to help it enforce a prohibition on the sale of alcohol in 1997.¹³² This was a major victory for NPY, PC and for all Anangu, and it served to reaffirm the importance of the PLRA as a vehicle for Anangu 'special' rights.

The Commission's *Alcohol Report* (1995) laid significant groundwork for the recognition of such Special Measures Certificates when it cited *Gerhardy v Brown* in relation to the validity of 'special rights' and reaffirmed the right of Aboriginal communities to demand restrictions on the distribution of alcohol for the benefit of all community members (HREOC 1995, 1996). Given its significance, a brief discussion of the 1995 Report is presented below, followed by a summary of the deteriorating conditions on the Lands.

4.5.1 Alcohol supply and control issues: the HREOC Report

In 1990, then Race Discrimination Commissioner, Irene Moss, received multiple expressions of serious concern from a number of Aboriginal communities and organisations about the extent of alcohol abuse by Aboriginal people and its effect on

¹³¹ Robbins (1993, p. 73) cites SA as having complained at earlier government forums that, in Aboriginal Affairs, the state took on extra responsibilities 'only to have the Commonwealth renege on its financial responsibilities'.

¹³² For more information, see the NPY Women's Council, <<http://www.npywc.org.au/about-nywc/achievements/>>.

communities in the NT (HREOC 1995). Such representations emphasised the devastating effects of alcohol abuse on Aboriginal communities, including violence, murder and social breakdown, and they described such addictions as ‘a major threat to the survival of Aboriginal culture and to the achievement of self-determination by Aboriginal and Torres Strait Islander peoples’ (HREOC 1995, p. 4).

As a result, in late 1990, the Commissioner established an inquiry into race discrimination, human rights issues and the distribution of alcohol in the NT—focusing particularly on Central Australia—and called for submissions on these issues. In 1995, the inquiry was completed by the new Race Discrimination Commissioner, Zita Antonios, and its comprehensive findings were published as ‘The Alcohol Report’.

The ‘Alcohol Report’ (HREOC, 1995) specifically detailed the struggle Anangu had endured with Curtin Springs Roadhouse¹³³ continuing to supply alcohol to people going to or from the Lands, despite bylaws prohibiting alcohol on the Lands and specific local agreements struck between PC and the Roadhouse. The case-study in the Report (1995, p. 43-48) described how given the High Court’s view in *Gerhardy v Brown* that special rights were valid under the PLRA it was reasonable to infer that alcohol restrictions on the Lands did not contravene the *Commonwealth’s Race Discrimination Act*, as these restrictions could be viewed as a ‘Special Measure’ and hence ‘lawful discrimination’ in accordance with the needs and wishes of the community (HREOC, 1995, pp.65-68).

An outcome of HREOC’s engagement with this issue and NPY Women’s Council’s submissions on the Curtin Springs case, is that a formal certificate was developed to show a particular situation was either considered non-discriminatory in terms of the RDA or a form of ‘lawful discrimination’ as a special measure within provision of s.8(1) of the RDA.

4.5.2 Deteriorating health and well-being on the Lands

Anangu success through NPY in restricting the supply of alcohol to people on the Lands was a major achievement that led, in part, to NPY receiving significant Commonwealth funding in 1999 for the *Petrol Sniffing Support Project*, which targeted 26 communities (as cited above). However, petrol sniffing nevertheless persisted across the Lands, undermining health and well-being and disrupting social order.

¹³³ For in depth details of this particular case-study and work done by Anangu especially through the NPY Women’s Council, see Kavanagh (1999), <<http://worldlii.austlii.edu.au/au/journals/ILB/1999/24.html>>.

One result of the South Australian Government's acquiescence to the Commonwealth's ascendancy in the funding of Central Australian social policy initiatives (for petrol sniffing and community well-being) was that it lost contact with the deteriorating conditions, poverty and violence troubling the Lands in the late 1990s.

Not only was Nganampa Health reporting a steady rise in petrol sniffing again in the late 1990s, as cited above, but a 1998 cost-of-living study concluded that a lack of work meant that an average Anangu family's income 'would not buy sufficient food and basic supermarket items requisite for the family to achieve adequate nutrition and hygiene' (Tragenza 1998, p. 12).

Despite these examples of the stark deterioration in social conditions on the Lands, the regionalisation of services and general state government retreat from AP matters lessened local community engagement. From 1999, for example, Anangu Community Constables were only supported by 'Development Officers' rather than sworn police officers, who were now stationed off the Lands at Marla.

Being off the Lands meant that the SA police (SAPOL) had limited capacity to respond to community requests for assistance with violence, petrol sniffing and associated problems. It could take many hours before the police responded to major incidents. Later, senior police would document their concern that (SC 2004, p. 41):

we [SAPOL] have not really met our objectives in the past four years—probably since 1998. Prior to that we had a heavy concentration, particularly because of the rise in petrol sniffing. **We took our eye off the ball for a while and problems emerged again...** [my emphasis]

4.6 The PC/AP Relationship: Tensions Erupt over Mining

The relationship between the PC and AP was under strain throughout the 1990s. AP's physical shift to the Lands and its separation from the PC had escalated the deteriorating relations between the two bodies. Rather than ameliorate issues, the shift heralded not only a physical and operational separation, but also a destabilisation of established patterns of communication and decision-making.

By the end of the decade, tensions erupted. The precipitating issue was mining. Since the proclamation of the PLRA, the PC had provided anthropological and legal support and advice to AP for its deliberations on mining Exploatory License Applications (ELAs), which were managed 'one at a time' and 'in order of receipt'.

Established in 1986 and agreed to again by the Minister during discussions about the 1987 amendments, the 'one at a time' policy was initiated by AP to ensure that TOs had enough

time to understand and discuss each mining proposal—sometimes in small groups. While the PLRA conceived of the Lands as a single corporate entity and stressed the importance of ‘the preservation and protection of Pitjantjatjara ways of life, culture and tradition’ [Section 20(15)], complex kinship and family links bound particular Anangu to specific places in the Lands with deep cultural and custodial responsibilities through the Tjukurpa.¹³⁴ As a corporate entity of tenants in common under the PLRA, the Lands were, in reality, a complex matrix tessellated by interdependent and intersecting currents of power, responsibility and duty.

The ‘one at a time’ policy enabled TOs to consider the implications and likely impact of each individual mining exploration application on the part of the Lands for which they and their family group/s had customary responsibility for, in a consultative manner. It gave AP a means for steadily managing the often intense pressures from mining interests, and it prevented overstretching of the limited professional resources (legal and anthropological expertise for example) available to assist TOs in their decision-making.

While the PLRA placed an onus on mining companies to carry the costs associated with this anthropological and legal work,¹³⁵ it also stipulated that ‘the period between the initial lodging of the application and that notification of AP’s decision to the applicant shall not exceed 120 days’¹³⁶ (Ascione 2002, p. 160). Further, it laid out an important role for the AP Executive in ensuring thorough consultation with TOs. Section 20 (3) stated that once an application in writing had been made to the AP Executive and all relevant information was assembled:

Anangu Pitjantjatjara shall, before carrying out or authorizing or permitting the carrying out of any proposal relating to the administration, development or use of any portion of the lands, have regard to the interest of, and consult with, traditional owners having a particular interest in that portion of the lands, otherwise affected by the proposal, and shall not carry out the proposal, or authorize or permit it to be carried out, unless satisfied that those traditional owners;

- a. understand the nature and purpose of the proposal;
- b. have had the opportunity to express their views to Anangu Pitjantjatjara; and
- c. consent to the proposal.

Although the ‘one at time’ policy worked well in the 1980s, by the late 1990s, the South Australian Government and mining companies were urging AP to speed up the processing

¹³⁴ Tjukurpa is the Pitjantjatjara term for Anangu epistemology/cosmology or ‘law’. APY peoples believe that the past, present and future form a continuous link through ancestral history to the present time in their Lands, which is both physically and ‘spiritually’ felt. Thus, the Tjukurpa is not a past ‘dreamtime’, but an active continuum: ‘*Tjukurpa iriti ngaringi munu kuwari wanka nyinyangi. Tjukurpa* has existed from a long time ago and is alive today’ (senior law woman cited in James 2015). See James (2005), Young (2006), Tregenza (2010) and James (2015) for more contextual information.

¹³⁵ Section 20(7)(a).

¹³⁶ Section 20(14) (e).

of mining applications and encouraging Anangu to embrace mining as an economic benefit. The business media signalled nationally that ‘the mining industry and the state government are keen to have the Pitjantjatjara land opened up’ (Davis 1999).

Pressure stemmed from a global boom in the mining sector, from geophysical exploration analyses, which revealed the Lands to be one of the most ore-rich regions in Australia, and from frustration with the pace at which applications were managed by the PC/AP joint handling of ELAs. Fewer than 10 applications had been approved in the early years of the PLRA, and 56 applications were waiting in a queue, as a surge in mining took hold elsewhere (*Alice Springs News* 1999; Ascione 2002; SC 2004).

4.6.1 Applications from the Pitjantjatjara Mining Company and Musgrave Block Holdings

In 1997, the Pitjantjatjara Mining Company (PMC),¹³⁷ which included some Anangu working with mining entrepreneur Danny Hill,¹³⁸ lodged an application to explore around 18% of the AP Lands. The company urged AP to deal with its application quickly, fast-tracking it out of order and justified its request on the basis that it had Anangu Directors who stood to gain from the mining.

The involvement of AP Executive members in an application they stood to benefit from (as Directors of PMC) created a mire of potential conflicts of interest. Some saw this request to ‘fast track’ a proposal as a ‘Trojan horse’ that would undermine TOs’ general control over mining applications. In the ensuing conflict, some Anangu suggested that others had succumbed to pressure from mining interests to change their ‘due process’, while others suggested that it was a deliberate attempt to obviate the PLRA (SC 2004, p. 78; Davis 1999).

The application was rejected by the Executive and at a full General Meeting of TOs, during which there was an outpouring of concern. Some TOs expressed alarm about what they perceived as ‘humbug’ by those Anangu advocating the quick ‘out of turn’ processing of a mining application in which they or their family had a pecuniary interest. The incident polarised Anangu into two camps—those for and those against the rushed

¹³⁷ In June 1999, the *Alice Springs News* reported on the history of the establishment of the Pitjantjatjara Mining Company (PMC)—allegedly by Aboriginal businessman Charlie Perkins, local Anangu and ‘some Sydney financial people’.

¹³⁸ Mining entrepreneur Hill set up the MBH and proposed to work on a joint venture with the Pitjantjatjara Mining Company if permit processing could be expedited quickly. The contention was that this would advantage some Anangu over others and potentially be a conflict of interest for some members of AP, who might be perceived to have pecuniary interests in the outcome of certain ELAs.

mining application—and irretrievably ‘destabilised the AP Executive and administration staff’ (SC 2004, p. 78).

The rift between AP and the PC escalated again in June 1999, when Musgrave Block Holdings (MBH) announced a ‘done deal’ with the AP Executive without any of the usual vetting of ELAs by the PC’s legal and anthropology team or comprehensive consultation with TOs as the PLRA required (*Alice Springs News* 1999; Ascione 2002, p. 158). Five members of the Executive had apparently signed a ‘Pitjantjatjara Land Future Access Facilitation Deed’ in April 1999, which would not only allow an MBH joint venture with the Pitjantjatjara Mining Company to proceed, but would also facilitate other ELAs in the future through a ‘partnership’ deal with Taliwel Pty Ltd.¹³⁹

The five AP Executive member signatories to this agreement were Chairman Trevor Adamson from Nyapiri, Deputy Chairman Kunmanara Ken, Lee Brady and Michael Mitakiki from Amata, and Alby Burton from Pipalyatjara (*Alice Springs News* 1999, p. 5). Bebe Ramzan from Anilalya Homelands—one of five AP Executive members who had *not* signed the agreement—challenged AP and MBH’s actions with the support of four other Executive members: Roger Kayipi from Fregon, Rupert Peters from Irintata Homelands, Gordon Inkatji from Anilalya and Adrian Intjalki from Ernabella.

As spokesperson for the dissenting group, Ramzen claimed that they were not against mining per se, but were opposed to the way that the rights they fought for under the PLRA were being ignored:

We are not saying no, We are saying do it the right way (*Alice Springs News* 1999).

Ramzan argued that each mining exploration application should be considered on its merits, after proper anthropological assessment and consultation with TOs:

for which AP have always used the services of the legal and anthropology sections of the Pitjantjatjara Council. By neglecting this process, AP as a body corporate, would be denying the rights of traditional owners, and therefore not acting in their best interests (*Alice Springs News* 1999).

However, describing the Lands as ‘the last unexplored frontier in Australia’, MBH’s Andrew Drummond argued that his company would:

¹³⁹ Taliwel Pty Ltd was a small mining exploration company that had close links with the PMC through Perkins’ investments, for example. It was allegedly proposed that Taliwel would become a subsidiary of the joint venture between PMC and MBH under the leadership of mining entrepreneur Hill (BRW 1999; AS News 1999). Hill and some Anangu AP Directors’ names appeared across each of the enterprises.

put resources into AP and onto The Lands to educate people about mining, and would also use strategies such as clustering applications over adjacent areas, and not waiting for one application to reach final resolution before considering another (*Alice Springs News* 1999).

This larger proposal, which entailed engaging Taliwell Pty Ltd to manage AP's ELA processes, found support with the Commonwealth through ATSIC, and also with the South Australian Government through the Department of State Aboriginal Affairs (DOSAA) and PIRSA.

Liberal Aboriginal Affairs Minister Kotz reported to Parliament's Estimate Committee that her department advised her that the proposed deed would provide:

a long term agreement where in return for processing mining applications on the AP lands, Taliwell receives a part interest in the proceeds received from such mining operations (House of Assembly Estimates Committee, 30 June 1999, p. 194).

Opposition Aboriginal Affairs Spokesperson Labor's Terry Roberts accused the Olsen (Liberal) government of supporting a mining industry push into the Lands, arguing that in fact there was no 'done deal':

Chris Milne put out two major press releases in the Business Section of the *Advertiser*, one on 12 June and the other on 16 June 1999, with the headlines '*Mines Chamber aims to meet traditional land owners: Pitlands growth*' and '*Joint venture to bring jobs to Pitjantjatjara lands: A dream deal*'. There were photographs of the geographical location and some of the traditional owners and a light aircraft indicating that all was going well and that the negotiations that had been promised were starting to bear fruit. Once the journalist or others started to ask questions of the other negotiating parties, the Aboriginal people themselves, it became evident that there was not an agreement. There might have been an agreement among the applicants for access deeds, but there was certainly no agreement among the majority of the Aboriginal elders (Legislative Council 8 July 1999, p. 1630).

Roberts argued that this 'unfortunate exercise' had resulted in 'the worst case scenario, where there [were] now divisions within the Aboriginal communities' and legal action had been threatened (Legislative Council 8 July 1999, p. 1631).

With the support of legal officers and anthropologists from the PC, the Ramzan group of AP Executive members ensured that TOs were fully appraised of all the issues and were given an opportunity to express their views at a Special General Meeting to be held the next month (in accordance with the PLRA). The TOs who attended in large numbers, resoundingly objected to the MBH deed, which was effectively stalled.

Drummond blamed the PC and its legal and anthropological staff for resisting change, and he urged AP to sever ties with the PC and use other services. He argued that AP would be better off contracting solicitors on a case by case basis, instead of relying on the PC to help AP process ELAs.

The split on the AP Executive in relation to mining approval processes, which flowed from the PMC and MBH applications was entrenched, protracted and bitter. This added to a broader disputation between some AP Executive members and the PC, primarily around the role of professional (piranpa) staff providing legal and anthropological support direct to TOs (Ascione 2002, p. 161).

From this time on, the pro-mining voices on the Executive fought for AP to establish its own anthropological and legal advice for mining licences on the Lands. Others lamented the intense pressure being placed on Anangu (especially AP Executive members) to adopt a more liberal approach to mining.

The resulting conflicts among Anangu led to much confusion amongst TOs and a weakening of Anangu control in the late 1990s. Externally there seemed also an emerging lack of respect for Anangu land rights and a preparadeness for some mining operators to test the resolve of Anangu to uphold ELA conditions. TO Murray George later lamented how, at this time:

drilling crews commenced operating without proper notification and had transgressed particular sacred areas in contravention of negotiated agreements (SC 2004, p. 80).

DOSAA and ATSIC now jointly funded AP's 'Land Rights Administration' costs (e.g., permits and mining application processing), and a proportion of this funding was being regularly transferred to the PC for its legal and anthropological advice. The bitter polarisation of Anangu now carved a rift through the two Anangu organisations PC and AP, which was further inflamed by increasing pressure from ATSIC and PIRSA for a greater mining presence on the Lands. Government agencies effectively had the upper hand as they controlled the funding directed to AP for administration.

As a result of this pressure, in October 1999 the AP Executive agreed to process three mining applications at a time. Gertrude Stoltz, then senior anthropologist with the PC, later claimed that this decision only came about because of PIRSA's insistence (G Stoltz Submission 5, SC 2004, p. 78).

To construct the AP/PC dispute over ELAs however, as only a struggle between those *for* mining and those *against* would belie the complexity of the issues. The dispute was not just about whether to allow mining; it involved tensions about who *could* or *should* have input into decisions or opportunities to guide (or control) TO decision-making processes. There were also concerns about the administration of ELAs and the access of 'experts' and lobbyists to important 'private' cultural information.

As older routines established with the PC¹⁴⁰ and its long-term staff were destabilised and broke down, TOs worried about trusting the advice of the many new ‘expert’ piranpa courting their favour, especially those involved in the resources sector.

Of particular concern was the pace at which decisions could, would or should occur. How much time and expert advice could Anangu reasonably expect in order to ensure that decisions regarding development were well informed, and therefore self-determining, in ways envisaged by the PLRA? It was the operations and administration—not just the spirit of the PLRA—that were increasingly being tested.

The Commonwealth Howard Government had begun to move rapidly away from the policy rubric of ‘self-determination’, and increasingly espoused the discourse of mainstreaming, invoking what Robbins termed an ‘imposed national unity’ (2007, p. 1). The scene was set for an irrevocable confrontation between the PC and the now deeply split AP Executive.

4.7 Anangu Pitjantjatjara Operational Review 1998

During these volatile events, the Commonwealth and South Australian State governments instigated the 1998 ‘Operational Review of Anangu Pitjantjatjara’ - to address tensions between the PC and AP; to provide strategic directions for the development of services and infrastructure; and to recommend a model for service delivery and organisational accountabilities (Larkin & Hayes 1998).

The Review was tasked with identifying a coordinating body for Anangu service delivery. It was a means for the two governments to strategically influence the outcome of the battle between the PC and AP. Some felt that it spelled the beginning of the end of the PC for fostering perceived Anangu resistance to mining.

Chris Larkin, a respected Aboriginal public servant with a history in community administration linked to the Lands, and Brian Hayes, a well-regarded QC specialising in local government, development and organisational governance issues, were commissioned to undertake the review as a joint effort between DOSAA,¹⁴¹ ATSIC and AP. Notably absent was the PC, a subject of the Review, but not part of it.

¹⁴⁰ While the PC and AP and its Executive were all non-Aboriginal organisational constructs, the PC had emerged organically as part of the ground-up social movement that lobbied for the PLRA, as detailed in Chapter 2. The PC had tri-state significance reflecting cultural relationships across the region, whereas AP was a newer governance model formed top-down out of the PLRA.

¹⁴¹ DOSAA was a division within the SA Department of Environment, Heritage and Aboriginal Affairs at this time (1997–2000).

This was the most significant review of AP since the Bonner report a decade earlier. The final version of the 'Operational Review' was completed in March 1998. After consultation with Anangu, the Review was scheduled for implementation during 1999 and 2000, which it recommended occur during the rest of 1998 and into 1999.

The terms of reference for the Review were to:

- identify the major roles of AP
- assess whether AP meets the requirements of its legislation
- determine AP's degree of accountability to its clients in carrying out its current functions, and assess whether it meets their needs
- determine the resources required to manage AP's responsibilities under the legislation.

In addition, the Review was asked to comment on the scope of AP's responsibilities and relationships to the Lands, Anangu communities, organisations, and government and non-government service providers (Larkin & Hayes 1998, p. 1).

It was a far-reaching review that echoed aspects of Bonner's earlier recommendations for greater recognition of AP's central role under the PLRA. However, whereas Bonner had sought to develop AP's regional coordinating role in a cooperative manner in order to shape policy frameworks and directions for the Lands 'without eroding community autonomy' (Bonner 1988, p. 47), the Operational Review recommended that AP be a peak council at the apex of a federated structure. It sought to empower AP as the preeminent Lands body and to establish clearer parameters of accountability between community councils, Anangu regional organisations and AP. It also recommended a substantial funding boost for AP and its associated delivery arms. Under the model recommended by the Review, a shift in organisational relationships would see AP at the 'top', with a range of service functions subordinated and reporting to it.

The Operational Review identified limitations on AP's operations at the time of its inquiry. AP had no ability to delegate any of its powers under the Act to any other agency or sub-committee. The Review also noted that Anangu regional organisations such as the PC, the NPY Women's Council, Nganampa Health, PY Media and local community councils were all separately incorporated and operated independently of AP, with each seeking funding from external sources for their programs.

The Review argued that this deterred cooperation and created incentives for Anangu agencies to compete for funding. It argued that, as a result, regional Anangu agencies

were ‘parochial’ and unwilling to cooperate with AP because it lacked the ‘leadership role which would build confidence with the service agencies that their areas of operation would be protected’ (Larkin & Hayes 1998, p. 11).

Hence, Larkin and Hayes argued that the ‘creation of separate constituencies and associated power bases around a system of governance and administration structured on separately incorporated bodies’ was a systemically flawed model that perpetuated a situation whereby governments were continually directing funding away from AP and diluting the self-determination ethos of the PLRA (1998, p. vi).

In perceiving the complexities of dispersed governance as a deficiency rather than a potential strength, as Bonner had argued (1988, p. ii), the Review rationalised its pursuit of a bureaucratic ‘chain of command’ model of organisation, replete with a convenient single local sovereignty (Sanders 2004).

In the model proposed by the Review, AP would operate as a ‘governance umbrella’ under which would sit a range of sub-committees, federated community councils and Anangu regional service providers. These would be guided by AP as the key decision-making ‘corporate entity’ under the PLRA. Larkin and Hayes promoted the idea that AP was effectively ‘above’ the other regional bodies as a representative ‘governing’ body because it was the collective land-holding body (Larkin & Hayes 1998, p. 61).

The Review identified two ways to reform what it argued to be duplication: ‘poor accountability’ and the competitive nature of service delivery to the Lands. The first was to amend the PLRA to strengthen AP’s operational control of service delivery on the Lands (as the prime driver of an overarching policy framework for the Lands). The second was for Anangu to be supported by the Commonwealth and state governments (and existing regional Anangu organisations) to implement a model of service delivery that positioned AP at the peak of a federated (and representative) umbrella body to which service delivery organisations had accountability.

Downgrading the PC and giving AP clearer powers and more staff and resources was necessary to realise the first reform, and subordinating the range of mature and powerful regional Anangu service agencies under AP was required for the second reform. Elevating AP was likely to exacerbate tensions with the PC, but attempting to subordinate Anangu regional organisations such as the NPY Women’s Council and Nganampa Health was likely to prove even more contentious.

The Review recommended downgrading the PC's role and empowering AP as the focus for service delivery to Anangu. Larkin and Hayes (1998, pp. 16, 81) argued that the PC should pass all relevant funding and resources to AP, which should be properly resourced as the key governance body for the Lands. The Review allowed for the possibility that AP might subsequently contract the PC (or other providers) for services on an agreed fee-for-service basis, but it considered that government funding should be provided direct to AP (and not to the PC) for such purposes. As noted at the beginning of this section, the formulation of these and other Review recommendations regarding AP's future was happening at a time when tensions around liberalising mining industry access to the Lands were escalating into open hostility between the PC, AP and the key Anangu protagonists involved in either or both of these organisations.

The 1998 Operational Review adopted Colebatch's (2009, p. 24) 'authoritative choice: policy making as deciding' framework and recommended a linear hierarchical model of AP governance. Taking a more critical perspective, it might also be argued that the Operational Review was geared towards serving the political economy interests of the government and an eager-for-change mining lobby that was perhaps bolstered by those Anangu who were pragmatically keen for an economic 'modernisation' of the Lands.

However, it seems particularly naive to expect that large regional organisations such as Nganampa Health, the NPY Women's Council, PY Media and the PC would give up their funding and ascendancy as organisational entities as part of a process of social engineering for 'better service delivery' to Anangu. These were well-established, large agencies that employed many piranpa as well as Anangu, and they were adeptly engaged in service delivery supply-chains and government contracts. Recommendations for the PC to relinquish its resources and functions to AP, or suggestions that regional Anangu bodies might subordinate themselves to AP, were accelerants in an already inflammatory environment.

The Review also recommended the re-establishment of an ATSIC Regional Council for AP as a matter of priority, which Anangu had campaigned for since ATSIC's original regional council structures were replaced.

It recommended the winding-up of PY Media, AP Services and PYEC as separate agencies, and the transfer of their functions to a new portfolio structure for AP. The plan was for a number of services to operate under the elected governance of an enhanced AP, which would oversee regional delivery in a model akin to a local government authority.

The Review argued that bringing regional Anangu bodies under AP's 'umbrella' would rationalise, improve and alleviate the burden of management and enhance governance (Larkin & Hayes 1998, p. 98).

Under this model, the NPY Women's Council, for example, would continue to be a service provider to Anangu communities, but it would include AP on its Management Committee and establish a service provider relationship with AP. This was more reminiscent of Bonner (1988), who had also argued for the integration of women's issues within the main body politic, as well as a separate organisation—a replica of policy constructions, rationale and advice. Like Bonner, the Operational Review recommended that Executive members be trained, that women be supported to attend Executive meetings, and that AP meetings be broadcast across the Lands.

Unlike Bonner's (1988) more nuanced focus on the needs of accommodating the cultural mores and strengths of Anangu community and organisational life, the Operational Review identified fragmented government service delivery as 'the problem' and searched for the elusive but seductive and appealing notion of a single, rational, unified 'solution' to establish order over Anangu services and governance. It advocated the development of an intergovernmental approach to service delivery to the Lands, as well as the development of new bureaucratic accountability protocols:

The notion of Service Agreements or Protocols between AP and government service agencies should be developed to identify service outcomes, mutual obligation, AP's vision for development and service outcomes and consultation protocols (Larkin & Hayes 1998, p. 86).

The Review was against making major changes to the PLRA itself, preferring a bilateral 'heads of agency' agreement to capture responsibilities in a clear, well-defined manner. It also recommended a significant increase in funding to AP to provide support for governance, leadership and management training (Larkin & Hayes 1998, pp. 96–100).

4.7.1 PC/AP relationship: tensions escalate around the Operational Review

The recommendations of the Operational Review challenged longstanding arrangements whereby the PC had been funded to service AP. The Review's initial preferred position was for funding to be provided to AP to enable it to purchase services by competitive tendering, on a competitive fee-for-service basis (Larkin & Hayes 1998, p. 16). In this model, the PC would compete with other tenderers to provide support services to AP.

Public choice theory (Buchanan & Tollison 1984) was becoming popular at this time, with ‘competitive contractualism’¹⁴² (Moran, Porter & Curth-Bibb 2014, p. 20) replacing what Sanders (2007, p. 2) described as ‘loyalty models’, whereby Indigenous organisations obtained ongoing funding and support ‘because of their identification and links with the community being served’.

However, the sudden introduction of this level of market competitiveness was considered unworkable given the specialist linguistic and cultural knowledge held by the PC and the remoteness of the communities to be serviced. The Review therefore recommended another option—that the PC transfer staff and resources to AP so that it could become the pre-eminent Anangu service delivery and governance body on the Lands (Larkin & Hayes 1998, p. 81).

Not surprisingly, this resulted in strong and prolonged objections not only from the PC, but also from other communities in the broader cross-border constituency (in the NT and WA), who felt that they would lose out if this transfer occurred. The PC resisted this proposal vehemently and fought to maintain arrangements whereby it was the exclusive provider of legal and anthropological services to AP.

On one side of the dispute stood Anangu protagonists such as Lester, Lewis (then Chair of the PC), George and others who had a long history with the PC, and whose legal and anthropological staff had assisted five AP Executive members with legal advice regarding their challenge to the signing, by five other members of the Executive, of the MBH/Taliwel ‘Pitjantjatjara Land Future Access Facilitation Deed’ some months earlier, as discussed above.

On the other side stood AP Chairman Owen Burton, Trevor Adamson, Lee Brady and others—including PC ‘sympathisers’ on the AP Executive, such as Ramzan and Inkatji¹⁴³—with ATSIC, DOSAA and PIRSA staff, who were perceived by some as the key drivers of the push to centralise and fast-track the processing of mining ELAs in the South Australian Government’s political economy, which was increasingly pro-mining.

However, TOs who still worked closely with the PC and their tri-state Anangu counterparts in WA and the NT were less keen on such changes and were not easily

¹⁴² See Maddison (2009) for an analysis of the contracting-out era, which was not only aimed at increasing efficiency, but also at silencing dissent.

¹⁴³ The Executive members who had raised concerns previously, when in 1999 a group of five Executive members had tried to sign a deal with MBH without, they argued, broad AP or TO agreement (in contravention of the PLRA).

manipulated. Following the PC's AGM in May 2000, a large group of Anangu who gathered for a meeting at which ATSIC and DOSAA staff were present voiced their unified, strong objection to the Review's recommendations about the PC:

The Pitjantjatjara Council is the 'mother' organisation representing all members of Pitjantjatjara, Yankunytjatjara and Ngaanyatjarra over the 'children' organisations—including AP. This is the view of Anangu members that they are: ...*freely exercising their legal, economic, social, cultural and political rights!*¹⁴⁴ (Ascione 2002, p. 161).

In response to this resistance from the PC and its supporters, ATSIC redirected funding for 'Land Rights Administration' through DOSAA (rather than direct to the PC), so that DOSAA could determine the distribution of the funding by competitive tendering. The PC could still apply for funds, but it would be competing on a fee-for-service basis with other contenders.

Thus, the Commonwealth passed the issue over to the South Australian Government to resolve. Not surprisingly, the PC viewed this as a further threat:

Consequently, it became necessary for the very existence and survival of the Pitjantjatjara Council [that] a Provider Agreement was presented at the AP Executive Meetings on 6 December 2000 and 6 February 2001 between AP and Pitjantjatjara Council to continue to provide a range of professional services to AP (which it has done for the past 20 years). Ultimately following a resolution passed unanimously,¹⁴⁵ each party signed and sealed the said Agreement (Ascione 2002, p. 162).

From polarisation around mining, which was splitting the PC and AC into warring camps, to threats of competition over service delivery, TOs worked through endless meetings towards a position that they felt would work for both agencies. Anangu leaders from both organisations signed a 'Service Provider Agreement' to be binding for three years, which established the PC as the legal and anthropology service provider to AP (Ascione 2002, p. 162).

After the bitterness and division between Anangu leaders around government-sponsored proposals for new, externally imposed administrative regimes and governance models, Anangu had finally found a unified voice again—or had they?

4.8 Reflecting Back on the Second Decade

The 1990s were book-ended by the advent of ATSIC in 1990 and the Harbour Bridge walk for tolerance in 2000. This 'reconciliation decade' is often characterised as a time of great optimism, but also of lost opportunity (Duncan 1993; Dodson & Pritchard 1998;

¹⁴⁴ The wording in italics (original emphasis) was a set of words taken from the cover of the 'ATSIC—Service Charter' 1998 and was intended as a 'dig' by the TOs present, reminding ATSIC of its stated commitment to self-determination.

¹⁴⁵ On 6 February 2001

Dodson, Mowbray & Snowden 2003; Altman & Hunter 2003; Berhendt 2003; Robbins 2004, 2007). The same could be said with respect to the 1990s and the PLRA.

When the 1990s began, Labor was in office at both the State and National levels under Premier Bannon and PM Hawke respectively. By the end of the decade, there were Liberal coalition governments both at the State level, under Premier Olsen, and nationally under PM Howard. At the National level, a policy reversal was gathering momentum, and it was a policy shift away from self-determination, away from the populist push for Treaty and away from ATSIC.

In its place, rhetoric about a ‘unified’ and normalised citizenship for all Australians was shaping public discourse (Arabena 2005; Robbins 2007; Sullivan 2011). Howard argued against ‘special’ treatment for Aboriginal Australians and in favour of what he saw as mainstream inclusion of Indigenous Australians, which his critics argued was a return to assimilation. In 1997, Patrick Dodson, the ‘father’ of reconciliation, proclaimed his frustration with Howard’s approach to Native Title legislation, protesting that the Coalition ‘was “pulling apart the delicate threads of Reconciliation” by rejecting “opportunities to act with magnanimity”’ (*Canberra Times* cited in Sanders 2002, p. 4).

For many Anangu on the Lands, the 1990s took them full circle. As at the end of the 1980s with the Bonner Review, so it was for Anangu at the end of the 1990s with the Larkin and Hayes Review. However, whereas Bonner had sought ways to enhance Anangu self-governance through culturally sensitive and collective control, the 1998 Operational Review sought to promote AP over the PC in order to establish a singular local sovereignty with hierarchical control and stricter accountability to the government.

AP’s move onto the Lands created two loci of Anangu governance and political power, where previously there had primarily been only one (the PC). Mining split Anangu into warring factions. The strained relations between the PC and AP over mining demonstrated many of the issues that Bonner had foreshadowed a decade earlier. The Operational Review exacerbated tensions by suggesting AP take over the PC’s role, funding and resources.

However, it was the intractable issue of petrol—of collective concern to Anangu since before they started meeting together in the late 1970s—that was to prove the final trigger for the discursive construction of narratives of blame and dysfunction in the decade ahead.

Petrol sniffing persisted as a cyclical and wicked problem.¹⁴⁶ With the Commonwealth providing significant new resources to NPY in 1998 for a four-year regional ‘Petrol Sniffing Support Project’, the South Australian Government withdrew from its previous, more locally focused, community development funding role.

As ATSIC lost momentum locally and favour nationally, and in an increasingly politicised policy environment, relationships between the PC and AP—two organisations born from the same womb of land rights activism and, often conflated, were now set against one another in competition for funding and support—nearly reached breaking point.

¹⁴⁶ ‘Wicked problem’ is a term originating in the planning literature; for example, see Rittel and Webber (1973). It refers to multifaceted and complex problems that are aggressive and persistent, not easily (if ever) resolved, for which solutions change over time, problems in which stakeholders have radically different world views and frames for understanding (Conklin 2003), and ‘whose solution requires large groups of individuals to change their mindsets and behaviours’ (Hunter 2007, p. 37).

Chapter 5: 2001–2002: Tensions between Anangu Pitjantjatjara and the Pitjantjatjara Council: First Coronial Inquest

‘The extent of the problem diminished somewhat in the mid 1990s, and it is apparent that there was a reduction in effort towards tackling the problem. It has been apparent since at least 1998 that the problem was returning, and that the prognosis was bad, but little has been achieved to restore the effort to pre-1995 levels, let alone take it further’.¹⁴⁷

5.1 Introduction

This chapter argues that the sustained pressure on Anangu to fast-track applications for mining exploration continued to exacerbate divisions between Anangu leaders at the start of the new millennium. The dispute between the PC and AP, which had initially polarised around mining, spread into debates about contracting and service provision. As the schism between AP and the PC deepened, the AP Executive also split along what were generally considered pro- and anti-mining lines. Tensions were aggravated further by the concerted efforts of ATSIC and the SA DOSAA¹⁴⁸ to implement the Operational Review they had jointly instigated and funded.

This chapter argues that bilateral government support for AP to take over the PC’s role and resources entrenched political divisions in Anangu governance.¹⁴⁹ Through ATSIC, the Commonwealth committed resources to AP to appoint an Administrator to develop a new centralised structure. The PC felt threatened by government pressure to transfer its resources to AP and strongly objected to this proposal. Efforts by the Rann Labor (minority) State government, elected in March 2002, to assuage the antipathy between the PC and AP were a case of ‘too little, too late’.

This chapter argues that, despite the Commonwealth and state governments’ efforts to direct Anangu organisations, the main threat to Anangu well-being remained the prevalence and persistence of petrol sniffing. While the Commonwealth supported regional responses through the NPY Women’s Council and Nganampa Health, the South

¹⁴⁷ South Australia Coroner’s Court (2002).

¹⁴⁸ In February 2000, the Division of State Aboriginal Affairs was transferred to the SA Department of Transport, Urban Planning and the Arts. In October 2000, it was renamed the Department of State Aboriginal Affairs.

¹⁴⁹ As detailed in Chapter 4, the Operational Review recommended that the PC transfer its resources to AP. It also recommended that all direct grant funding to the PC for services intended for AP constituents be discontinued, and that its assets be distributed to its shareholders and AP.

Australian Government drew back from localised service delivery, preferring to rely on Commonwealth leadership and funding to address petrol sniffing.

As petrol sniffing escalated and there was a series of local deaths, Anangu implored the state government to act, and elders appealed to the SA Coroner's office. This chapter explores the ensuing 2002 Coronial Inquest into deaths by petrol sniffing on the Lands, its critique of governments for 'taking far too long to act' (SA Coroner 2002, p. 36), and its comprehensive list of recommendations for urgent action.

It also analyses how the South Australian Government reacted to the Coroner's strongly worded public critique by strategically deflecting attention away from its inadequate responses to petrol sniffing on the Lands and onto Anangu governance instead. As the PC lost funding and support, the government steered media and public scrutiny towards AP and its Executive, where pressure from the prolonged trauma of petrol sniffing in communities and the fall-out between key protagonists over mining mingled with older kinship rivalries to escalate intra-Lands frictions.

5.2 Signing a Service Agreement: Appointing an Administrator for AP

ATSIC and DOSAA's plans for restructuring AP following Larkin and Hayes' (1998) Operational Review (discussed above in Chapter 4) were temporarily thwarted by Anangu leaders signing a 'Service Agreement' of their own between AP and the PC in February 2001. This codified an arrangement to keep matters between PC and AP much the same as the one that had existed since the PLRA began. This new consensus among Anangu threatened Government plans for AP to sever its ties with the PC's legal and anthropology section, which had been supporting TOs over two decades under the PLRA.

However, this consensus was itself set back when in April 2001, those AP Executive members who shared DOSAA and ATSIC's aims of severing AP's ties with PC and fast-tracking ELAs called for a new vote amongst TOs to reject the signed 'Service Agreement':

Anangu Pitjantjatjara Executive Council considers the Pitjantjatjara Council's service provider agreement unsatisfactory for the following reasons:

1. No fair and open competition
2. The agreement cannot be for three years
3. All agreements should be suitable for Anangu to understand
4. All services to be provided should be clearly defined including performance indicators and reporting requirements

5. Funding agency guidelines should be followed

6. AP should be allowed to choose other service providers for Anangu if they wish.

The executive wishes to have a meeting with ATSIC, DOSAA, independent lawyer and Pitjantjatjara Council lawyer to discuss development of guidelines and service agreement to be used by AP Executive and communities.

Moved: Anton Baker Seconded: Keith Stevens Carried: Unanimously

Executive Meeting of 27 April 2001(AP Executive Minutes, 27 April 2001).

While the conflict centred on the efficacy of the ‘Service Agreement’ signed by AP and the PC in February 2001, attention soon also shifted to the Terms of Reference for an Administrator, which AP had agreed to appoint to assist it with the implementation of the 1998 Operational Review. Contention emerged about who the Administrator would be accountable to—AP, the ATSIC or DOSAA, or both—and whether the Administrator would be involved in development issues. These matters unified Anangu from all ‘factions’, as their rights under the PLRA were considered sacrosanct – or were they?

5.2.1 ‘Practical reconciliation’ in practice

Pro-mining forces on the AP Executive were keen to see the Administrator installed as a way to help fast-track ELAs and explore new joint venture partnerships with the mining industry. Others were equally keen to ensure that the ‘Terms of Reference’ for the Administrator would ensure that whoever was appointed would focus first and foremost on the human service, health, well-being and infrastructure issues troubling the Lands.

Negotiations about ‘Terms of Reference’ for the AP Administrator continued for some months in the middle of 2001 against a backdrop in which both levels of government (and some Anangu¹⁵⁰) sought to liberalise mining access. For example, the Commonwealth had announced it would provide \$186,000 to AP for preparation of a ‘regionally integrated strategic plan’ for the ‘social and economic development on the AP Lands’, which specifically referred to active pursuit of ‘economic opportunities through mining’. This consultancy report was due to be provided to AP in 2002 (Tambling & Macdonald 2000; PDP 2002).¹⁵¹

¹⁵⁰ While most TOs continued to express concern and general opposition to mining, some were keen to encourage it. The point made by those challenging the MBH/Taliwell deed was not that they were ‘against mining’, but rather they wanted processes for consultation specified in the Act to be upheld. See Ramzan (*Alice Springs News* 23 June 1999): ‘we are not saying no, we are saying do it the right way’.

¹⁵¹ See Joint Media Release Senator the Hon. Grant Tambling; Senator for the Northern Territory, Parliamentary Secretary to Minister for Regional Services; for Health and Aged Care Territories and Local Government; Senator the Hon. Ian MacDonald, Minister for Regional Services, Territories and Local

The mining industry was impatient with the steps required by the PLRA before an ELA could be considered, and keen to pursue what were thought to be vast rich ore and minerals deposits in the Lands waiting to be developed. On 20 June 2001, Dennis Mutton, CEO of PIRSA, faced questions from Independent (ex-Liberal) MP Lewis:

The concern that has been expressed in the mining industry...is, 'What is the point of our discovering the minerals if the people'—that is, the Aboriginal people in the Pitjantjatjara lands or the Maralinga lands...—'will not let us have access to them?' I would have thought that, before the government sunk millions into that, it was sensible for the government to have concluded the background arrangements that would enable access and further exploration and development of whatever is discovered; otherwise, it seems to me to be an exercise in futility. If they will never let the ground be developed, there is no point in exploring it. We might as well ignore it until they decide (if ever) that they would like to see the mineral deposits so discovered, or any mineral deposits for that matter, developed for commercial purposes. Why sink taxpayers' money into a black hole—and no pun is intended? (South Australia House of Assembly Expenditure Committee 20 June 2001, p. 77).

Mutton responded to the Estimates Committee's questioning by explaining that PIRSA was working to 'encourage' AP to expedite matters. He said 'about 10%' of the Eastern end of the Lands had ELA's pending from a surge in mining interest in the region:

there is very strong support from those companies that have applications in place [and] over recent times, the involvement of the agency [PIRSA] has been to work with the Aboriginal community [AP] to provide support and data to accelerate the process of consideration of those exploration applications (South Australia House of Assembly Expenditure Committee 20 June 2001, p.78).

Shadow (Labor) Minister for Aboriginal Affairs, Terry Roberts, was alarmed at the mounting pressure placed on the AP Executive. He felt that there had been insufficient efforts to stem tensions between the PC and AP. Roberts supported an ongoing role for the PC as a way of ensuring that there could be a consistent source of 'independent' legal and anthropological advice to TOs. He grew close to activists such as Lester, Ramzan and Lewis, and he spent time sitting quietly listening to older TOs like Kunmanara Thompson and Nyaningu.

In an effort to highlight the pressure on TOs, Kunmanara Thompson, then Director of AP and the man who had signed the original land rights agreement in 1981, wrote a heartfelt letter to the *Advertiser*:

Dear Editor,

We are very concerned about the actions of the Federal and State Governments to take away our land rights and walk over us. We met Deputy Premier Rob Kerin and representatives of the Department of State Aboriginal Affairs and ATSIC this week and hope that they will resolve this serious action taken by their senior government officers. The Federal and State Governments stopped funds to Anangu Pitjantjatjara and Pitjantjatjara Council earlier this month after traditional owners refused to accept a government-imposed administrator with

Government Tuesday 6 June 2000 entitled '\$186,000 Federal Funding to Help Social and Economic Development in Anangu Pitjantjatjara Lands'.

powers to dismantle the Pitjantjatjara Land Rights Act (1981). The terms of reference governing the administrator are illegal and undermine traditional owners' rights to control development on their land. It takes us back to the 1940s. Senior government officers decided to install the administrator and we only became aware of the consequences of the terms of reference governing the administrator last month. Anangu Pitjantjatjara and the Pitjantjatjara Council are both financially in the 'black' and have no argument with the Governments' claim they want to install a financial administrator. What we cannot accept is the proposed terms of reference, which go far beyond the merely financial into the profoundly political area of traditional owners' rights. Both the SA Liberal and Labor governments presented the Pitjantjatjara Council with land rights 25 years ago. We hope to jointly celebrate 20 years of land rights with Anangu Pitjantjatjara in November.

Kunmanara THOMPSON
Director
Anangu Pitjantjatjara
Umuwa
(*Advertiser* 2001, Letters to the Editor, p. 27).

This public appeal by Kumunara Thompson was effective. After further negotiations, DOSAA and ATSIC 'conceded and acknowledged the continuing contractual arrangements between AP and the PC', and agreed that the Administrator would focus on organisational, not resource development, issues (Ascione 2002, p. 162).

This was a significant win for the PC, as Clause 6.8 of the 'Terms of Reference' agreed to by the AP Executive on 5 September 2001 stated that the 'Management Consultant' (as the Administrator was now called) 'shall not interfere with any contractual relations subsisting between AP and third parties, namely the Pitjantjatjara Council' (AP Executive Minutes, 5 September 2001).

The Administrator/Management Consultant took up the position in September 2001. The piranpa appointee was Chris Marshall, an imposing and experienced consultant known to ATSIC staff and throughout the NT. Marshall embraced the role with vigour, exacerbating some existing conflicts and igniting new tensions as he set about restructuring AP. Marshall was well attuned to ATSIC and DOSAA, which jointly funded his consultancy, and he was pro-development and keen to prise AP away from its dependence on the PC. He quickly established centralised finance and development under AP's control. The campaign to consult with communities across the Lands on the new centralised 'umbrella' structure for AP was called 'Rolling Thunder'. An example of the existing and proposed relationships between Anangu organisations used in the campaign is presented in Figure 5.1.

Anangu Pitjantjatjara Yankunntjatjara Current and proposed corporate relationships

Revision date October 2002

LEGEND

- Proposed new departments and positions
- Proposed new entity
- Linked at both Management and Governance levels
- Proposed Memorandum of Understanding

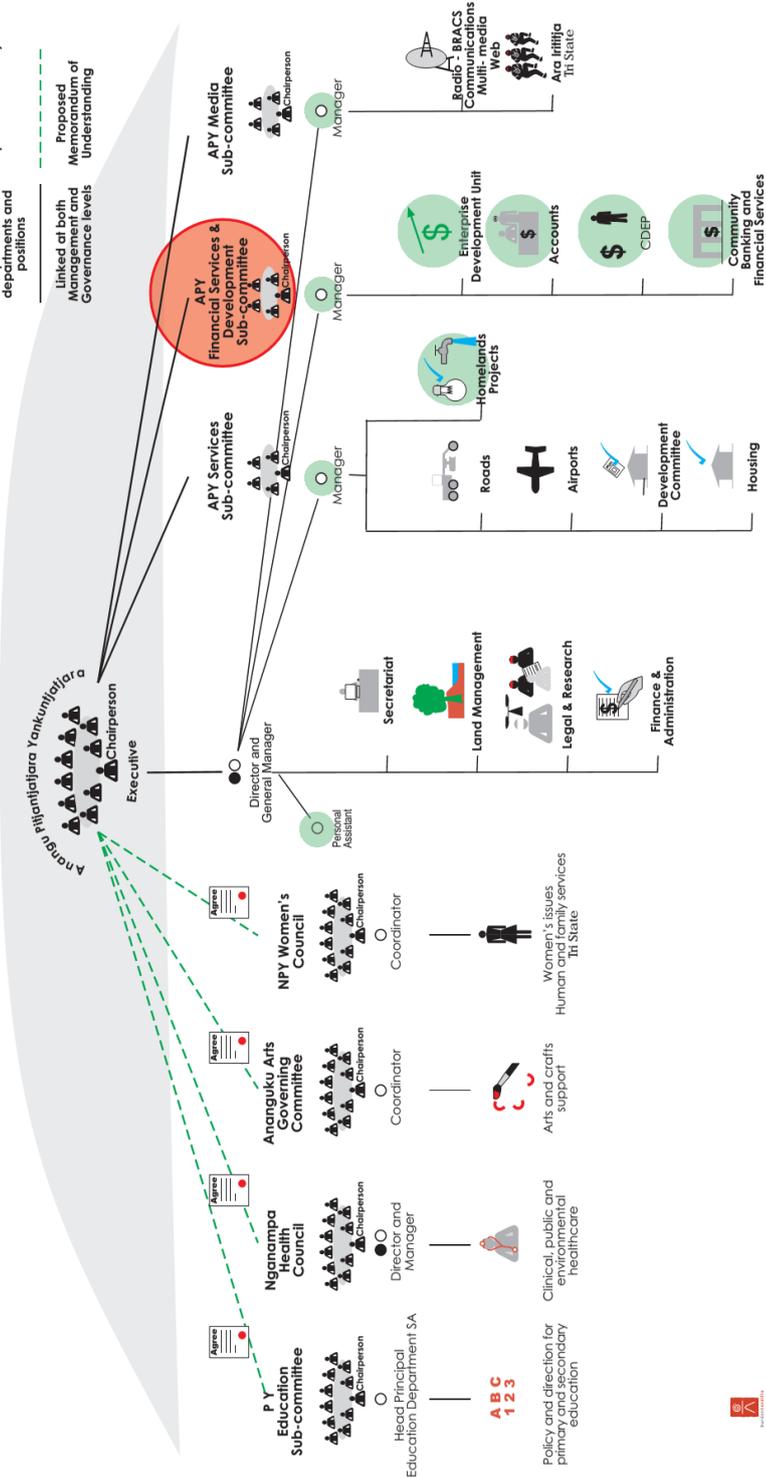


Figure 5.1: ‘Rolling Thunder’, Proposed APY Relationships. Copyright Burdon, R, Burdon Torzillo Pty Ltd, 2002.

Proposing AP as the pre-eminent governance body on the Lands was not popular with those it would subordinate. Playing out through the PC and AP tensions was a clash of values, competition over resources and power, and a more profound, deeper struggle over the future of Anangu ‘self-determination’ on the Lands.

As Altman and Martin (2009) suggested, following the 1996 election of Howard’s Liberal Coalition, a national narrative emerged that criticised past policies of ‘self-determination’ promoted by Labor leaders such as Whitlam, Keating and Dunstan for their alleged failure to achieve ‘development’ in Aboriginal communities. However, the capacity for Indigenous communities to resist state-sanctioned mining or ensure an equitable share of profits remained highly dependent on the capacity of regional Indigenous controlled agencies to advocate for Indigenous people’s collective entitlements as legal rights (Altman & Martin 2009).

Some Anangu—particularly those keen on development—saw the implementation of the ‘Operational Review’ model as a means for consolidating Anangu control through AP as envisaged under the PLRA, whereas others saw the centralised, bureaucratic nature of the model and severance of ties with the PC as having the opposite effect. Separating AP from the PC, as well as moves to denude the PC’s funding, had political and organisational dimensions as well as longterm ramifications.

Schisms about governance arrangements for the Lands were increasingly located along three key continuums: Anangu ‘self-determination’ versus centrally directed governmental social engineering; a pro-mining/pro-development ‘open the Lands to economic development’ push versus a more cautious ‘protect the environment and cultural traditions’ group; and the PC versus AP inter-organisational competition for status and resources. Key protagonists—both Anangu and piranpa—were located throughout these tendencies, at times moving between them.

5.3 Twenty Years’ Celebration of the PLRA—as Petrol Sniffing Reappears

5.3.1 Coronial inquest announced

A month before AP Director Kunmanara Thompson’s letter, which protested government attempts to ‘undermine traditional owners’ rights to control development on their land’ (*The Advertiser* 28 July 2001, p. 27), appeared in the media, Anangu people’s ongoing struggle with petrol sniffing had taken a tragic turn. Thompson’s own son had died of

petrol sniffing, prompting the SA Coroner to announce that he would conduct an Inquest into three deaths from petrol sniffing on the Lands.

The media headline read:

Petrol Sniffing Deaths Inquiry

South Australia's coroner Wayne Chivell is to establish an investigation into a hidden killer of Aborigines in the state's Far North. The death of Anangu-Pitjantjatjara land council director Punch Thompson's 27-year-old son last month has paved the way for Mr Chivell to undertake the investigation into petrol sniffing-related deaths.

Mr Thompson's son was found dead in a house at Ernabella, 440km southwest of Alice Springs, with a petrol-can by his side. Mr Thompson asked the coroner to investigate his son's death, and those of two others who died in the past year (*The Advertiser* 28 August 2001, p. 23).

The Coronial Inquiry focused on the deaths of Kunmanara Ken of Amata who died on 3 August 1999, Kunmanara Hunt of Black Hill Homeland who died on 27 January 2001 and Kunmanara Thompson of Ernabella who had died on 26 June 2001 (Chivell 2002, p. i). The Coroner grouped the deaths and tackled the inquiry as one in order that the three deaths under investigation were considered within the broader context of petrol sniffing which he argued was '...endemic on the Anangu Pitjantjatjara Lands'.

It has caused and continues to cause devastating harm to the community, including approximately 35 deaths in the last 20 years in a population of between 2,000 and 2,500. Serious disability, crime, cultural breakdown and general grief and misery are also consequences (Coroner 2002, p. ii).

For some time, Anangu community leaders had protested that sniffing had begun to increase again in the late 1990s to levels not seen since the early 1980s. In language echoing his calls for support at the time of the passing of the PLRA, Thompson called on the government to act:

Children and sniffers have become bosses over their parents. They are running the agenda by their behaviour. They are out of control and people have to react to the behaviour of sniffers rather than keeping to the law and keeping to the culture. Sniffers break their mother's arms. There is violence against families. Sniffers threaten their parents that they will commit further acts of self-harm. They swear at their parents. They breach traditional secrets by speaking out of turn. They throw rocks at their parents.... When I talk about these things I am talking about sniffers generally, I am not talking about the deceased. We as older people are worried about the children and about the younger generation of parents having to bring up petrol sniffers.... We have no sniffers now. We have lost our only son (Coroner 2002, p. 20 [Exhibit C24c, p5]).

Commencing in September 2001, the Inquest took a year to deliberate, collecting evidence from health experts, government agencies, Anangu organisations and individuals, families and community leaders in situ on the Lands at Umuwa for over a week each time in May, June and September 2002. The submissions to, and findings of, the Inquest are returned to shortly. However, this chapter first tracks other events that were unfolding on the Lands at this time.

5.3.2 Celebrating the second decade of the PLRA

In November 2001, an *inma*¹⁵² was organised by Anangu to celebrate the twentieth anniversary of the passing of the PLRA. The celebrations at Amata were attended by thousands of people and held great meaning for Anangu communities and families across the Lands.

The NT *Centralian Advocate* noted how ‘they came from communities all over the Pitjantjatjara Lands, PC staff, past and present, plus special guests many who had travelled interstate in order to be present’:

Pitjantjatjara Council chairman and Anangu Pitjantjatjara member Gary Lewis opened the proceedings soon after midday, introducing guest speakers. These included the Anangu Pitjantjatjara director Kawaki Thompson, Anangu Pitjantjatjara chairman Owen Burton, Shadow Minister for Aboriginal Affairs Terry Roberts, Federal Member for Lingiari Warren Snowdon, SA Member for Grey Barry Wakelin, ATSIC commissioner Brian Butler as well as many of those who had been involved in the struggle for land rights in the late 1970s (*Centralian Advocate* 7 December 2001, p. 41).

The image of Anangu leaders such as Lewis, Burton, Adamson and Thompson, often pitted against one another in Anangu organisational politics, together performing customary affirmations of their connection to country and each other is an emblematic image of the complex interconnections of people, politics and place on the Lands.

This diversity within unity, or balance between collectivism and autonomy that characterises the Anangu organisational landscape is often overlooked in Western analyses. Eurocentric managerial notions can too easily privilege structure over process to enact a ‘new form of structuralism’ (Sanders 2004, p. 12). Obsession with ‘the’ perfect governance model leads to simplistic approaches to Aboriginal governance (Wolfe 1989; Rowse 1992; Sanders 2004), which belies the complexity, messiness and ambivalence of Anangu social relations, where situational leadership adapts to circumstance and where multiplicities of difference coexist as unity.

Despite all of the challenges confronting the Lands, the PLRA’s twentieth anniversary celebrations proceeded as a display of Anangu pride, dignity and joy in self-determination:

¹⁵² *Inma* is a Pitjantjatjara term meaning ‘celebration’, involving singing and dancing for example.

Historic day in struggle to win land rights

The Advertiser 27 November 2001

Sean Fewster

THE Pitjantjatjara Council's struggle for land rights was long and hard—but yesterday, thousands of people gathered to celebrate their eventual triumph.¹⁵³ Formed [in] 1976 the council represented the views of Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara people—a community stretching more than 350,000sq km across Australia's arid centre. Its aim was to return the land to its traditional owners and set about changing public perceptions through rallies, meetings and marches. The council returned to Amaralytja Creek yesterday to commemorate its 25th anniversary and the Pitjantjatjara Land Rights Act 1981 which led to the handover of 102,630 sq km of land to the Pitjantjatjara people by former premier David Tonkin—a landmark in Aboriginal history.

Led by council chairman Gary Lewis, the group performed traditional celebration dances—or inmi—including the Witchetty Grub Dreaming inmi and the Perentie inmi. They also listened to speeches by the director of the Anangu Pitjantjatjara, Kawaki Thompson, and Anangu singer Trevor Adamson. Former council director Yami Lester was not able to attend the ceremony but said it would be as jubilant as the 1981 celebrations. He said his fondest memory of the fight yesterday came from a rally in the early 1980s: 'One of the old blokes stood up and said, "The Government has taken our kangaroos and put them on their penny, and they've taken our emus and put them on the two-bob coin"', Mr Lester said. 'Then he said, "so now, we want our land rights in return". I laughed because it was such a good thing to say'.

5.4 Rift between AP and the PC Widens as Rann Takes Office

5.4.1 AP turns away from the PC

After the goodwill of the twentieth anniversary of the PLRA celebrations, it only took three months before a bitter dispute erupted again between the PC on one side and AP, ATSIC and DOSAA on the other. Within weeks of his appointment, Chris Marshall, the Administrator/Management Consultant, and now called Acting CEO, sought to secure independent legal and anthropological services for AP and to sever any previous arrangement with the PC. The PC felt that they had a Service Agreement that was being dishonoured.

The PC alleged that DOSAA was withholding ATSIC funding. However, the AP Chair was reported in the press as arguing otherwise:

The council, which has provided legal, anthropological and administrative services to the Anangu Pitjantjatjara for 20 years, says it relies on the funding to continue operating. AP Council chairman Owen Burton, in a statement issued at the weekend, denied funding had been blocked by DOSAA. He said it was AP, which '...has proposed changes to the legal and anthropological services currently provided by the Pitjantjatjara Council' (*The Advertiser* 28 January 2002, p. 2).

¹⁵³ A letter from Bill Edwards, a past administrator with a long history on the Lands, appeared the following week (Letters to the Editor, *The Advertiser*, 03/1201) discussing aspects of Fewster's reporting. Edwards told of how the PC was formed at a meeting at the Amata Community on 13–14 July 1976. Edwards helped with interpreting at the meetings, which were significant steps towards gaining Pitjantjatjara land rights in 1981.

Lewis, who was Chair of the PC, responded by suggesting that problems underpinning the conflicts between the PC and AP were not issues of Anangu making, but rather that the South Australian Government was behind continual attempts to ‘usurp control from the traditional owners’ (*The Advertiser* 28 January 2002, p. 2).

Lewis and other members of the PC felt frustrated by attempts to wrest decision-making away from the PC and into new consultancy arrangements that he argued would be more amenable to government control. He argued that:

the State Government wanted greater control over the Pitjantjatjara lands to ensure mining projects were fast-tracked (*The Advertiser* 28 January 2002, p. 2).

Lewis had previously accused the Liberal government of trying to weaken Anangu organisations that had been built up over many years to support Anangu self-determination. Under the banner headline ‘Land Rights Body under Siege’, *The Australian* reported:

The Pitjantjatjara Council—a pioneering force in early land rights victories—is fighting to survive...according to Chairman Lewis. He claims there is a campaign to destroy the council by diverting its powers to the Anangu Pitjantjatjara Executive, the legal land-holding body. [PC] is a service provider...Lewis accused David Rathman, executive officer of the Department of Aboriginal Affairs... of trying to weaken the PC so it was ‘easy to manipulate and control’. ‘This concerted attack on the integrity of the indigenous people’s right to self-determination must constitute the lowest point in the recent history of Aboriginal Australia’, Mr Lewis said (*The Australian* 5 June 2001, p. 6).

Anangu TOs called a Special General Meeting about the dispute between the PC and AC in January 2002 which called for the resignation of Aboriginal Affairs Minister, Kotz, and DOSAA CEO David Rathman. The conflict around the ‘Service Agreement’ between the PC and AC became litigious, with all sides engaging legal counsel.

5.4.2 A minority Labor government

In February 2002, the SA elections resulted in a hung parliament, with the return of 23 ALP, 20 Liberal, one National and three Independent members in the 47-seat House of Assembly (Martin 2009, p. 160). Labor’s leader, Rann, negotiated the support of the key Independents and signed a ‘Compact’ with maverick Independent MP Peter Lewis. Lewis became Speaker and Rann was able to form government. Lewis was a contentious former Liberal MP who was infamous for confessing in Parliament that he had once shot a man. Lewis held a long-standing desire for radical Constitutional change in SA, as well as

several mining interests of his own. He was also well known for his pro-mining, pro-development views in relation to the Lands.¹⁵⁴

In March, Rann became SA's forty-fourth Premier, leading a precariously balanced minority Labor Government in the House of Assembly. In the Legislative Council, the State's Upper House, there was also a non-Labor majority, with seven Labor members, nine Liberals, three Australian Democrats, one Family First and two Independents.

Rann's fragile minority coalition strategically embraced non-Labor ministers to form Government and relied on the support of unpredictable and volatile Speaker Lewis, to maintain it.¹⁵⁵ As a result of the fragile alliances holding his minority Government together, Rann was generally acquiescent to Lewis's interests, which on the AP Lands coincided with the Commonwealth's (and others) pro-mining agenda.

Labor's Terry Roberts was sworn in as Minister for Aboriginal Affairs and Reconciliation¹⁵⁶ on 6 March. Roberts had seen petrol sniffing first-hand and considered it a policy priority to address it. In September 2001, when the Coronial Inquest was first announced, he had called for an 'emergency summit' to deal with the 'epidemic' he said he had witnessed on the Lands:

'I saw kids between 10 and 16 with cans strapped around their mouths and noses walking around in a semi-dazed state' he said. 'It's tragic. It depressed me considerably but it also affirmed my commitment to work towards a solution (*The Advertiser* 3 September 2001, p. 2).

Roberts viewed the dispute between the PC and AP as counter-productive and destructive. He formed a view in Opposition that the Howard Government's move away from self-determination and towards policies of economic self-sufficiency and 'mutual obligation' (Braithwaite, Gatens & Mitchell 2002) dovetailed with ATSIC, DOSAA and PIRSA's pursuit of liberalising mining industry access to the Lands.¹⁵⁷

He observed that the two key Anangu organisations had been pitted against one another, and that while this served Anangu interests poorly, it had empowered Governments that

¹⁵⁴ Hon Peter Lewis owned eight mining leases and held interests in Goldus Operations and Mintech Resources. It has been reported that Lewis had sold his iron ore project at Razorback Ridge, 80 km east of Yunta, to Western Australia's Royal Resources for \$30 million (*The Advertiser* 5 October 2009). His pro-mining stance is also illustrated by the tenor of Lewis's questioning of the CEO of PIRSA, which was cited earlier in this chapter.

¹⁵⁵ The Rann government worked to appease the Independents by representing itself as 'tough on crime' and economically 'dry' and distancing itself from both the social democratic progressiveness of the Dunstan era and the State Bank collapse under Bannon.

¹⁵⁶ The Hon. Roberts also became Minister for Correctional Services at this time.

¹⁵⁷ According to Ascione (2002), mining interest intensified after the Aero-magnetic Survey revealed the possibility of rare, precious and profitable minerals in the Musgrave Ranges and PIRSA senior staff outlined the comprehensive results of the Aero-magnetic Survey, focusing on AP Lands at an International Conference held in Adelaide in August 2000.

were united in pursuit of the pro-mining policy agenda. There was little doubt in Roberts' mind that larger and more economically focused political agendas were advantaged in the dispute between PC and AP as the two peak Anangu organisations.¹⁵⁸ Concern about the macro political economy of the State had usurped the quest for Indigenous 'self-determination' that was characteristic of the Dunstan Labor era.

One of Roberts' early interventions as Minister was to engage professional mediator Rick Farley, former head of the National Farmers Federation to attempt to reconcile key Anangu protagonists. Discussions with all parties to the PC and AP dispute were hosted by the Minister in May 2002. Portrayed as a dispute resolution process, careful media analysis of what each protagonist said reveals much about the construction of this issue:

State Aboriginal Affairs Minister Terry Roberts convened a meeting of the executive of Anangu Pitjantjatjara at Parliament House to discuss the dispute, which stems from a decision by AP to remove funding for legal and anthropological services from the Pitjantjatjara Council. The Pitjantjatjara Council, based in Alice Springs, is the organisation contracted by AP for the past 20 years to implement essential services....

Members of the [Pitjantjatjara] council have argued since last year that their organisation, a force in Aboriginal land rights in the 1970s, is being undermined by forces in the Aboriginal and Torres Strait Islander Commission manipulating the parent body by controlling funding (*The Australian* 15 May 2002, p. 19).

AP's Administrator was resolute that it should be properly recognised as *the* peak body:

Acting general manager of AP Chris Marshall said the dispute with the Pitjantjatjara Council would be settled quickly if all parties acknowledged the role of AP as the peak body for [the] Pitjantjatjara lands (*The Australian* 15 May 2002, p. 19).

Roberts appeared to be focused on establishing a basis for effective Government service provision:

'Provision of services will have to be commonwealth, state and territory governments' responsibilities, in agreement with the governance of AP and the representatives on the ground', he said.

'We need the input, we need the feedback, we need the ideas...because in the past we've failed badly' (*The Australian* 15 May 2002, p. 19).

Roberts' next step was to request the transfer of the Head of DOSAA, stating that 'he did not feel they could work together' (*The Advertiser* 4 June 2002, p. 4). David Rathman, then SA's most senior Aboriginal employee, had become embroiled in the PC and AP conflicts of the previous three years. Roberts argued that he was too closely aligned with ATSIC and thereby AP with regards to the dispute.

¹⁵⁸ Personal communications with Minister Roberts about the breakdown in the relationship between the PC and AP.

While Roberts considered Rathman too supportive of AP and its Acting CEO Chris Marshall, he had himself become close to a number of TOs involved with PC, including Lester and outspoken PC Chairman Lewis. Roberts interpreted attempts by DOSAA, ATSIC and Acting AP CEO Marshall to sever the ties between AP and the PC as a strategy of ‘divide and conquer’. In the new Minister’s mind, this was anathema to empowering self-determination for Anangu on the Lands.¹⁵⁹

Roberts wanted DOSAA to play a facilitative role in assisting Anangu to make independent decisions, rather than feeling they were being coerced through the carrot-and-stick manipulation of funding. However, dumping DOSAA’s Head drew a sharp response from ATSIC SA Zone Commissioner Brian Butler, who quickly clarified in the media that Marshall was funded by the government but appointed by AP, not DOSAA. Butler restated ATSIC’s support for ‘any efforts to bring about...reform to governance and service delivery on the Lands’ and strongly defended Rathman, commending him for having ‘served Aboriginal Affairs admirably’ in SA (*The Advertiser* 6 June 2002, p. 18).

The way Rathman was dispatched did not win friends for Roberts in some quarters. In a surprise move Roberts succeeded next in attracting ex-senior Commonwealth public servant and Narungga man Peter Buckskin back to SA to take up the position as the new Head of DOSAA. In a previous role, Buckskin had been an advisor to Commonwealth (Liberal) Minister Kemp. Buckskin was well accepted across the SA political spectrum.

5.4.3 PDP Strategic Economics Initiatives Plan (Phase II)

In July 2002, a report from the consultancy engaged from the economic development grant (awarded by Ministers Tambling and Macdonald in June 2000, as detailed above) was provided to AP. The Report, which was prepared by consultants PDP Australia Pty Ltd, assessed potential areas for economic development on the Lands in the areas of ‘cattle, camels, tourism, the arts, mining and banking’ (PDP 2002, p. 6).

Although the brief for this consultancy was to assess ‘Anangu aspirations and priorities for furthering AP’s economic goals’, the Report’s key recommendations highlighted what it termed ‘the critical need for better governance’. It recognised that governance:

is a multi-faceted issue: it relates to matters such as accountability, transparency, the level of consultation, and the way decisions are made and implemented [and] has important implications for the efficient and effective allocation and use of human and financial resources (PDP 2002, p. 6).

¹⁵⁹ Personal communication with Minister Roberts at this time.

Governance here was addressed not in terms of representativeness or decision-making (Mantziaris & Martin 2000; Hunt, Smith, Garling & Sanders 2008), but rather as coordination for budget and organisational efficiency in terms of normative administration (Sullivan 2006; Jose 2007; Limerick 2008).

In many ways, PDP’s model of governance—or rather administrative control—mirrored the 1998 Operational Review. It argued for a single ‘Policy Coordination and Management Office’ to provide a form of central command to support the economic development it recommended.

In a Western style of normative bureaucratic rationality, the PDP Report postulated a matrix that calibrated ‘the problem to be solved’ (Bacchi 2009, 2012) with a specific organisational solution (badged as addressing ‘governance’ concerns), as Table 5.1’s excerpt from the matrix in the PDP Report (p. 8) illustrates.

Table 5.1: Source PDP Report Matrix (2002, p.6)

Problem to be solved	Actions to be taken	Beneficial outcomes will be
Agencies operating in the AP Lands operate autonomously as ‘silos’ in terms of policy development, project design, liaison with funding agencies from a wide range of governments without screening and priority setting from a single entity that coordinates and unifies priorities and budgets in support of wider development objectives for the AP Lands as a whole.	Establish a Policy Coordination and Management Office to underpin the operations of the CEO and integrate strategic plans for sectors under a single development approach.	A better allocation of resources to coordinated achieving of strategic priorities across the AP Lands would be achieved as a first step to establish a single unified governance structure. <i>*my bolding emphasis</i>

The Report contained advice on how to minimise the dispersed consultative processes through which AP maintained cultural dialogue across communities, family groups and TOs, and to speed up access for development possibilities, particularly those related to mining. Interestingly, the Report suggested that engaging anthropologists in the assessment of proposals was ‘unnecessarily paternalistic’. It recommended direct negotiations between the mining industry and TOs:

With respect to the Exploration Licence Approval system we have found that in the past it involved using anthropologists to filter mining proposals to the Traditional Owners. This appears us to be unnecessarily paternalistic; to have inhibited Traditional Owners from making informed decisions, and to have resulted in delays, which could impose costs on AP communities (PDP 2002, p. 12).

Continuing on the trajectory of the Operational Review (Larkin & Hayes 1998), the Report sought an improved ‘administrative efficiency for AP’, along private sector,

corporate or departmental lines. The concept of a single bureaucratic organisational efficiency focal point is used interchangeably with governance, as if it could be an unproblematic proxy for it. It advocated strongly for ‘a single unified governance structure’ (PDP 2002, p. 8).

A pervasive discourse was building in Commonwealth and state government policies at the time about the need for ‘improved governance’ in Aboriginal community and organisational domains. However, ideas of ‘improved governance’ were often conflated with administrative rationality, centralised planning and authoritative hierarchies, which were expressed as chains of command.

As Rowse (1992, p. 89) identified a decade earlier, the notion that ‘community power is, or should be made to be, a unified, centralised sovereignty’ [is] ‘one of the most common and seductive assumptions in the discussion of Aboriginal self-government’.

While clear lines of organisational accountability may be one part of some strategies to improve governance in some contexts, the notion of governance also encompasses complex and messy questions of cultural congruity and relevance of fit for purpose, political pluralism and dispersed relationships. Sanders (2002, p. 8) suggests that Indigenous organisations,

can also make legitimate claims to representing the interests of Indigenous people if government is thought of more as a process than a structure.

However, little content in the economically focused PDP Report was geared towards the complexities of the inter-sectorial, inter-cultural or intra-cultural space (Limerick 2005; Hunt et al. 2008; Moran 2010), let alone empowering the primacy of self-determination with regards to the lived experience and expressed priorities of Anangu peoples.

The Report was a pro-development study framed in terms of fast-tracking capital investment to improve economic development on the Lands. This was of course also the nature of its brief from the Commonwealth funders. In a supplementary assessment of the study, which was requested by the AP Executive, Altman (2002, p.3) made the wry observation that it was, ‘unclear how this developmentalism [could] be reconciled’ with the clearly stated wishes of Anangu:

The consultant notes that mining is **not** a popular aspiration for Anangu, but presses ahead as if this is not a major issue, indeed seeks options to enhance exploration activity on AP Lands and to streamline provision of [mining] leases.

5.5 Dodson Report

After Rick Farley's attempts to facilitate mediation, Minister Roberts next engaged Professor Mick Dodson in early June 2002 to, in the Minister's words, 'attempt to bring the Executive Board of the Anangu Pitjantjatjara and the Pitjantjatjara Council's executive together to resolve their differences' (South Australia Legislative Council 29 August 2002, p. 969). Dodson had been Australia's first Aboriginal and Torres Strait Islander Social Justice Commissioner, from 1992 to 1998.¹⁶⁰ He had previously served as Counsel assisting the Royal Commission into Aboriginal Deaths in Custody and was widely respected as an Indigenous leader.

In visiting the Lands, Dodson was accompanied by Phillip Toyne,¹⁶¹ a well-respected lawyer who had worked for the PC and been deeply involved with Anangu in their land rights campaign. Toyne had deep knowledge of both AP and the PC when he met with each of the Executives, initially separately in Umuwa on 25 June and in Alice Springs on 26–27 June. Dodson then held mediation sessions with all parties in both Umuwa and Alice Springs on a number of days during July.¹⁶²

Dodson reported to Minister Roberts in August 2002, and the report was tabled in Parliament on 29 August. The observations and recommendations that Dodson provided were succinct, penetrating and plain-speaking. He reported his 'great professional disappointment' in being unable to resolve the dispute, and he had concluded that in his mediation efforts, 'the process had broken down irretrievably' (Dodson 2002, p. 1).

Dodson briefly summarised the history of the dispute, pointing out that while the PLRA specifies a role for AP and the Executive Board of AP, there is no mention of any role for the PC under the PLRA. However, while the PC had no designated role under the PLRA, 'nevertheless AP for most of the life of the PLRA engaged the PC to provide legal, anthropological and other services to AP' (Dodson 2002, p. 1).

He identified that the dispute emerged when, 'sometime late in 2001 the AP ceased to engage PCI for the delivery of legal and anthropological services' and that while AP had

¹⁶⁰ The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner was created by the Commonwealth Parliament in December 1992 in response to the findings of the Royal Commission into Aboriginal Deaths in Custody. Dodson also served as Counsel assisting the Royal Commission into Aboriginal Deaths in Custody and held many other associated highly respected roles in pursuit of self-determination for Indigenous peoples in Australia and internationally.

¹⁶¹ Toyne had also co-authored '*Growing Up the Country: The Pitjantjatjara Struggle for their Land*' with Vachon in 1984.

¹⁶² Mediation sessions were held in Umuwa from 11–26 July and Alice Springs on 29 and 30 July.

the power to make this decision, it had sparked intense conflict ‘with claim and counter claim, accusation and counter accusation’ (Dodson 2002, p. 2).

Dodson referred to a deliberate politicisation of the dispute by politicians with direct links to the Executive, and of their preparedness to use confidential mediation discussions to further their own ends. In a strongly worded rebuke directed at Opposition (Liberal) Aboriginal Affairs spokesperson Kotz,¹⁶³ Dodson (2002, p.2) spoke of his distress when he learned that Kotz had asserted in Parliament that he agreed with her and had taken the side of, and was aligned to AP:

It now pains me no end to now see something I said privately to the AP Executive Board being used inaccurately and for party partisan political purposes in the Parliament. For me there is no clearer illustration of the way in which the parties have conducted themselves throughout the dispute, almost no tactic including breach of trust is discarded.

As Dodson (2002, p. 2) described, it was a litany in the Parliament and on the Lands too, of what he termed ‘claim and counter claim accusation and counter accusation’. Dodson (2002, p.3) detailed his concern that some of the enmity between ‘players’ had longstanding historical origins and that a small number of people ‘did not genuinely desire a mediated outcome’. He argued that poor advice was being provided to Anangu in both the PC and AP about the mediation process and broader aspects of the PLRA.

Dodson (2002, p.3) considered that the duty of an elected Executive Board was to protect the interests of TOs ‘in relation to the use, management and access by others to the Lands’. Accordingly, AP had ‘political advocacy, negotiation and administrative functions in protecting those rights and interests on behalf of the Traditional Owners’, which Dodson argued included hiring staff and ensuring the provision of independent expert advice to TOs (ibid).

Dodson was clear in his view that AP had *no* role in the provision of services. Rejecting the ‘peak’ umbrella service delivery model promoted by the ATSIC and DOSAA sponsored 1998 Operational Review (and later PDP Report), Dodson (2002, p. 3) explained:

I do not believe that it was ever intended, nor do I think the AP is the appropriate legal vehicle, as presently constituted under the provisions of the PLR act, to deliver a host of municipal or human services to the communities on the Lands generally and the TO’s particularly.

¹⁶³ On 1 August, Opposition spokesperson Kotz continued urging AP to split from the PC and claimed that Dodson was ‘aligned’ to AP and supportive of her view. Kotz accused the PC of being ‘irrational and not necessarily eager to assist in the [mediation] process’ (Hansard, EA 1 August 2002, p. 102). Minister Roberts (Hansard, EA 1 August 2002, p. 102) defended the impartiality of Dodson’s mediation process and inferred that the Opposition was fuelling, if not manipulating, the dispute.

He argued (2002, p.3) that the fundamental role of AP did not appear to be understood, or appreciated, by the AP Executive Board, staff of AP or Government officials:

With the exception of PC there has been a tendency to inflate or expand the position of AP beyond what is provided for in the Act.

This is a muddle headed view of the PLRA and the AP!

It is not appropriate to ascribe to AP roles that are not provided for under the statute.

Dodson argued against AP's involvement in the delivery of municipal and other human services because it 'has the potential to place them in conflict from time to time with the interests of the TOs' (Dodson 2002, p.3).

On governance, Dodson suggested that, at that time, the AP Executive¹⁶⁴ was 'unrepresentative, undemocratic, unaccountable, seriously confused about its role and future role'. He also raised concerns about the 'possible misuse of Board funds', which he suggested 'should be explored' (Dodson 2002, p.4).

Dodson advocated a review of the PLRA due to its 21-year history. He advocated a closer examination of local government models for the Lands: 'what this might look like is a matter for discussion, consultation and negotiation between Anangu, their representatives and government'. Specifically, Dodson (2002) recommended:

- AP Executive Board members to be elected for a minimum 3-year term
- Election to be by secret ballot and/or conducted by relevant state electoral authority
- Number of Board members to be expanded to represent all major Lands communities
- Board Chairperson to be elected by members of the Board through independent secret ballot
- Fixed number of seats to be set aside for female Anangu Executive members
- Qualifications for candidature to be detailed
- Dispute resolution through mediation and arbitration provisions
- Recognition of Yankunjatjara [sic] in the PLR Act
- Limitations on use of proxy representatives at AP Executive meetings.

Dodson pointed out that while AP's Constitution enabled most of the above to be enacted, some matters required legislative amendment, which he favoured as a means of enshrining good practice. Dodson expressed a sense of profound concern and disappointment at the collapse of the mediation discussions.

Acknowledging the organisation's historical depth, Dodson wrote of the PC as having been a champion of political advocacy and agitation on behalf of the people of the AP Lands. He pointed out that it was the PC that had secured the PLRA. He also noted that the PC had been instrumental in achieving the hand-over of Uluru to the TOs:

¹⁶⁴ Under the Chairmanship at this time of Burton.

On any measure PCI [sic] has a very successful history in achieving Land Rights for Anangu. It is a record that any Indigenous organisation can be justifiably proud of (Dodson 2002, p. 5).

Dodson's (2002) Report cut to the heart of the structural problems bedevilling the PLRA. While Dodson's efforts at mediation had no effect on what he portrayed as frustratingly self-serving and wilfully obstructive 'Party partisan' politics, his Report established a baseline for next steps to be taken by the South Australian Government.

However, Dodson's Report (2002) was also not without its critics. For example, then AP Chairman Burton was reported as saying that Dodson's Report was 'unbalanced':

[It's] not really a true story—it's not real to Anangu people. This story about money misuse is untrue. We have in Alice Springs an accountant and bookkeeper and in Umuwa a financial manager. We have auditors too (*The Australian* 30 August 2002, p. 4).

5.5.1 Parliamentary Select Committee on the PLRA established

Following the tabling of Dodson's Report in August 2002, a *Parliamentary Select Committee on the Pitjantjatjara Land Rights Act*¹⁶⁵ was established with bipartisan support (South Australia Legislative Council 29 August 2002, p. 957).

The SC was asked to report on:

- a) the operation of the Pitjantjatjara Land Rights Act 1981;
- b) opportunities for, and impediments to, enhancement of the cultural life and the economic and social development of the traditional owners of the lands;
- c) the past activities of the Pitjantjatjara Council and Anangu Pitjantjatjara Executive in relation to the lands;
- d) future governance required to manage the lands and ensure efficient and effective delivery of human services and infrastructure; and
- e) any other matters.

This was the first full review of the PLRA since its inception. The SC held public hearings in Adelaide, Alice Springs, Yulara and on the Lands at Umuwa and in six community locations. Ninety-six witnesses gave evidence to the Inquiry, which finished its hearings in 2003 and finalised its Report to the SA Parliament in June 2004. Chapter 6 will discuss this report in more detail.

5.6 First Coronial Inquest Reports

Running alongside the entrenched struggles and political controversy surrounding the PC and AP was Coroner Chivell's Inquest into the deaths of three men by petrol sniffing on the Lands. The Inquest convened at Umuwa on 28–31 May, 3–6 June and 6 September 2002. State elections were held, Rann's minority government was formed, and disputation

¹⁶⁵ The SC was Chaired by Minister Roberts and comprised the Hon. John Gazzola (Labor), the Hon. Sandra Kanck (Australian Democrats), the Hon. Robert Lawson (Liberal), the Hon. Caroline Schaefer (Liberal) and the Hon. Nick Xenophon (Independent, No Pokies). Due to illness, Nick Xenophon was unable to participate in the activities of the Committee.

over the Executive seeking to sever its agreement with the PC peaked, while at hearing after hearing, Anangu from communities all over the Lands quietly poured out their sense of loss, trauma and suffering to the Inquest into the deaths of people who had been loved parts of their immediate families and extended kinship networks. The Inquest heard of Anangu living in a ‘constant state of grief’ (Coroner 2002, [T400–402], p. 33). It heard testimony of the effect on communities:

If the petrol sniffers are running riot, few people get to sleep; the whole place is in uproar. Sometimes there is damage; there’s community meetings; there’s white fellas growling at you; there’s police running around. The whole thing is very stressful, and it goes on night and day and it’s extremely disruptive to everyone’s life (Coroner 2002, [T30], p. 19).

Testimony at the Inquest emphasised this Anangu perception that petrol sniffing was ‘imported in, so the answer must be imported in because we have no answer here for this problem’ (Coroner 2002, T31, p. 21). In his submission, elder Kunmanara Thompson, father of one of the deceased, made this poignantly clear:

There has been petrol sniffing since the 1950s. Who is responsible? The petrol doesn’t belong to us. It is not part of Anangu law. It was introduced to the Lands by white people. It is important that Anangu revive their culture and hold on to their culture.

The problem with petrol comes from outside, it’s like the Maralinga bomb tests, the solution should come from the outside too (Coroner 2002, [Exhibit C24c, p4], p. 19).

Anangu elder Kumunara Ward, an Aunt of Kunmanara Thompson and member of the NPY Women’s Council, told the Inquest that:

Petrol is not from our culture; it’s got nothing to do with Aboriginal people’s culture or law. It comes from white people, from white people’s culture, from white people’s law.

Kids sniff petrol because families just don’t have enough money. They don’t have enough of anything. That’s why they sniff (Coroner 2002, [T327], p. 18).

Dr Torzillo of Nganampa Health suggested in his testimony that ‘alienation and sometimes hopelessness’ was a factor in young and mature aged men’s use of petrol as an inhalant. Torzillo is also cited as stating that:

there seems to be a widespread view within government...that this is a problem which the community should solve, this is their responsibility...

This is a community with less resources and ability to control a tough problem than any mainstream community...and secondly, that’s not a demand that’s put on any other community in the country.

No-one, no politician and no bureaucracy expects that...a suburb like Cabramatta...have to solve the heroin problem and it’s up to them to do it.

No-one makes that demand of them...because it’s a stupid thing to do, it’s clearly not possible (Coroner 2002, [T1 55–6], pp. 20–21).

Jane Lloyd of the NPY Women's Council gave evidence of the connection between domestic violence and petrol sniffing. She suggested that one in four women on the Lands at that time aged between 15 and 44 years was, or had been, a client of their services, and that around 80% of violence experienced by clients was committed 'by males who are under the influence of marijuana, alcohol or petrol' (Coroner 2002, [C41a p.1–2], p. 17).

The NPY Women's Council submission called for system changes in the form of 'legislation, police procedures, court procedures and women's shelters in Alice Springs', and argued for a 'permanent police presence, a more expedient court system, and a local women's shelter' for the Lands.

Repeating a longstanding request of Anangu, the NPY Women's Council also argued the urgent need for 'a treatment and rehabilitation centre located close to their home communities' (Coroner 2002, [C41a p.3–4], p. 18).

As earlier discussed in Chapter 3 of this thesis, in 1986 the South Australian Government had promised to build a treatment and rehabilitation facility on the Lands 'within twelve months';¹⁶⁶ however, 16 years later, this important facility had not been built. This example was raised by a number of Inquest witnesses as indicative of Government inaction (Coroner 2002, [T400–402], p. 33; p. 39; p.40; p. 47; p. 75).

Evidence also highlighted a lack of post-primary education on the Lands. Apart from the University of South Australia's Anangu tertiary training program, AnTEP,¹⁶⁷ vocational training, trades and apprenticeships remained largely unavailable.

Anangu evidence to the Inquest complained that there was little employment on the Lands outside of the CDEP program. As one elder, Mr Young, described, '...there is not enough work for the young people to be proud of' (Coroner 2002, T312, p. 18).

In a powerful statement to the Inquest, the NPY Women's Council Coordinator, Maggie Kavanagh, expressed strong feelings about the way the repeated requests by Anangu for support were met with a culture of inaction by governments or repeated requests for more information:

¹⁶⁶ In December 1986 Health Minister Cornwall, announced that the South Australian Government would build a rehabilitation facility for petrol sniffers on the Lands 'within twelve months' (Burnett 1986, p.1).

¹⁶⁷ As described in Chapter 1 the University of South Australia's AnTEP program commenced with its first intake of 10 students in 1984. Most students of AnTEP studied Anangu teacher training and over the years scores of graduates obtained Diplomas or Bachelor degrees in Anangu education and gained employment across the Lands in Schools and associated positions. It was considered by PYEC and Anangu to be a successful example of AP initiative and an important education for employment program.

Anangu are sick and tired of yet again having to tell the government what they want, because they know the next time a government person comes here, it won't be the last one, the same person that they talked to the last time, it will be a different person. And so they have no relationship, they have no corporate memory about what has gone on, they have no knowledge of the history of the communities, what the issues are, who people are, they know nothing about their lives, they know nothing about the tragedy and the grief in people's lives... weekly people are going to funerals here, it has enormous impact on people's lives because they're always grieving, let alone their health being so poor, people are in a constant state of grief.

We don't need more reports, we don't need more enquiries, we don't need more meetings with government to say, '*What do you want?*'. Anangu have written it down time and time again.

The recommendations from the AVGAS conference was very, very thorough, it involved 40 communities across a wide area. You couldn't get more clear about what is needed and what people want...

...in the meantime we know that kids are dying, we know that services aren't getting out here, we know that the incidence of acquired brain injury on communities mean there are many, many more children who are ending up in wheelchairs....

Anangu have said they want youth workers in every community, they want housing for youth workers. They want a detox/rehabilitation facility. They want more money for diversionary and sport and rec activities. They have said this consistently for years (Coroner 2002, T400–402, p. 33).

There was no criticism of Anangu governance during the Inquest. Only one comment referred to Anangu governance, and it was aimed at governments rather than Anangu. Consultant John Tregenza, a long-term worker on the Lands with affiliations to Nganampa Health, suggested that governments were mistaken in their tendency to concentrate on the AP Executive as if it were somehow 'the Parliament of the Anangu Pitjantjatjara lands' (Chivell 2002, T232, p. 31).

Echoing Dodson's (2002) report, Tregenza suggested that the governments' fixation with wanting a peak representative body showed 'a lack of knowledge of the history of the organisations on the lands'. Tregenza argued that the Executive was not the paramount organisation, but one of a number of Anangu organisations, some of which 'such as the Pitjantjatjara Council, existed before the passing of the Pitjantjatjara land Rights legislation' (Chivell 2002, T232, pp. 29–30).

5.6.1 Findings

The Coronial Inquest Report stated early in its findings that petrol sniffing was not a new issue, but rather one that had been entrenched for more than 20 years. Chivell found that the number of petrol sniffers on the AP Lands 'fluctuated from as high as 178 in 1993 to a low of 85 in 1995 and then a gradual increase back to 166 in 2000':

The extent of the problem diminished somewhat in the mid 1990's, and it is apparent that there was a reduction in effort towards tackling the problem. It has been apparent since at least 1998 that the problem was returning, and that the prognosis was bad, but little has been achieved to restore the effort to pre-1995 levels, let alone take it further (2002, p. ii).

Reasons given at the Inquest for the decrease in petrol sniffing between 1993 and 1995 related primarily to the introduction of Avgas, as well as the policy and material support for the ‘outstations movement’ with the resurgence of cultural activities such as hunting, ceremony and land maintenance as a result of support for homelands (Chivell 2002, T135–336, p. 11; T22, p. 10).

Chivell also noted that there had been a marked decline in the South Australian Government’s support in funding and service provision for Anangu communities in the mid 1990s, and that the maintenance of homelands had been neglected.

Chivell (2002, p.75) referred to the ‘remoteness of bureaucracy’, demands for outcome reports and cumbersome grant processes. He cited evidence of what he found to be ‘appalling’ and inadequate service provision. He emphasised the ongoing requests from Anangu for government help:

the wider Australian community has a responsibility to assist Anangu to address the problem of petrol sniffing, which has no precedent in traditional culture. Governments should not approach the task on the basis that solutions must come from Anangu communities alone (Coroner 2002, p. 75).

In their analysis of petrol sniffing in Central Australia, d’Abbs and Brady (2000, p. 23) noted that ‘the situation today remains in many respects little different to what it was thirty years ago’. They argued that the way governments addressed petrol sniffing as a short-term crisis impeded its resolution.

Citing the cyclic and sensationalist nature of media attention, d’Abbs and Brady (2000, p. 23) identified ‘that petrol sniffing remains on the public agenda in...a transient manner’, and that petrol sniffing as a public issue ‘owes almost everything to media outbursts’, whereas long-term systemic support is needed. Chivell echoed these sentiments, noting the fluctuations in cycles of ‘crisis’ funding, and arguing for ongoing sustained support:

It would also be preferable...if programmes are funded on a triennial basis, as recommended by the Royal Commission into Aboriginal Deaths in Custody (Coroner 2002, p. iii).

The Inquest Report also emphasised a lack of effective government support:

I believe that both the federal and state governments have failed the people up here in that they have been aware of this problem up here for...more than 30 years...and still there is very little that occurs, and I don’t think it’s for want of resources (Chivell 2002, p. 24).

Chivell found that too much emphasis was placed on consultation and discussing ‘the issue’, while action on the ground remained limited and poorly planned:

the redescription of the problem and the research has been going on long enough...everyone knows what there is to know about petrol sniffing is really significant...there should have been action some time ago (Chivell 2002, p. 12).

Coroner Chivell (2002, p.20) highlighted that systemic political, policy and socio-economic issues had disadvantaged Anangu communities. He argued that government inaction over the 1986 promise to provide a rehabilitation facility on the Lands, as well as a lack of adequate police presence, had not only contributed to the increased prevalence of petrol sniffing, but also to family violence and the disruption to community life that ensued:

Clearly, socio-economic factors play a part in the general aetiology of petrol sniffing. Poverty, hunger, illness, low education levels, almost total unemployment, boredom and general feelings of hopelessness form the environment in which self-destructive behaviour takes place.

That such conditions should exist among a group of people defined by race in the 21st century in a developed nation like Australia is a disgrace and should shame us all.

A constant theme before the Inquest was the need for greater government assistance with the problems of petrol sniffing, education, welfare, health, employment, and housing needs—‘only coordinated and outside funded—that means in this instance government funded—programs are going to have any impact’ (Chivell 2002, p. 24).

The 2002 Inquest Report raised no concerns with the existing PLRA (1981). Not one witness, nor any submissions to the Inquest, saw the PLRA as being relevant to petrol sniffing or affecting AP service delivery issues in any way. However, the Coroner specified that separate new legislation around substance controls to enhance policing powers was needed. The Coroner noted that Anangu were generally scathing about the lack of Government support.

In relation to the SA Department for Families and Youth Services Chivell said:

several of the witnesses were critical of the level of services provided by FAYS to Anangu. Mr Charles, Counsel for the families of the deceased, described the level of services to Anangu youth as ‘appalling’ (Chivell 2002, p. 75).

that agencies are unable to offer long-term appointments with no guarantee of continuance because Commonwealth and State governments insist on providing short-term funding for projects, is also unhelpful (Chivell 2002, p. 56).

Anangu cannot be expected to find all of the human and other resources to tackle these problems. They need...assistance and input of non-Anangu professional people to tackle these problems direct, and give them the power and skills to take up the task in due course (Chivell 2002, p. 58).

Coroner Chivell (2002, p.37) bluntly criticised the South Australian Government and urged greater support for ‘developing and fostering community cohesion’. He emphasised the perception that there were serious human rights issues for the Lands.

It seems to me that in the Lands there is actually a human rights issue here. Everywhere else in Australia communities are able to feel a certain level of security in the knowledge that they have access to reasonably rapid police services, and the fact that at a minimum it takes two hours for the police from Marla to get to most communities

...to me this is really an issue of basic human rights and not being able to be accessed by the community members in the Lands, and I believe they have a right to a range of government services in terms of say health, education

...somewhere along the line there seems to have been a decision made that they don't have the right to the protection of the community itself from people who may be at risk of either harming themselves or harming other people in the community (Chivell 2002, p. 70).

Chivell (pp. i-v) made 17 specific recommendations on immediate interventions regarding policing, engagement of community constables, Anangu training for assuming job roles, the long-promised rehabilitation facility, and a range of diversionary and preventative strategies. Finally, he urged (2002, p.36) the South Australian Government to act immediately if further deaths were to be avoided, stating that '...there is no need for further information gathering':

What is missing is prompt, forthright, properly planned, properly funded action.

5.7 Conclusion

The Coronial Inquest was a wake-up call to Commonwealth and South Australian Governments that came one month after Dodson's (2002) confronting report was received. New Minister Roberts had appointed a new CEO for DOSAA, which was now re-configured in conjunction with the Premier's Department to strengthen its policy focus. A bilateral inter-agency group called the 'Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee' (APLIICC) assumed responsibility for overseeing the implementation of 17 specific recommendations made by the Coroner in the findings of his Coronial Inquest into Anangu deaths by petrol sniffing on the AP Lands.

As the first year of Rann's minority government ended, many challenges lay ahead in improving service provision to the Lands. The new parliamentary SC was charged with reviewing the PLRA. Major issues remained unresolved between key Anangu protagonists and organisations on the Lands.

On 28 September 2002, a Commonwealth-led review of the NPY Women's Council was announced 'to ensure that an effective community driven and properly resourced women's council provides measurable and culturally appropriate services to its community' (Lawson, South Australian Legislative Council 15 October 2002, p. 1022).

Although funded by the Commonwealth, the review was expected to report to the newly formed APLIICC, under the South Australian Government.

As outlined in Chapter 4, in 1999, the NPY Women's Council had received \$800,000 dollars in Commonwealth funding (for three years) to deliver a regional response to petrol sniffing in Central Australia, including for communities on the Lands. At the conclusion of the funding period, the regional approach adopted by the Commonwealth was not considered to have been the most effective means for dealing with the escalating issues associated with petrol sniffing.

The Shaw (2002) review of NPY's petrol sniffing project delivered at Kaltjiti (Fregon) from 1999 to 2001 made thoughtful observations about the importance of 'sustained local level community' connectedness for externally funded projects to be effective. It argued that 'delivering blocks of activities to communities with endemic chronic sniffing is unlikely to result' in desired outcomes, and that what was needed was 'a confluence of policing, law and justice, education, youth work, health and recreational strategies' accompanied by consistent and prolonged input from well-resourced external agencies (Shaw 2002, p. 35). The latter echoed the findings also of the Coronial Inquest.

The Commonwealth's approach in the late 1990s discussed in chapter 4, of dispersing one-off project grant funding via regionally controlled Anangu organisations was not netting the practical change anticipated. Heightened scrutiny of Anangu organisations (such as NPY and Nganampa Health) was one result. Not only were the PC and AP under pressure, but other Anangu regional bodies were now faced with new accountability measures and heightened scrutiny.

Despite the best efforts of mediators and pro-PC supporters, with the support of new Administrator/Acting CEO Marshall, AP severed its service agreement with the PC. Without funding or support, the PC wound up its legal and anthropological operations.

In an audacious and swift retaliatory coup on 7 November 2002 at the AP AGM, the immediate past Chair of the PC, Gary Lewis, was elected incoming Chair of AP with the strong support of a broad range of TOs from across the Lands (Minutes of meeting, 7/11/2002). Minister Roberts issued a press release congratulating the new Executive, which included new women members, and stated also in Parliament that election of the new Executive represented:

a significant opportunity to reverse almost a decade of neglect which has led to a breakdown of basic human services, including health, housing and education (South Australia Legislative Council 12 November 2002, p. 1228).

By 14 November 2002, incoming Chair of AP Lewis moved quickly to sever Acting CEO Marshall's contract¹⁶⁸. After some disputation and settlement discussions, Marshall quietly and quickly left the Lands. An eventful chapter in AP's journey had reached a dramatic conclusion. However, tensions and conflicts between key agencies and the many actors involved in the PLRA story still had a long way to go before reaching an even more calamitous peak.

¹⁶⁸ Internal correspondence between the parties shown to the author privately backed by private discussions with the key participants.

Chapter 6: 2003–2005: Consultations, Crisis, Consultants and a Second Coroner’s Inquest

‘The sheer number of inter-departmental and inter-governmental forums for dealing with issues such as petrol sniffing on the AP Lands reads like a nightmare from a Kafka novel’
Jonas (2004)¹⁶⁹

6.1 Introduction

In the months following the September 2002 release of the Coronial Inquest into Petrol Sniffing, the conflict between the PC and AP resolved in AP’s favour. A new AP Executive was elected in November 2002, with ex-PC Chair Lewis becoming AP Chair. Greater prominence was given by the South Australian Rann (minority Labor) Government to the bilateral ‘Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee’ (APLIICC). It was hoped that the APLIICC would bring together government responses to petrol sniffing and address the ‘fragmentation of effort and confusion and alienation of service providers’ identified by Coroner Chivell (2002, pp. 75–77).

Two major partnership agreements were promoted in the first half of 2003. The first, on 24 January, was a strategic ‘Statement of Intent’ between the State Government and AP, which outlined the Government’s commitment to improving service delivery to the Lands. The second, on 22 May, was a joint Commonwealth/state/AP ‘Working Together’ Memorandum of Understanding (MoU), which confirmed the Lands as one of eight COAG sites selected to trial ‘whole of government action’¹⁷⁰ (COAG 2002).

Despite these new arrangements, tensions between Anangu and the Government re-emerged at the end of 2003, particularly around the role of the ‘Allocations Committee’ established under the COAG trial to involve Anangu stakeholders in funding decisions (HREOC 2003).

¹⁶⁹ See Jonas (2004).

¹⁷⁰ In April 2002, the COAG announced that governments would work in partnership to improve service delivery to remote Aboriginal and Torres Strait Islander communities (COAG 2002). In eight trial sites, one of which was the APY Lands, Commonwealth and state/territory governments agreed to work on a ‘whole of government’—interdepartmental and intergovernmental—basis together with Aboriginal and Torres Strait Islander communities.

Among other governance reforms sought by AP was an extension of its Executive's term of office from one to three years, as recommended by Dodson (2002, p. 2). However, attempts to realise this change initially failed.

The cumbersome nature of the interdepartmental, intergovernmental APLIICC slowed on-ground service delivery and by early 2004, the State government's response to the 2002 Coroner's Report was stalling. The Coroner indicated his intention to hold another petrol sniffing inquest and Rann went into damage control. In a strongly worded statement, the South Australian Government announced an end to self-determination on the Lands.

This chapter maps the period leading up to this crisis in Anangu–state government relations in March 2004. It chronicles how the Premier centralised control of AP issues in an effort to limit the political fall-out feared from media scrutiny over petrol sniffing.

A critical analytical lens is used to reveal how alleged 'failures' of AP governance were discursively constructed, then widely promulgated as the excuse, if not focus of blame, for delays in government service delivery to Anangu communities battling chronic petrol sniffing. The chapter also discusses the roles of a succession of well-paid external administrators, consultants and advisers engaged by the government to propose solutions to what was framed as an 'Anangu problem'.

I: Consultations: Plans and Committees in 2003

6.2 Statement of Intent

With a new AP Executive elected with Lewis in the Chair, Minister Roberts aimed to broker a fresh start in Anangu–government relationships. On 24 January 2003, he hosted an event to celebrate the signing of a formal 'Statement of Intent' (Williams 2003; Roberts, LC Hansard, 3 April 2003, p. 2086) committing the SA Rann (Labor) government to cooperate with AP and its new Executive on issues of shared concern. Present were four Ministers from the Aboriginal Affairs, Human Services, Environment and Resources portfolios, several senior Commonwealth and state departmental officials, and a delegation of 25 Anangu from the Lands.¹⁷¹

Announcing the 'Statement of Intent' as indicative of the Rann government's aim to work well with the new AP Executive, Roberts suggested that the dispute between AP and the

¹⁷¹ The delegation included representatives from eight Anangu communities on the Lands and Board members of key Anangu regional organisations, including the NPY Women's Council, Nganampa Health and PY media.

PC had been prolonged by ‘white-gatekeepers’¹⁷² (*The Weekend Australian* 25 January 2003, p. 3). He stated that his ‘first priority is to address human services issues and out of that will come land management, the dividing issue for the last 20 years’ (2003, p. 3). AP’s new Chairman Lewis responded by emphasising the determination of Anangu leaders to ‘work together’ with governments to overcome petrol sniffing in their communities:

We’ve been working in different directions and we’ve lacked government support. Now our people are united. But the problems still exist—we’ve got more young people sniffing petrol. We’ve got to set up a program for the young people (*The Weekend Australian* 25 January 2003, p. 3).

AP had held a planning workshop¹⁷³ the day before the ‘Statement of Intent’ event, which identified ‘land and culture; petrol sniffing; education and training; women’s issues; and community safety and youth issues’ as the priorities that Anangu wanted to urgently address (Williams 2003, p. 8).

In addition to this Adelaide workshop, a second AP planning session held in Alice Springs over two days in February 2003 was attended by more than 165 delegates from Anangu regional organisations, communities and other service providers. A third planning workshop was held with TOs at AP’s General Meeting in Umuwa in March 2003. The resulting ‘APY Land Council Strategic Plan 2003’ was presented to the South Australian Government by AP’s Executive in April (Williams 2003, p. 7).

The ‘Statement of Intent’ that facilitated AP’s focus on local strategic planning was also the first stage towards the more formal ‘Working Together’ MoU between Anangu and the Commonwealth and state governments, as outlined below. Roberts was keen to use the rubric of the COAG ‘whole of government’¹⁷⁴ approach, announced in April 2002, to promote the repair of Anangu/state relations wherever possible.

¹⁷² Roberts believed that interference by piranpa (and pro-mining interests especially) in AP decisions was creating too much pressure on Anangu. He argued that some of the entrenched hostilities between Anangu protagonists had even been deliberately promoted for party politics or the advancement of outside interests. Roberts’ difficult interactions with Marshall, the Management Consultant funded by ATSIC, added to his preparedness to be overtly partial toward Anangu TOs who questioning of the pressure for change. This led in turn to suggestions Roberts was politically aligned with Lewis.

¹⁷³ AP requested that the South Australian Government fund it to engage Aboriginal management consultant Rod Williams of ‘Gongan consultancy’ to develop a detailed Strategic Plan. For more info on ‘Gongan’ and Rod Williams see: <http://www.gongan.com.au>

¹⁷⁴ For a discussion of ‘whole of government’ trials on the Lands, see d’Abbs and MacLean (2003) and Tedmanson et al. (2011).

6.2.1 Mining still in focus as arts gain support

Roberts was aware of concern in the mining lobby and the Liberal opposition at Lewis's election to the Chair of AP, given Lewis's opposition to fast-tracking mining exploration when with the PC. Roberts was also the leader of Labor's left faction in SA at this time and¹⁷⁵ was perceived to be pro-land rights, pro-self-determination and wary of the mining lobby. In contrast, Premier Rann set about working with the mining lobby to promote the benefits of an open-door approach to mining on the Lands.

Under the headline 'Royalties lure for blacks on mines', a feature article reported that:

The mining industry is wooing Aboriginal communities in the Anangu Pitjantjatjara lands of central Australia with promises of 'potentially huge' royalties to restart exploration, which they say has been strangled by bickering between communities. Miners believe the 'under-explored' territory contains gold, silver, platinum, nickel, lead and zinc. The wooing includes showing Pitjantjatjara leaders Northern Territory mines generating jobs and prosperity (*The Weekend Australian* 25 January 2003, p. 3).

Lewis responded that the new Executive would 'be more accommodating to exploration' (*The Weekend Australian* 25 January 2003, p. 3). AP was also keen to develop its arts industry to ensure work and a future for young people in communities. Rann announced a special 'one-off' \$150,000 grant to help the 'estimated 300 artists' on the Lands into the national art market:

'Artworks like painting, works on paper and craft are currently the major regular source of income earned from outside the region', Mr Rann said. 'My Government is keen to increase communities' capacity for self-help, particularly as we seek ways of responding constructively to serious issues of the kind exposed by the coronial inquiry into petrol sniffing deaths' (*The Advertiser* 12 March 2003, p. 111).

Petrol sniffing was the first priority of the new AP Executive, as detailed in the 'Statement of Intent' and at every workshop, meeting and government forum. However, it was not viewed in isolation, but as part of broader challenges for Anangu communities to generate employment and hope.

6.3 'Working Together': The COAG Trials

Minister Roberts brought the AP Executive into closer dialogue with the APLIICC. The Coroner had criticised the APLIICC¹⁷⁶ for being 'stuck in the information gathering

¹⁷⁵ Terry Roberts had worked as a ship's engineer and was an active union delegate for the Australian Metal Workers Union, a left-wing union that was prominent in Labor politics in the 1980s and 1990s. A left faction convenor before being elected to SA's Legislative Council in 1985, Roberts became Shadow Minister for Aboriginal Affairs and Correctional Services in 1993. He was appointed Minister for Aboriginal Affairs and Reconciliation, Minister for Regional Affairs and Minister for Correctional Services by Rann in March 2002. The role of Minister Assisting the Minister for Environment and Conservation was added in December 2002.

¹⁷⁶ Along with the Commonwealth's Central Australian Cross Border Reference Group on Volatile Substance Abuse.

phase' and taking 'far too long to act' (Chivell 2002, pp. iii, 35–36). Roberts wanted APLIICC to coordinate governmental efforts on priorities nominated by AP that, along with Nganampa Health and the NPY Women's Council, continued to push for greater practical support for people affected by petrol sniffing. At the request of AP's Executive with Lewis as Chair, Nganampa Health became a formal member of the APLIICC.

The APLIICC had Tier One and Tier Two¹⁷⁷ committees, the SA Petrol Sniffing Task Force (now absorbed into Tier One's functions) and the Central Australian Cross Border Reference Group on Volatile Substance Abuse. Another coordinating body, the 'Tri-Jurisdictional Justice Group', was established early in 2003 to examine legislative and policy means for greater cooperation between courts and police across the tri-state border region (HREOC 2003). Meetings with Commonwealth and State officials continued as a major feature of Anangu leaders' lives.

In addition to the existing coordinating mechanisms, a new layer of 'inter-governmental inter-agency collaboration and coordination' was also taking shape. The Lands had been named one of eight COAG trial sites¹⁷⁸ in April 2002, and during 2003–2004, the Lands received 'whole of government' attention (SC Report 2004).

6.3.1 From Statement of Intent to MoU

In May 2003, at yet another meeting between Commonwealth and state representatives, Anangu regional service providers, local community representatives and the AP Executive published a joint ministerial press release¹⁷⁹ to announce the signing of a 'Working Together' MoU between AP and Commonwealth and state governments on the COAG trial. Roberts reported to the SA Parliament as follows:

We [met] with the federal government in the AP lands last week. We met with the AP Executive, and the members of the COAG trial, the Hon. Kay Patterson and the Hon. Philip Ruddock and their support staff. We have had numerous meetings here in Adelaide in relation to building up a working relationship with the new AP Executive. We signed a partnership arrangement with them in January. There were further meetings held in Alice Springs that included some 150 representatives who attended to endorse and discuss the resolutions that were made at the Adelaide seminar, and consequently we listed full recommendation to the federal government that the AP lands become part of the COAG trials. ... Tier 1 will be going to the lands, either in the first or second week of June and it will meet with the AP Executive to form those

¹⁷⁷ The APLIICC's Tier One comprised a core group of CEOs from a range of state government departments, the Commonwealth Department for Health and Ageing, ATSIC, AP Chairman and Nganampa Health Council. Tier Two comprised working groups of senior officers from state and Commonwealth agencies who were responsible for the implementation of the Tier One directives.

¹⁷⁸ In April 2002, COAG agreed to trial a 'whole of government' cooperative approach with Indigenous communities to 'provide more flexible programs and services based on priorities agreed with communities'. A further discussion of COAG's 'whole of government' initiatives is presented in Chapter 5 of this thesis.

¹⁷⁹ Signed by the Hon. Philip Ruddock (Minister for Immigration, Multicultural and Indigenous Affairs), the Hon. Kay Patterson (Minister for Health and Ageing), the Hon. Terry Roberts (SA Minister for Aboriginal Affairs and Reconciliation) and Gary Lewis (AP Chair).

relationships. With the COAG collaboration we now have federal ministers Ruddock and Patterson and our own cross agencies working together to maximise returns that, hopefully, we will get (SA Legislative Council 26 May 2003, p. 2370).

The Minister's reference to 'returns' undoubtedly included his hopes for added Commonwealth dollars, as well as improvements in Anangu well-being. Ruddock et al. (2003, p. 2) also emphasised 'shared responsibility':

The key to this initiative is that neither governments nor Indigenous communities can do it all on their own. We must work together...in partnership and share responsibility for improving outcomes and building the capacity of people in communities to manage their own affairs.

This COAG announcement was cause for hope, but some people foresaw pitfalls. Aboriginal and Torres Strait Islander Social Justice Commissioner Bill Jonas prophetically warned of danger, stating that 'the APLIICC/COAG trial process as the major interface between government and AP Lands communities' might become such a slow, cumbersome bureaucratic operation that it could 'foreclose the potential to make progress on an issue such as petrol-sniffing on the AP Lands' (HREOC 2003, p. 17).

Despite the public optimism of State and Commonwealth officials (and Anangu) at the 22 May 2003 COAG launch event, a shadow spread over the gathering with the terrible news that petrol sniffer Kunmanara Ward,¹⁸⁰ aged 19 years, had hanged himself that day on the 'monkey bars' in the playground at Indulkana.

6.4 'People Cannot Be Allowed to Die!'

In July 2003, Magistrate Hiskey delivered a sharp rebuke to the South Australian Government over the inadequate supervision of, and lack of support for, the petrol sniffers that he witnessed on the Lands. Anangu man Casper Yakiti was charged with petrol sniffing offences in a case heard by Hiskey during his June court circuit to Pukatja (Ernabella). Yakiti pleaded guilty and Hiskey ordered that he be counselled and placed on a supervised bond. However, Correctional Services wrote to Hiskey, claiming that they lacked the departmental resources and personnel to carry out his order.

The Coroner's 2002 Report had made specific recommendations about Lands-based justice and sentencing options.¹⁸¹ Hiskey was outraged and went public with his frustration at the government's inaction on petrol sniffing:

¹⁸⁰ The death of Kunmanara Ward was referred to the Coroner and subsequently became part of the additional inquests conducted by Chivell in 2004–2005, as discussed later in this chapter.

¹⁸¹ Chivell identified secondary interventions related to: a range of sentencing options available to the courts sitting in the AP Lands (recommendation 8.5); amending the *Public Intoxication Act* (recommendation 8.6); establishing night patrols (recommendation 8.7); planning for secure care facilities on the AP Lands (recommendation 8.10); implementing the recommendations of the SAPOL review into the Community

People are dying for want of intervention and assistance. Parliament [needs] to act immediately to ensure implementation of the findings of the Coronial Inquest into the deaths of three petrol sniffers on the Pitjantjatjara Lands (ABC News 23 July 2003).

Hiskey called for more supervisors ‘so that bonds, undertakings and community service obligations can be enforced’ (*The Advertiser* 24 July 2003, p. 25). Yakiti was a 27-year-old man with a two-year-old child, and he wanted to stop sniffing petrol. Hiskey argued that the lack of supervisors impeded Yakiti’s opportunity to be placed on a supervised bond, which amounted to systemic unfairness. In newsprint, on TV and through radio, Hiskey (2003, p. 25) expressed anger, pointing out that in his time on the Lands, ‘59 offenders came before the court charged with 138 petrol sniffing offences’.

He warned of serious consequences if the Government continued to delay. ‘People cannot be allowed to die when intervention and assistance may save them. The communities on the Pitjantjatjara Lands need assistance’ (ABC News 23 July 2003).

Constable Scheme and establishing a permanent police presence (recommendation 8.12); and ensuring that Marla staffing was at full strength (recommendation 8.13).

'These people can't be allowed to die'

Magistrate speaks out on petrol sniffing



A South Australian magistrate has spoken out about the 'grim' petrol-sniffing problem on the Anangu Pitjantjatjara Yankunytjatjara Lands and has called for immediate action.

"People cannot be allowed to die when intervention and assistance may save them. The communities upon the Pitjantjatjara lands need assistance," said Magistrate Gary Hiskey.

Mr Hiskey is one of two magistrates who routinely hold court sessions on the 'Pit Lands'. He made the comments in sentencing remarks relating to a 27-year-old initiated man, Casper Yakiti, charged with petrol sniffing.

The Yakiti case, heard by Mr Hiskey in Ernabella on June 24, resulted in the magistrate imposing a supervised bond order, which the SA Department for Correctional Services said was not possible.

Mr Hiskey said he made the order because he had formed the view that the alternative of a bond could provide the offender with positive support and assistance.

"It is not being over dramatic to say that this may be a life-and-death situation," he said. Mr Hiskey said there was no doubt that there were difficulties in providing services to remote parts of South Australia.

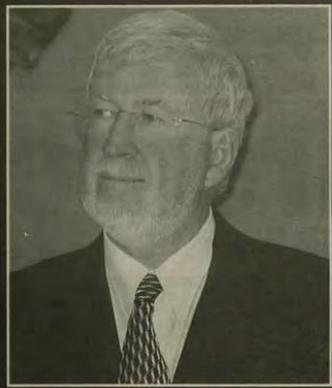
"However as a magistrate ... I perceive it to be my obligation when sentencing offenders to impose whatever penalty is most appropriate in law having regard to the circumstances of the offence and the offender," he said.

"The court sitting location ought not to be a relevant factor."

The magistrate pointed out that no action

'It is not being over dramatic to say that this may be a life-and-death situation'

— SA Magistrate Gary Hiskey



had been taken on the recommendations of SA Coroner Wayne Chivell in September 2002, after an inquest into three petrol-sniffing deaths.

Coroner Chivell stated in his findings that: "the range of sentencing options available to courts sitting in the Anangu Pitjantjatjara Lands must be increased. The SA Department for Correctional Services must provide supervisors so that bonds, undertakings and community service obligations can be enforced. The establishment of outstations/homelands and a secure-care facility would also provide options to courts."

Mr Hiskey said that it was imperative and urgent that action be taken to implement the recommendations of the coroner because the position on the Pitjantjatjara Lands was grim.

He went on to say that neither the court nor the Department for Correctional Services could deal with the socio-economic factors behind the petrol-sniffing problem but that did not absolve either the court or the department from doing what they could.

"The advice given to the court by the department is not acceptable. This defendant, Casper Yakiti, deserves the benefit of a

supervised bond," Mr Hiskey said.

He said that the court expected and required that its orders be carried into effect.

The magistrate's comments reverberated throughout the halls of power in SA, with Aboriginal Affairs and Reconciliation Minister Terry Roberts, who is also the Correctional Services Minister, saying that the orders of the court would be carried out.

"We will find a way to make that happen," he said.

Mr Roberts acknowledged the long-standing social problems created by petrol sniffing in the Anangu Pitjantjatjara Yankunytjatjara Lands, welcoming Mr Hiskey's efforts to increase public awareness.

The Minister said the Government had committed almost \$12 million over four years to the Pit Lands to address petrol sniffing and the recommendation of Coroner Chivell's report.

"It will take more than money to fix this problem," said Mr Roberts.

"This Government is dedicated to tackling the issue with a collaborative approach with the Anangu people. Solutions being finalised under this partnership take time and we must remember they need to be acceptable to the

people most affected," he said.

Of the \$12 million earmarked in the State Budget:

- \$7 million over four years for Department of Human Services health and wellbeing initiatives that will directly impact on petrol sniffing

- \$1 million over four years for policing and justice initiatives on the Lands

- \$1.163 million over four years for the Department of Human Services to provide regional office and respite initiatives

- \$2 million over four years for the Department of Administration and Information Services to provide staff housing in the APY Lands.

One of the reasons behind Mr Hiskey's action on the petrol-sniffing problem was that when his court was sitting at Ernabella, within a few hundred metres of the court room, a young man 'high' on petrol attempted to hang himself.

"He was saved only by police intervention at the last moment," said Mr Hiskey.

He said the situation at Ernabella was of such a concern that he adjourned the court and held a community meeting, expressing the "earnest desire of the court to deal with offenders in a manner that would provide a measure of protection both to the community and to the offenders themselves."

"During the course of the meeting an elderly woman came to the microphone and said that she wished there was some place upon the Lands where it was safe for petrol sniffers to be taken. She said that if such a place were established she would go there and cook for the young people affected and make sure they got proper meals," said Mr Hiskey.

"This is a simple statement made in the context of a profound problem. It points to the sorts of thing which the Coroner had in mind when he recommended that the range of sentencing options available to court sitting in the Anangu Pitjantjatjara Lands must be increased."

Department of Aboriginal Affairs and Reconciliation chief executive Peter Buckskin said one of the issues his department was investigating with other government agencies was the merits of acquiring a former cattle station to be used to assist in the sniffing crisis.

"Petrol sniffing is a social catastrophe, but we are determined to find appropriate ways to overcome it," said Mr Buckskin.

He said the Aboriginal Justice Consultative Council, which includes APY Lands chairman Gary Lewis, would continue meeting to progress initiatives to tackle petrol sniffing.

'This Government is dedicated to tackling the issue with a collaborative approach with the Anangu people' — SA Aboriginal Affairs Minister Terry Roberts



Figure 6.1: *Koori Mail* (30 July 2003, p. 5)

Minister Roberts announced \$12 million of funding¹⁸² for Lands-related initiatives during this same week (Media release, 23 July 2003). However, Commonwealth and State officials remained locked into the APLICC and its Tier 1 and 2 committees as they negotiated priorities for COAG trials.

The 'silo behaviour of different departments, which whole-of-government approaches were meant to overcome' was proving difficult to change (Hunt 2008, p. 30). As Fitzgerald observed in his critique of the *over*-investment in coordination, 'often

¹⁸² This included: \$8.163 million over four years for Department of Health Services health and well-being initiatives that directly affect petrol sniffing, and for regional office and respite initiatives; \$1 million over four years for policing and justice initiatives on the Lands; \$797,000 over four years for the Department of Aboriginal Affairs and Reconciliation for the introduction of legally licensed electrical operators; and \$2 million over four years for the Department of Administration and Information Services to provide staff housing on the Lands (Roberts 2003).

coordination by governments becomes a euphemism for inaction’ (Fitzgerald 2001, p. 10). Creating more and more committees to coordinate the activities of others can ironically generate a need for more committees to coordinate the coordinating committees. As Lea suggests, the paradox of coordination is that it actually ‘creates more fragmentation, which only more coordination can solve’ (Lea 2008, p. xvii).

6.4.1 ‘What is the name of that committee again please?’

As media attention on Hiskey’s rebuke subsided, government officials hosted yet another priority-setting ‘Shared Responsibility’ workshop with Anangu in Alice Springs in September 2003 so the ‘government and community representatives could set priorities for the COAG trial’ (HREOC 2003, p. 16).

Hundreds of Anangu participated, and most had attended some, if not all, of the previous consultations. The AP Executive, Nganampa Health, PYEC, the NPY Women’s Council, PY Media, TOs and various representatives of local community councils were again well represented. The focus of this meeting was the COAG trial. The South Australian Government was keen to lock in Commonwealth funding through the lead agency, the Department of Health and Ageing (DoHA). Anangu priorities remained the same; their most urgent concern was to receive help for petrol sniffing.

As the meeting dragged into its second day, Anangu elder Kunmanara Thompson strode purposefully to the microphone. This was no ordinary Anangu elder; this was the man who had signed the deed for the PLRA, whose son had died from petrol sniffing, and who had called for the Coronial Inquest¹⁸³—a man who was well known across the Lands and respected by Anangu and piranpa alike. In sheer frustration, he took to the microphone¹⁸⁴ and, focusing on the government officials, he said:

How many times do we have to say this to you? What is the problem—is it that you do not believe us? Our young people are dying, our communities are stressed and upset—we need assistance and *we need it now!* We have told you the same things, the same priorities over and over again—we told you during the ‘*Rolling Thunder*’ consultations in late 2002...we told you when we met the new Minister in January this year...we told you in the Strategic Plan we worked hard on with Rod Williams...we told you when we met with the Ministers in May this year—and here we are now in September telling you all over again! Our priorities have not changed, and they are still urgent. Every time we tell you, you set up another committee with another big name—rather than do something, you set up another committee to talk about it. Every time we hear these new committees, COAG, Petrol Task Force, Tier this and that—too many tears if you ask me—every time these committees get long names—but the words mean

¹⁸³ With the support of the NPY Women’s Council.

¹⁸⁴ I was present as an observer during this meeting and had been asked (by Anangu TOs) to keep a written record of speeches and contributions, which were also, in part, recorded. Thus, I witnessed this ‘intervention’ first-hand. It ended with much mirth and applause and was a well-timed strategic input that served to release tension for all those assembled.

‘let’s do nothing’. Can you tell me, what is it that one you’re all from now? Which mob is it this time? *What is the name of that Committee again please?*

At this plea, a senior public servant stepped up to the microphone and, emphasising each syllable, he slowly and carefully said: ‘It’s APLIICC, which stands for the ‘Anangu... Pitjantjatjara... Lands... Inter-Governmental... Inter-Agency... Collaboration... Committee’. Thompson took the microphone back and, in a loud voice and with a melancholic yet wry grin, he smartly said: *I rest my case!*

6.5 COAG Trials: Mai Wiru and PY Ku

The September 2003 ‘Working Together’ meeting settled on two programs for adoption under COAG: Mai Wiru and PY Ku. Mai Wiru was to be conducted and managed by Nganampa Health and PY Ku by PY Media. These trials were overseen by a COAG working group formed under the APLIICC and led by the Commonwealth DoHA. Earlier in 2003, the Commonwealth provided funds to AP for a project officer (selected and engaged by DoHA) to prepare a business case for PY Ku,¹⁸⁵ an initiative to provide Internet connectivity, which PY Media had strongly advocated. Mai Wiru¹⁸⁶ was a primary health project aimed at improving the quality and cost of food in local stores that Nganampa Health had already established with local community councils. Neither initiative directly tackled petrol sniffing.

In a critical analysis of the COAG trials and the accompanying Shared Responsibility Agreements (SRAs) four years later, Lawrence and Gibson (2007, p. 650) suggest that this approach signalled a shift in policy away ‘from debates about rights and inheritances, to the “responsibilities” that communities must accept in order to be provided with infrastructure and services from government’. They argue that discourses about shared responsibility were often linked to requests from Aboriginal communities for interventions or help with specific problems. Such requests became opportunities for governments to ensure that Aboriginal communities conformed to certain ‘specified disciplinary practices such as improved personal hygiene [or] maintaining clean households’ (Lawrence & Gibson 2007, p. 650).

Mai Wiru and PY Ku illustrated this critical analysis, with the former encouraging healthy eating and the latter providing options for people to better manage their banking and payment of fines, fees and charges online. COAG priority-setting meetings appeared to

¹⁸⁵ For detail on PY Ku, see Tedmanson, Fisher and Muirhead (2011) and Urbis Keys Young (2006).

¹⁸⁶ For more detail on the Mai Wiru initiative, see above and ‘Mai Wiru: healthy food, healthy families’, <http://www.maiwiru.org.au/history_top.html>

emphasise consultation and choice; however, an agenda to enforce compliance was also taking shape. As White and Hunt (2000, p. 105) point out: ‘choices forced on subjects can be highly coercive’.

With COAG funding these initiatives through Anangu regional agencies, there was a co-option of Anangu service providers into the supply chains of discretionary resourcing, which characterised the ‘carrot-and-stick’ approach of SRAs (McCausland & Levy 2006). Substantial new funding was provided to Nganampa Health and PY Media for being part of the COAG trials; however, having obtained this new funding, they and their Anangu Boards of Management were now caught between their traditional Anangu constituencies and the requirements of multi-agency COAG committees—their new ‘partners’.

Beneath the collaborative appeal of the ‘Working Together’ COAG trial rhetoric, with its promise of new funding, lay the risk of Anangu agencies being conscripted into government agendas and bureaucratic modes of implementation as part of a hidden cost for their willing participation (Cooke & Kothari 2001).

Self-determination was making way for ‘shared responsibility’ (Hunt, op cit. p. 30). As d’Abbs and Brady (2003) pointed out, under the policy rubric of ‘shared responsibility’, communities were increasingly enlisted to the disciplinary work of the government:

Under this strategy, Aboriginal communities are expected to articulate desires and aspirations which are then taken as authentic manifestations of ‘self-determination’—as long as they accord more or less with what the state wants them to choose (d’Abbs & Brady 2003, p. 7).

‘Shared responsibility’ enabled the Commonwealth to increase its control while outsourcing risk. Control remained with APLIICC and the COAG lead agency (DoHA), while Anangu agencies PY Media and Nganampa Health bore responsibility for the implementation. An older Anangu protagonist who had observed many policy shifts noted that ‘It’s all coming from the government down’ (Tedmanson et al. 2011). As Braithwaite, Gatens and Mitchell (2002) suggest, beneath the simplistic rhetoric of mutual obligation and its shared responsibility lay ‘the concrete assumptions of a new paternalism’ (p. 226).

While PY Ku and Mai Wiru were welcomed by Anangu, these trial projects also introduced new complexities, and neither project tackled petrol sniffing. With prophetic foreboding, the ATSI Social Justice Commissioner’s 2003 Report further mused:

whether such initiatives as the COAG whole-of-government trials [will] ultimately prove to be more of a hindrance, obscuring and obstructing an effective response to issues such as Indigenous petrol sniffing (Jonas 2003, p. 154).

6.5.1 The ‘Allocations Committee’

The September 2003 COAG ‘Working Together’ meeting established a 15-member ‘Allocations Committee’—comprising nominees of Community Councils, Homelands, AP Services, Nganampa Health, PY Media and the NPY Women's Council—to be convened by AP’s Chair, Gary Lewis. The Committee was established to help the government disburse funds across the Lands and:

Aim[ed] to ensure that all stakeholders [would] have a clear understanding of the funding situation for the AP Lands, as well as a say in the distribution of monies on the Lands’ (HREOC 2003, p. 16).

An information flyer was distributed to communities by the AP Executive to invite them to be part of the Committee’s first meeting in Alice Springs in early November. The flyer stated that:

This is a new way for Anangu—to work together—everyone sharing the responsibilities towards helping fix the problems on the Lands.... We have over \$1 500 000 to allocate to different programs i.e. petrol sniffing, family violence, youth development, mothers & babies programs.... We have to work out a fair way to allocate this funding and make sure it is helping to fix the problems in our Anangu communities and not wasted [sic] (*Allocation Committee invitation to communities* cited in Lawson, LC 13 November 2003, p. 572).

The AP ‘Allocations Committee’ was intended to be a means to obtain consensus regarding local priorities, and hence more ‘buy-in’ at the community level. However, in effect, it was a confusing addition to the plethora of committees already in play. Perhaps more importantly, it was an approach not particularly welcomed by Anangu regional service providers, who considered it a challenge to their roles as the ‘go to’ agencies in the delivery of health and welfare services.

Creating options for dispersed local funding through a multi-interest ‘Allocations Committee’ could undermine the role of Anangu regional agencies as the key actors on health and social welfare issues—a role that was actively fostered by the Commonwealth in the 1990s and recognised in the COAG trials. It unsettled these agencies, which each had their own Anangu board, network of constituencies and budget issues.

Nganampa Health and the NPY Women’s Council had more than 20 years’ experience by this time, and they were key sources of advice to governments on petrol sniffing and other issues—a role they wanted to keep. Project funding that flowed to these agencies might come under challenge if community councils developed their own local priorities not mediated by regional agency administrations (HREOC 2004; McCausland 2005).

There was also tension between an increasingly professionalised service delivery and the community ‘bottom-up’ approaches. In a corollary to Lea’s (2008) observations about

the paradox of coordination (cited above), a paradox of ‘participation’ is that, while intended to promote consensus, it inevitably invites conflict. The trend for governments to stimulate ‘quasi-markets’ in welfare service delivery (Le Grande 2000; Carson & Kerr 2013) also flamed local tensions in Aboriginal and mainstream communities.

For Anangu, managing funding allocations was potentially quite destabilising, as one’s place in community life was shaped by complex webs of relationships, duties and customary roles. While consultation over resources mattered, continuity and stability were more important to community well-being than competitive aspiration or material accumulation.

The South Australian Government’s focus on empowering the AP Executive and fostering local participation generated new tensions as well as competition for funding. The focus on a top–down-initiated push for participation has been critiqued in the broader development literature as masking unequal relations of power *between* the state and communities, and/or ignoring power imbalances *within* communities (see Escobar 1984; Mosse 2001; Mohan & Stokke 2000; Cooke & Kothari 2001; Williams 2004). Hunt (2008, p. 27) pointed more specifically to the Australian context in her analysis of how, during this period, Indigenous organisations found themselves increasingly ‘between a rock and a hard place’:

the assumptions and principles of self-determination underlying the policy environment in which many of them were created have changed...and [they find themselves] caught at an uncomfortable intersection between communities operating with one set of assumptions, and governments another.

Promoting the AP Executive as the focal point for the ‘Allocations Committee’ ran counter to Dodson’s advice, which counselled against the tendency to ‘inflate or expand the position of AP beyond what is provided for in the Act’ (Dodson 2002, p. 2). As Jonas (2003) argued, making the AP Executive responsible for advice on the distribution of petrol sniffing funds ‘set them up to fail’. It furthered the misconception of the Executive as ‘the peak body in all matters on the AP Lands and over-stretches the community acceptance and expertise of that agency’ (Dodson 2004, p. 2).

Placing Lewis, as the AP Executive’s Chair, at the core of a new broad-based ‘Allocations Committee’ was another contentious decision. Jealousies and tensions remained volatile around Lewis after his election as AP Chair at the end of the previous year. While politically adept, Lewis had displaced a small group of old ‘factional’ rivals,¹⁸⁷ many of

¹⁸⁷ Bern’s (1989) analysis of politics in Ngukurr communities in the NT points to the powerful role of family competition in community life, and likens the competitiveness and division between leading core

whom were still antagonistic about the role he had played in the struggle to maintain support for the PC.

6.6 Rolling (Over) the Executive

The September 2003 ‘Working Together’ COAG priority-setting workshop agreed to extend the term of the AP Executive from one to three years,¹⁸⁸ in line with the Dodson Report of 2002.¹⁸⁹ The proposal had been put to communities during the August–September 2002 ‘Rolling Thunder’ consultations and was strongly supported by the majority of Anangu communities.¹⁹⁰ The proposal was re-endorsed during the strategic planning workshops conducted in January and February 2003 (Williams 2003, p. 4), and at the COAG workshops in May and September.

Under the terms of the PLRA, changes to the Executive’s constitution had to be agreed upon at the AP General Meeting. In July 2003, a General Meeting of TOs held at Umuwa agreed to the proposal to extend the term of the current AP Executive from one to three years.

In consultation with the APLIICC and the Minister’s office, AP therefore put the necessary steps in place to extend the term of its Executive. On 15 October 2003, AP’s lawyers applied to the Office of Consumer and Business Affairs to amend rule 10(d) of the AP Executive Board’s Constitution to read that ‘a member of the executive board shall hold office from the date of his or her election until the annual general meeting of AP three years thereafter’.¹⁹¹

The amendment was approved by the Office of Consumer and Business Affairs, and AP was notified that the amendment to its Constitution had been registered and took effect immediately (South Australian Legislative Council Hansard 16 February 2004, p. 939). This meant that the Executive expected to continue for a further two years, until November 2005. However, this extension was not to be.

families as structuring local politics in ways similar to the ‘factional divisions of the ALP’ (p. 169), which characterised inter-family rivalry on the Lands at this time.

¹⁸⁸ Along with training and support for AP, as well as other local Anangu organisations in administration and finance.

¹⁸⁹ The SC (established on 29 August 2002) was also expected to recommend an extension of the Executive’s term. Although due in October 2003, it did not report until June 2004; as anticipated, it recommended that the term be extended.

¹⁹⁰ The majority of communities were in favour, except for Indulkana and Mimili, which preferred a one-year term (see Williams 2003, p. 26).

¹⁹¹ This wording was used in correspondence between the Executive and the Office of Business and Consumer Affairs (2003).

Capitalising on tensions around the Executive convening the ‘Allocation Committee’, and encouraged by politically savvy Anangu who were hostile to Lewis,¹⁹² the South Australian Liberal Opposition took exception to any roll-over of the Executive’s term. Shadow Minister Lawson accused Labor Minister Roberts of favouring AP’s Executive (Lawson, LC 10 November 2003, p. 473; Lawson LC 18 February 2004, p. 990).

In a repeat of partisan alignments and Anangu *for* and *against* the PC, sides formed *for* and *against* the extension of the Executive’s term of office. Despite general agreement across the Lands and in government for extending the Executive’s term, some local aspirants resented the idea, and the Opposition quickly exploited the situation.

While Anangu continued to request urgent petrol sniffing support, the first meeting of a new Aboriginal Lands Parliamentary Standing Committee (ALPSC)¹⁹³ with Minister Roberts as Chair, took place in Adelaide on 27 November 2003. This was a reactivation and reinvigoration of a Committee similar to the original Pitjantjatjara Lands Parliamentary Committee, which had been established by the 1987 amendments to the PLRA, but which had ceased to meet after the Liberals took office in 1993 and finally lapsed in 1997.

Roberts pushed to re-establish the parliamentary oversight of AP through the *Aboriginal Lands Parliamentary Standing Committee Act 2003*. The *Select Committee on the Pitjantjatjara Land Rights Act* also continued to take evidence in what had become a much longer inquiry than planned.¹⁹⁴

Given Opposition criticism of the extension of the Executive’s term, and acting on the Minister’s advice, Lewis sought confirmation of the Executive’s ‘mandate’ by requesting re-endorsement of the Executive at the AP AGM on 15 December 2003 (LC Hansard 4 December 2003, pp. 8883–8884). The opportunity to meddle was not missed by those

¹⁹² In particular, for example, proactive and outspoken Anangu activists such as Burton and Bernard Singer from Iwantja (Indulkana), who was subsequently elected Chair after Lewis.

¹⁹³ As discussed in Chapter 4, the Pitjantjatjara Lands Parliamentary Committee was originally established after the 1987 amendments to the PLRA; however, after operating continuously since that time and achieving a five-year extension to enable it to continue to operate, the Committee ceased to meet after the Liberals came to office in 1993, and it expired in 1997. The passing of the *Aboriginal Lands Parliamentary Standing Committee Act 2003*, enabled Minister Roberts to re-establish the Committee—now known as the Aboriginal Lands Parliamentary Standing Committee—which held its first meeting on 27 November 2003 with Roberts in the Chair.

¹⁹⁴ On 29 August 2002, the Legislative Council of SA appointed a SC to review the operation of the *Pitjantjatjara Land Rights Act 1981*. The SC was chaired by the Minister of Aboriginal Affairs, Roberts, and was originally scheduled to report to parliament by October 2002 (Hansard, LC 29 August 2002, p. 957); however, it did not report until 2 June 2004. A summary of the SC findings and recommendations is provided in this Chapter.

unhappy with the Executive. Shadow Minister Lawson sent a formal letter to be read out at the AGM, advising the gathering *against* re-endorsing the Executive.

While neither Lawson nor Minister Roberts were present at this AGM, their competing construction of the issues conveyed by letters and advice to those who were present further fuelled internal Anangu rivalries. Both Minister and Shadow Minister sought to influence AP, while Anangu rivals also willingly drew politicians to their respective causes. The AGM resolved to support an extension of the Executive's term, but ended without recording a clear statement of 'endorsement' for the incumbent Executive.

Ongoing tensions on the Lands and in Adelaide continued to stifle the delivery of urgently needed petrol sniffing support. The 'remoteness of bureaucracies and their incessant demands' identified by the Coroner (Chivell 2002, p. iii) had increased, rather than abated, in 2003. In the words of Social Justice Commissioner Jonas (2004, p. 4), the 'sheer number of inter-departmental and inter-governmental forums', established since the Coroner's 2002 Inquest, created an administrative quagmire akin to 'a nightmare from a Kafka novel!'

Tragically, on 19 December 2003, just four days after the AP AGM, Kunmanara Ken,¹⁹⁵ a 35-year-old man who was severely brain damaged as a result of prolonged petrol sniffing, walked away from his community of Indulkana on the Lands and died from exposure in the scorching summer heat.

II: 'Crisis'

6.7 The Ides of March

On 16 February 2004, Coroner Chivell signalled his intention to conduct an inquest into the deaths of Kunmanara Ward and Kunmanara Ken, commencing 4 May 2004 at Umuwa on the AP Lands. Effectively warning the Rann government, the Coroner announced that as part of the inquest he would be examining progress on the implementation of his 2002 recommendations.

This was also the first sitting day of the SA Parliament for 2004. Minister Roberts promptly sought leave to make a Ministerial statement in the Legislative Council. Interestingly, whether perhaps advised to or from self-volition, Roberts focused this statement on the AP Executive, its input to the APLIICC and COAG consultative

¹⁹⁵ The death of Kunmanara Ken was referred to the Coroner and, with others, subsequently became part of the further inquests conducted by Coroner Chivell in 2004–2005 (discussed later in this chapter).

processes and the proposed extension to its electoral term, rather than reporting on service delivery or progress on mitigating petrol sniffing on the Lands.

Roberts outlined the discussions with the previous and current AP Executive over extending its term to three years. He also described the December 2003 AGM and explained that Chair Lewis had followed his advice in seeking the re-endorsement of the Executive. The change 'was extensively discussed with support expressed at the meeting, although there was...minority opposition' (Roberts, LC 16 February 2004, p. 938). Roberts also reported on the APLIICC's activities and praised the work of Anangu regional organisations and the AP Executive in particular:

The current executive board has done a great deal of work and continues to be proactive to ensure priorities for Anangu are being considered by service providers and policy makers alike. Since signing a statement of intent with the government in February 2003, its contribution to discussion and decision making with APYLIICC has provided the government with timely advice on matters such as the agreement of priorities through the statement of intent, the establishment of the allocation committee and the participation of Nganampa Health on APYLIICC (Roberts, LC 16 February 2004, p. 939).

Roberts appeared to be making pre-emptive efforts to protect and support AP; however, by making the Executive's term a feature of his first Ministerial Statement for 2004, Roberts wittingly or unwittingly drew the focus onto Anangu governance, which served to obfuscate questions about government service delivery to the Lands. Robert's focus on governance implied that the Executive's term was somehow related to the Government's incapacity to respond to petrol sniffing or implement the Coroner's recommendations.

By Roberts defining what the problem was 'represented to be' (Bacchi 2009, p. 1), a trajectory was shaped that framed the analyses and responses that would follow. Public policy is politics through 'communicative practice' (Fischer & Gottweis 2012; Yanow 2003; Colebatch 2009). By foregrounding the Executive's role, election and term of office, the Government generated a particular representation of an 'issue', and then shaped its response accordingly. The generation and promulgation of this fertile 'policy storyline' (Fischer 2003, p. 86) reverberated in the days and weeks ahead.

On 1 March 2004, Minister Roberts presented a briefing paper to Cabinet. He emphasised the constructive engagement of the AP Executive in the COAG trials and associated APLIICC activities (paper tabled during Legislative Council debates, Hansard, 31 May 2004). The briefing paper gave Cabinet details of the Executive's term of office, including the repeated commitments given for its term to be extended. It recommended a Bill to

amend the PLRA to provide for an Executive term of between one and three years.¹⁹⁶ The briefing paper and recommendation was signed as noted by Premier Rann that day.¹⁹⁷

Meanwhile, the Cabinet Office was asked ‘by the Chief Executive of the Department of the Premier and Cabinet to look into how the money for the petrol sniffing problem was being spent’ (Mazel cited in Chivell 2005, p. 57). Of \$12 million provided over four years in the 2003/2004 State Budget, the Cabinet Office found that ‘a large amount of the money was yet to be spent’ (Chivell 2005, p. 57).

The CEO of the Premier’s Department urgently briefed the Premier and Deputy Premier, who was also the Police Minister, on this large under-expenditure of funding allocated for services to tackle petrol sniffing on the Lands. On 12 March 2004, the Commissioner of Police informed the Premier and Deputy Premier about three deaths by suicide and eight attempted suicides that had occurred on the AP Lands during the preceding 12 days (Chivell 2005, p. 48).

6.7.1 ‘Tied up by red tape!’

On 15 March 2004, *The Advertiser* ran a front page article headlined: ‘DISGRACE! Funding to save lives tied up by red tape’:

Urgent funding of \$7 million to deal with Aboriginal petrol sniffing—highlighted by State Coroner Wayne Chivell in September 2002—has never reached health workers. An investigation by *The Advertiser* has found bureaucratic delays have blocked the delivery of the funding to doctors and nurses battling petrol sniffing and drug addiction in the Anangu Pitjantjatjara Lands (Kemp 2004, p. 1).

The article cited John Singer of the Nganampa Health Council as saying that ‘people have heard about all this money and gone to all these meetings...and nothing has happened on the ground’ (p. 1). While citing Human Service Department CEO Jim Birch as accepting ‘some responsibility for the delay’, the article also cited him as suggesting that legal arrangements between Government agencies and service providers took time:

we can’t just allocate money willy-nilly...we have to have a legal agreement between us and the people receiving the money (Kemp 2004, p. 1).

In contrast, AP Director Rex Tjami:

¹⁹⁶ It was argued that it was necessary for this amendment to take effect from the immediate past AGM so there could be no doubt of the legality of the Executive’s decisions after November 2003, when it was elected, up until the amendment’s passing.

¹⁹⁷ Personal communication: during the later controversy surrounding the mid March 2004 ‘intervention’ by Premier Rann, the signed Cabinet minute was anonymously circulated to a number of media, church bodies and community activists. During this time, I was shown a copy of the signed recommendation at a well-attended Anangu support group meeting.

blamed the Department of Human Services for the delay... 'It is not the Lands Council's fault or the community council—it is the department in Adelaide. The community is not happy because they should have given the money directly to us to allocate' (Kemp 2004, p.1).

Not only was the front page article scathing of the Rann Government's delays in responding to petrol sniffing, but the *Editorial* was also negative. It associated the recent spate of young Anangu deaths with the Government's failure to implement the funding identified for tackling petrol sniffing on the Lands:

Failure of the Government to ensure the money was paid and the program implemented is disgraceful. This is funding critical to...help in youth suicide prevention and substance abuse; and necessary for the purchase of medical equipment. That it has never reached its intended target because of a farcical debate over who should control the funds and decide the allocation is a terrible shame. Pointing the finger of blame at Aboriginal communities is futile. Ultimately, the lack of follow-through and accountability is an indictment on Government and Public Service processes and disciplines. Sadly, the breakdown in the process to tackle petrol sniffing may have been indirectly responsible for the premature deaths of at least two, and perhaps many more, young Aboriginal people. ...There can be no further delays. The money must be paid and the programs set up to avoid further tragedy. Too many committees and too much debate is doing nothing to reduce the damage of substance abuse in the Anangu Pitjantjatjara Lands (*The Advertiser*, Editorial, 15 March 2004, p. 16).

This stinging rebuke was potentially damaging to the Rann minority government. It was also challenging for the Labor heirs of Dunstan who had initiated the PLRA and worked with Anangu to bring it to fruition.¹⁹⁸ Despite this legacy, with knowledge that the Coroner was initiating a follow-up inquest and therefore desperate to shift the blame, the Rann government appeared to jettison existing policy frameworks and prior commitments to AP, COAG and APLIICC processes and opted for a strategy of political survival.

6.7.2 'Time's Up!'

On the afternoon of 15 March 2004, SA Deputy Premier and Police Minister Kevin Foley, acting for the Premier, issued a press statement indicating that the Government intended to make a 'radical intervention' in the AP Lands (Foley 2004, p. 1).

Stating that, in 'the opinion of Cabinet this crisis has simply gone beyond the capacity and control of the AP Council', Foley announced the immediate dispatch to the Lands of a high-level task force headed by former South Australian Assistant Police Commissioner Jim Litster 'to sort out an escalating crisis that has resulted in tragedy and death' (Foley 2004, p. 1). Directly contradicting earlier Cabinet agreements and commitments, Foley (ibid) announced an immediate spill of the AP Executive, and new elections were called alongside 'a full review of the *Pitjantjatjara Land Rights Act*'.

¹⁹⁸ Rann had worked for a time as Dunstan's Press Secretary. In a media feature during the previous year, he had claimed credit for writing the 'speech announcing Pitjantjatjara Land Rights in 1981' (*The Australian Magazine*, 'Rann the Man', 8 March 2003, p. 1).

On 16 March, just three days short of the twenty-third anniversary of the bipartisan passing of the PLRA in 1981, *The Advertiser*'s front page headlines announced that 'Self-rule is Finished':

'This government has lost confidence in the ability of the executive of the AP Lands to appropriately govern their lands', Acting Premier Foley says. 'We have no choice but to step in and take control. Self-governance in the Anangu Pitjantjatjara Lands has failed. What I say as far as the executive of the AP Lands is concerned is: time's up. This government has said we will not tolerate an executive that cannot deliver civil order, community services, social justice and quality of life to their community. The Government has decided to take drastic and dramatic action to step in and deliver civil order and appropriate action in a part of our state that is, quite frankly, a disgrace in terms of governance!' (Kemp, *The Advertiser*, 16 March, p. 1).

Foley proclaimed that he was putting the interests of 'women and children' ahead of Anangu 'factionalism [and] local politics, which simply cannot be tolerated and will not be tolerated by this government' (Foley 2004, p.1). In closing, Foley stated that he wanted 'order restored to an effectively lawless community' (Foley 2004, p.1). With purposively if hastily chosen words, he said:

'I think this is an acknowledgement that 20 years of doing what we thought was right for the Aboriginal lands has failed and dramatic action, strong action must be taken' (ibid).

Framing this intervention in the Lands as a policy response to an Executive that had been derelict in its duties and arguably illegitimate, Foley denigrated the PLRA and more than two decades of self-governance in the AP Lands (*The Advertiser*, 16 March 2004, p. 1). Such a powerful statement was a pre-meditated political bombshell delivered strategically by a state government that was keen to divert attention away from its own failure to deliver services to communities on the Lands. A 'politics of crisis management' (Boin, t'Hart, Stern & Sundelius 2006, p. 1) and strategic 'crisis exploitation' (t'Hart 2008, p. 1) drove the announcement of what became a dominant discourse and 'policy storyline' (Fischer 2003, p. 86).

The Rann Government's repudiation of self-determination aligned with the Howard government's intentions to abolish ATSIC, which were then taking shape at the national level of government.¹⁹⁹ Turning the spotlight onto alleged deficiencies in Anangu self-governance was, in this context, an opportunistic and pre-emptive deployment of a 'political wedge' (Wilson & Turnbull 2002; Singleton, Aitkin, Jinks & Warhurst 2013).

¹⁹⁹ Prime Minister Howard announced his intention to abolish ATSIC in April 2004, saying that 'the experiment in elected representation for indigenous people has been a failure' (*The Sydney Morning Herald*, 15 April 2004). Labor Opposition Leader Mark Latham also agreed to the demise of ATSIC. On 28 May 2004, Howard introduced to abolish ATSIC. After a delay, which also saw the Howard government re-elected for a fourth term in October 2004, the Bill finally passed both houses of Parliament early in 2005, and ATSIC was formally abolished at midnight on 24 March 2005.

It served to deflect public scrutiny away from the South Australian Government's response to petrol sniffing, while also blunting Opposition attacks. Rann was keen to maximise returns from 'working together' with the Commonwealth, and this spin on the policy storyline could serve that purpose well, as it added fuel to Howard's assertion at this time 'that the experiment in elected representation for Indigenous people has been a failure' (*The Sydney Morning Herald*, 16 April 2004, p. 1).

6.8 'Rann Takes Control from Blacks'

National newspaper headlines dramatically reported that 'Rann Takes Control from Blacks' and listed the 'decisive' actions of a government that 'had lost confidence in the APY council and had intervened to take control of the region' (DiGirolamo 2004, p. 6). Detailing how the government was moving quickly to 'install a former Police Commissioner as the area's administrator':

Former South Australian assistant police commissioner Jim Litster will head a government taskforce to take charge in the APY lands once the legal changes pass through state parliament. This will effectively halt state funding to the APY council and its executive, handing responsibility to Mr Litster's team.

'This Government has said we will not tolerate an executive unable to administer civil order, community service, social justice and quality of life for their community', Mr Foley said. 'We are stepping in, putting an administrator in, full resources, and we will do what we can to ensure young people don't die, women don't get bashed' (DiGirolamo 2004, p. 6).

Such language discursively constructed the Lands as a lawless, violent place, and Anangu leaders as people 'unable to administer civil order' to their own affairs (DiGirolamo 2004, p. 6). The Executive was portrayed as if it were responsible for matters of 'community service, social justice and quality of life' on the Lands, despite this not being its role, nor being consistent with any tenet of the PLRA.

Moral panic (Cohen 1972; HREOC 2003; Cuneen 2007) about petrol sniffing and failed communities (Dillon 2007; Lawrence & Gibson 2007) spread through the media. Such negative stereotyping found ready acceptance among the latent racial biases simmering just under the surface of public consciousness. Rhetorical and gratuitous concerns about young people dying and women getting 'bashed' (Foley cited in DiGirolamo 2004) awakened older imaginings and deep-seated anxieties about Aboriginal people as 'harbingers of disorder' (Cuneen 2007, p. 4). The Lands, which were mysterious and far away, were easily portrayed as 'failed or ungovernable spaces' (Lawrence & Gibson 2007, p. 652).

While Justice Elliott Johnston suggested that 'racial stereotyping and racism in the media is institutional, not individual' (Royal Commission into Aboriginal Deaths in Custody

1991, pp. 185–186), its application in specific contexts can be strategically deployed to advantage particular groups of individuals in calculated ways (Plater 1993; Mickler 1998a, 1998b; Hartley & McKee 2000).

As Hollinsworth (2005, p. 16) explains, ‘media representations and narratives occur within institutionalised codes and practices that typically sensationalise Aboriginal issues, emphasising conflict, violence, irrational and pathological behaviours’. The media agenda in this instance was encouraged by a powerful and well-resourced state government media unit under the direct control of the Premier’s office.²⁰⁰

This was a politically motivated and opportunistic form of covert racism that was deftly deployed by the Rann (Labor) government to shift blame onto the Executive and reposition itself on the moral high ground. It positioned AP governance as ‘the problem’ and pointed to Anangu as a vulnerable people in need of government intervention, as the Lands had been let down by its ‘leaders’; indeed, they had been let down by the policy of ‘self-determination’. The effectiveness of this framing was its appeal to latent public assumptions about non-Western peoples, with their conduct and organisations being readily seen as somehow less developed or less capable and in need of improvement (Hindess 2001).

This sudden attack on the AP Executive took place just weeks after it had been praised in parliament for its contribution, ‘proactive’ work and ‘timely advice’, and hailed as a respected partner that was conscientiously ‘working together’ with the government to overcome petrol sniffing (Roberts, LC, 16 February 2004, pp. 938–939). A senior person on the Executive who had a long history of engagement in efforts to combat petrol sniffing, as well as the personal experience of grief and loss from its effects, said:

What can be worse than watching your child die from petrol sniffing? Waking up to find you are being blamed for it on the front pages of the National and State papers and in radio and TV broadcasts.²⁰¹

6.8.1 ‘We will not be pushed around!’

Makinti Minutjukur was a senior Anangu woman who was respected across the Lands as *ninti*,²⁰² and who was sincere and moderate in her views and measured in her responses.

²⁰⁰ Rann had been a journalist prior to entering politics and had many years of experience as a Press Secretary to premiers and ministers. Upon assuming the office, he brought all Ministerial Press Advisers under his control through the Premier’s Department and ensured tight management of all government/media relations.

²⁰¹ Personal communication with senior Executive member (also on NPYWC) the day after the Foley announcement.

²⁰² ‘Ninti’ is the Pitjantjatjara word for clever/astute/smart.

In 2004, as a member of the AP Executive and the Municipal Officer for Pukatja (Ernabella), she wrote in protest to the Premier the day after the announcement, stating that:

Six and half months ago, I attended a meeting in Alice Springs with the South Australian Department of Human Services, and submitted a plan by the Pukatja community council for a petrol sniffing prevention program. Our plan was accepted as a good one. We were told that we would get \$120 000 for it. Since then, I have heard nothing further.²⁰³

Also on 17 March 2004, a letter dated 9 March arrived in the AP Executive's mailbox at Umuwa, signed by the then CEO of the state government's Human Services agency, Jim Birch, which stated:

I refer to the allocation of funds for petrol sniffing as recommended by the APY Lands Council Allocation Committee, which were forwarded to the government in November 2003. I advise that the recommendations concerning petrol sniffing are still being considered by the government.

Also on the same day, AP Chair Lewis, in Adelaide with a number of members of the Executive, issued a press release urging people to protest against the Government's actions reported on page 2 of *The Advertiser* under the headline, 'Fight Takeover, Urges lands' Boss':

'We want people to write letters and protest against the Government that has taken our rights away', [Lewis] said. 'Anangu call on all Aboriginal people, trade unions and the community to defend land rights, human rights and self-determination. We will not be pushed around' (Lewis cited in Kemp 2004, p. 2).

Lewis complained that despite being in Adelaide since Friday, the Executive only found out about the action when it was announced to the media:

This is a sad day. This is the cynical action of a very conservative government. It is not what we expected of a Labor Government and only serves to reinforce the racist beliefs that indigenous peoples are not capable of managing their own lives.... Lewis said it had been the State Government, not the lands council, which had failed to act after a Coronial inquest identified inaction over petrol sniffing. 'We asked the Coroner to report in the first place', he said (Lewis cited in Kemp 2004, p.2).

In a further letter to the Premier, Minutjukur challenged the sudden change in policy:

We are still waiting for the government to act on the Coroner's recommendations.... The government taking control, telling us what to do and changing the Land Rights Act is not the way to help us with our problems. How can the government change the act without talking to all Anangu first? It seems that some people in government and other places are looking at Anangu and blaming them for the problems. We have been waiting for two years since the APY council executive met with government in Adelaide and made an agreement which Gary Lewis [and the Minister] signed about delivery of services to the lands. It is the government that has been slow to act, not the APY council (Minutjukur cited in Lawson, *Legislative Council*, 22 March 2004, p. 1141).

²⁰³ Personal communication. Also, see South Australia. *Legislative Council Debates*, 24 March 2004, p. 1206.

As the Government's threat to take over administration of AP sunk in, the NPY Women's Council and Nganampa Health moved to assert their expertise as conduits for service delivery on the Lands. While the Executive was explicitly targeted for blame, Anangu regional organisations Nganampa Health and the NPY Women's Council were encouraged to act strategically—to work *with* rather than *against*—the Government's intervention.

In a carefully worded statement, the NPY Women's Council opposed any undermining of land rights: 'Anangu women fought for their land many years ago and would do so again if necessary'. However, the Council stated that it would support (Administrator) Litster's visit if it would bring some urgently needed action on petrol sniffing and violence in communities. NPY's Chairwoman Yanyi Bandicha said that:

'NPY has argued for more police on the AP Lands...for a long time, and maybe now some of the grog, petrol and marijuana will be stopped. We agree with Mr Foley that it is appalling that these things keep happening... Aboriginal communities should not have to solve all their problems without expert advice and help. We look forward to meeting Mr Litster very soon. We hope to talk to him about his plans and offer NPY's experience and knowledge to help get some order into community life...' said Mrs Bandhica (NPY Women's Council, Media release, 16 March 2004).

The next week, Nganampa Health issued a statement expressing concern at the 'continued misreporting' of deaths on the Lands, suggesting that it was a disrespectful and inaccurate way to deal with the loss of human life and tragedy (SC 2004, p. 101). Free pro bono journalism and legal support was quickly offered to AP, as academics, church groups, unionists and others rallied to protest against threats to the still iconic PLRA. Responding to Lewis's call for help, the SA United Trades and Labor Council (UTLC) passed a strongly worded resolution sent as a (public) letter to Premier Rann:

That the UTLC calls on the State Government to uphold the principles of self-determination and appropriate consultation with the Anangu people regarding their affairs. We note that problems in the lands are not of land management but of human service delivery and we encourage the Government to take the appropriate steps to address health, education and police matters in a culturally sensitive way. We do not support any changes to the Anangu Land Rights Act without agreement from the Anangu people (UTLC Letter, 18 March 2004).

The AP Executive subsequently wrote a long appeal to Minister Roberts, with whom they had worked closely over the previous couple of years. It asserted that AP was not a service provider, and it provided an analysis of the contradictory nature of the government's announcement:

we note that you agree with APY Council, communities and service agencies that there are issues relating to human service delivery especially regarding petrol sniffing which need to be addressed urgently. We note your acknowledgement that these issues relate to delays in the Government's implementation program.... The APY Land Council was never established as a service provider...we do not believe there is any necessity to amend the Land Rights Act to

affect (sic) self-government of the APY Lands in order to achieve urgent action on petrol sniffing and related human service issues.... Indeed it would be quicker and more effective if the urgent human service interventions the Government has mentioned were introduced side by side with the support of Anangu and that [any] amendments to the PLRA were negotiated separately in a respectful manner....

This was the Partnership approach agreed to and specified through the Working Together statement we signed with the Government at the beginning of 2003...we draw your attention to the Working Together Statement of Intent and Memorandum of Understanding Government's own policy.... The Pitjantjatjara Land Rights Act is held in trust by the Parliaments of South Australia to protect the rights of Anangu. The SA Labor Government policy initiatives announced last year commit the Government and its Agencies to negotiate in a respectful and meaningful way with Anangu for the best outcomes for communities *before* (Executive's italics) any action is taken (AP Executive Media Release, 22 March 2004).

On the same day, Minister Roberts defended AP and its Executive in Parliament. He expressed confidence in AP's Chair, Gary Lewis: 'We do have confidence. He is the elected Chairperson of APY in its current form...I am not blaming the APY executive...partnership is the key to working with people in the lands (Roberts, LC Hansard, 22 March 2004, pp. 1141–1142).

Roberts argued that Anangu had been proactive in difficult circumstances. He flagged his wish to extend the Executive's term to promote stability. He argued that contestation was a norm in all communities:

For as long as I have been familiar with the lands, it does not matter who is elected within those communities, there will always be people who are not happy with the outcome. That is the same in every society. In the interim, while we were developing a form of governance that suited the requirements of the government, we decided to engage them (Roberts, LC Hansard, 22 March 2004, p. 1146).

The Liberal Opposition took every opportunity to exploit divisions between Anangu and within Labor, focusing its attack on the AP Executive and its Chair. They claimed that Perth-based mining company Acclaim Exploration NL (formerly Austral Nickel), which had secured exploration rights over part of the Lands, had complained to the Premier about difficulties negotiating with the AP Executive.

The Opposition moved a censure motion against both Premier Rann and Roberts (as Minister of Aboriginal Affairs and Reconciliation) for: a failure to 'provide a timely and adequate response' to the Coroner's 2002 recommendations, 'delays in providing effective health, welfare, police and other services for people on the lands', a 'failure to insist' on Executive elections in the previous year, and:

attempts by the Rann government to transfer blame to the executive board of AP for the failure of the government to address issues on the AP lands (Lawson, LC Hansard, 24 March 2004, p. 1203).

In a powerful debate that canvassed the PLRA, petrol sniffing and the efficacy of State Government policy, the Australian Democrats amended the motion to censure the Rann Government, but not Minister Roberts, who in their view had been hung ‘out to dry’ when problems hit the headlines:

Cabinet did not like a damning front-page story and, instead of abiding by the agreement it signed in May 2003, when it promised to ‘do it right’, the Deputy Premier made a series of harshly worded accusations while he tried to deflect blame onto the APY executive (Reynolds, LC Hansard, 24 March 2004, p. 1215).

As media reporting amplified the construction of the Lands as a chaotic and unstable place that was unable to ‘govern’ itself, and as Parliament debated the politics of AP engagement and the role of the Premier and his Deputy in it, Minister Roberts stood firm against the censure, admitting forthrightly, if forlornly:

‘It is the Government not AP that has let the Anangu down’ (Roberts, LC Hansard, 24 March 2004, p. 1211).

III: Consultants and Reports

6.9 Litster Visits the Lands—Litster Resigns

After the Government’s hasty announcement, Assistant Police Commissioner Litster was to visit the Lands to take up a position as ‘Administrator’. Crown Law urged caution, as installing Litster by Executive decree could contravene both the PLRA and the *Commonwealth Racial Discrimination Act* and thereby expose the government to litigation (Niarchos 2004).

Litster was re-termed ‘Coordinator of Government Services’ and sent to Umuwa the next week to meet the AP Executive. When Litster arrived on 25 March, followed by a press contingent, he was met by AP Chair Lewis, who presented Litster with a ceremonial ‘VIP’ AP Lands permit and graciously welcomed him to Anangu country.²⁰⁴

At Umuwa, dozens of TOs, older law men and women, the Pumpas and Tjilpis²⁰⁵ of the Lands, gathered on the red dirt in a large circle near the AP offices to speak with the new ‘Coordinator’. Litster met with senior AP staff and then conferred with the old men for some hours. He then promptly returned to Adelaide and announced his resignation from

²⁰⁴ Under the PLRA, all visitors to the Lands must apply for an official permit to be allowed to enter and stay on the Lands; however, there is also provision for State Government workers and/or those conducting business for the Minister to have the ‘right’ to enter. Lewis and the Executive considered protesting and trying to prevent Litster from entering the Lands without a permit, but decided that doing so would be counterproductive and provocative. They quickly prepared the special guest ceremonial permit and diplomatic greeting, albeit they had not been told officially of Litster’s visit and found out through a call from the media in Adelaide, who alerted them that a plane carrying Litster was in transit.

²⁰⁵ *Tjilpi* is a Pitjantjatjara word for an elderly man, and *Pumpa* is the equivalent for an older woman.

the role, citing health and personal reasons. Litster explained that the task was too big for him to take on, now that he knew more about it:

The basic error was that no one knew quite how big the job was and what it entailed. But it's a massive job and I think common-sense tells you that now and we're always wise in hindsight (Litster 2004).

On the same day, HREOC Social Justice Commissioner Dr Bill Jonas launched his annual report, which featured a case study of petrol sniffing issues on the Lands. In a national media report entitled '*Black Land Council "Scapegoated" Over Suicides*', Jonas bluntly claimed that AP was being scapegoated:

by the South Australian Government for the significant problems in the way that it—the State Government—has gone about addressing petrol-sniffing issues over the past year (DiGirolamo 2004, p. 8).

6.10 Collins Flies in

Undeterred, the Rann government next secured the services of ex-Labor NT Senator Hon. Bob Collins²⁰⁶ to fill the position vacated by Litster. Rann viewed Collins as 'the right person' for the troubleshooting role (South Australian House of Assembly, 4 May 2004, p. 1967). Collins commenced at the end of March and made a brief 24-hour visit to the Lands in April 2004, accompanied by Premier Rann, Aboriginal Affairs Minister Roberts, regional MPs, a range of government officials and a 15-strong press contingent.

A photo feature in *The Age* depicted the Lands as a community of people 'trapped in a cycle of poverty and hopelessness that is destroying another Aboriginal generation' (*The Age*, 24 April 2004, p. 1). It described the spectacle of Collins' first visit from a local's perspective:

In a gesture of trust this week to coincide with the arrival of Bob Collins, the communities of Umuwa and Ernabella allowed several journalists in with the SA Premier, Mike Rann, a former minister of Aboriginal affairs and land rights activist. While *The Age* travelled independently, about 15 Adelaide journalists flew in for a visit that lasted less than 24 hours and followed Rann's itinerary. Expecting at the very least a meeting and tour of the town, Ernabella community chairman Joseph Tapaya...and others prepared to sit down to talk about their problems and hopes for a way forward. The meeting never happened.

At Umuwa, an expected meeting between Rann and the AP Council executive also never took place. 'I feel disappointed,' Tapaya said after Rann's group left. 'I think it was a bit rude to just

²⁰⁶ Collins had been appointed an Officer of the Order of Australia (AO) for services to the NT and Indigenous rights in January 2004, and he was a well-known figure in Australian (Labor) politics who undertook consultancy work in Indigenous policy after a successful career in NT politics, as well as serving as a Senator and Minister in the Commonwealth Parliament. During the period of his consultancy for Rann on the APY Lands, he sustained critical injuries in a road accident in the NT in June (while not at work on the SA consultancy itself), which led to his hospitalisation and later resignation from the South Australian Government adviser's position in August 2004. During this time, he was charged with a number of serious offences relating to child pornography and child sexual assault; however, he died prior to the charges being heard in court. On 14 February 2008, the NT Coroner found that Collins had committed suicide prior to facing court on the child sex abuse charges (ABC 2008).

come in and walk around without seeing the chairperson first. It would have been good to have a yarn with him, have a coffee and talk things over.' The way AP Council chairman Gary Lewis saw it, the Premier's group 'walked around in circles' at Umuwa, then talked to white staff at the office of the indigenous (sic) health service provider, Nganampa Health....

'We thought he was going to talk to the AP executive about what the Government wanted to do with the Anangu Pitjantjatjara Lands and the community about how people are dying and how we can work together and help people in the community,' Lewis said. 'But he just comes in here and wastes all that opportunity' (Debelle 2004, p. 1).

Executive member Makinti Minutjukur was determined to put on record her take on events. In consultation with other TOs, she wrote another strongly worded rebuke to the Premier. While the following represents one Anangu view, it was a collectively prepared letter. Minutjukur's letter was cited extensively by Australian Democrat Kate Reynolds (Reynolds, Hansard, LC, 31 May 2004, p. 1677) during parliamentary debates on Collins' increasingly contentious role in the Lands. First, Minutjukur addressed the Premier's behaviour:

When you visited the Lands at the end of April we were looking forward to meeting you after we received a fax at the Pukatja Community office telling us to expect you. I got Council members ready for a meeting with you and we had the kettle boiling for a cup of tea. When you didn't arrive I drove across the creek ...and found you outside the TAFE building in front of the newspaper cameras. Unfortunately, I didn't see you again (Reynolds, Hansard, LC, 31 May 2004, p. 1677).

Minutjukur then described the positive anticipation in the community surrounding Collins' appointment:

When I first heard that Bob Collins was going to work with us on the Lands for the government I was interested and hopeful. I heard that he is married to a Tiwi woman and I felt that he was a good choice for the job. He would know how to listen to Aboriginal people. I had never met him before.

The Community Council members and I all felt this was to be a very important and serious meeting. Now was a chance, after all the years of not being listened to, to talk straight to the Government. We expected that what we had to say would be listened to with respect, and would be taken seriously. Pukatja Community Council's meeting with Bob began three hours later than scheduled.

Several people had re-arranged their day to be ready for the meeting, and some councillors, who had been waiting since 11 am, gave up and had gone away by the time he arrived. I introduced myself and Bob said, '*Oh hello, Makinti. I know who you are.*' I felt shocked inside because he does not know me, and it didn't feel like a good start. Less than two minutes after he arrived at the Community office he suddenly walked away and went over for an unscheduled visit to the arts centre. I was surprised; I felt it was rude. He came back half an hour later wearing one of Enabella Arts' new bird beanies. This one looks like a galah.

The long letter continued with an account of the dire health and welfare situation on the Lands, and the importance Anangu had attached to meetings with the Premier and Collins as opportunities to discuss petrol sniffing and other urgent health and well-being issues. It also revealed that some Anangu felt that Collins was not really interested in consultation, but rather that he was pushing for a government-preferred outcome:

Bob has been sent by the Government to work between Anangu and Government, so that together— we can solve the dreadful problems in Anangu life: where people are dying young from petrol....

Bob talked about the APY election. He talked at us (*original author emphasis*). He talked on and on at us about the election. He said that if an election were held straight away, then COAG money promised to APY at the beginning of 2003 would be released in July this year.

Someone asked what if there is no election? Bob replied, no money. In disbelief that person asked the question again. Same answer (Reynolds, Hansard, LC, 31 May 2004, 1677).

6.10.1 Collins reports and resigns

Collins' first report, entitled 'APY Land Council and Community Safety in the Lands— Report by the Co-ordinator of Government Services to the APY Lands', was tabled in Parliament by the Premier a fortnight after receiving the letter cited above (Rann, South Australian House of Assembly, 4 May 2004, pp. 1967–1968). Rann praised Collins for his 'exceptional understanding of the needs and aspirations of indigenous Australians':

[Collins] has spent many hours meeting with dozens of people involved in service delivery here in Adelaide, in Alice Springs and also on the APY Lands. More importantly, he has met and held extensive discussions with many community members during the time he recently spent on the lands (Reynolds, Hansard, LC, 31 May 2004, p.1678).

In his report, Collins (2004, p. 1) argued that 'fundamental structural problems' with AP were 'impeding the delivery of important community initiatives', that 'there appears to be a profoundly dysfunctional situation' and that the current situation was 'entirely unacceptable'. The nature of these 'structural problems' was implied by delays with COAG trials, withholding of Commonwealth funds and confusion about the role of AP in relation to the APLIICC.

Collins (2004, p. 3) was clear that there had been no wrongdoing by Lewis or others on the Executive. However, he recommended that 'legislation [be] introduced to provide for an election for the APY land Council [sic] as soon as practicable', that the 'SA Electoral Commission conduct the election', and that the 'Commission ensure to the greatest extent practicable that all Anangu in the Lands have an opportunity to participate in this process if they wish to' (Collins 2004, p. 4; cited in Hansard, LC, 4 May 2014, p. 1418). Collins recommended that this election be held within 12 months, and that a review be undertaken so that amendments to the PLRA could be considered before the end of the 12-month term.

Collins recommended the solution to 'what the problem [was] represented to be' to paraphrase Bacchi (2009, p. 1). His brief was to focus on human service delivery, but he worked on the problem as the Government saw it and focused on questions of AP governance rather than petrol sniffing or the timely delivery of promised government

support. His attention to petrol sniffing was limited to a restatement of yet-to-be-implemented recommendations about night patrols, additional funds for SAPOL and the construction of short-term detention facilities (Collins 2004, pp. 4–5).

None of this was new input. The introduction of night patrols and added resources for SAPOL were recommended as urgent issues by the Coroner in 2002. AP already held elections under the scrutiny of the SA Electoral Commission. *A Review of the PLRA by a Select Committee*, which was established in August 2002,²⁰⁷ was soon to report on exactly the matters that Collins suggested be reviewed. All of these were current issues about which Collins would have been well aware.

However, the stand-out feature of Collins' Report was his proposal that legislation be introduced to force an AP Executive election 'as soon as practicable'. This served Rann well. Under the PLRA, this was one way to overcome the approval that the incumbent AP Executive had secured from the SA Consumer Affairs Commission to register a change to its Constitution, which had given it a three-year term.²⁰⁸

In recommending legislation to force an Executive election, Collins backed the Government's strategy of making an issue of Anangu governance, constructing this as the reason for delays and shortcomings in service delivery, thereby obfuscating government inaction. Collins (2004, p. 3) however, was careful to be fair in his report by noting that, despite being 'lobbied heavily' by opponents of the incumbent Executive, he had:

no reason to believe any member of the APY Executive took any improper or inappropriate action.²⁰⁹

Yet the AP Executive was being undermined and isolated as the Government worked to fine-tune its 'policy storyline' (Fischer 2003, p. 86) ahead of a second Coronial Inquest. The Premier announced that additional police resources that were promised after the first Coronial Inquest in 2002 - which were to cover 'seven fully sworn police officers, including an inspector' - were being allocated to the Lands (Rann, House of Assembly, 4

²⁰⁷ The PLR SC was tasked with reporting by October 2002 (Hansard, LC, 29 August 2002, p. 957).

²⁰⁸ Approval to extend the term of the Executive had been agreed to by Anangu on repeated occasions since 2002; it was a resolution of the previous Executive to do likewise and then agreed in January, March, May, September and again in a qualified way in December 2003. It was a key feature of the 'Statement of Intent' and the Working Together COAG MoU.

²⁰⁹ Collins was emphatic on this point, repeating in his recommendations that while he believed that legislation to compel an immediate election was needed, he did not wish this to 'infer...that any member of the APY Land Council has taken any improper or inappropriate action' (Collins 2004, p. 4).

May 2014, p. 196). In addition, the forbearance of Anangu regional agencies was acknowledged as resources that were promised two years earlier were finally provided:

Additional health workers have been or soon will be employed on the Lands, including two health coordinators to work with Nganampa Health Service, four youth workers and a youth coordinator. Extra funds have also been provided for the NPY Women's Council (Rann, Hansard, HA, 4 May 2014, p. 196).

On 25 May, three weeks after Collins' report was tabled, the 'Pitjantjatjara Land Rights (Executive Board) Amendment Bill' was introduced to Parliament (Roberts, Hansard, 25 May 2004, p. 1573). While stating that the Bill did not 'imply that any member of the Executive Board has taken any improper or inappropriate action' (Hansard 2004, p. 1573; see also Collins 2004, p. 3), Minister Roberts argued that uncertainty about extending the incumbent Executive's term was causing concern in the community and among funders. At the same time, debate on other amendments to the PLRA dealing with petrol sniffing contained in the 'Pitjantjatjara Land Rights (Regulated Substances) Amendment Bill'²¹⁰ was adjourned.

Premier Rann next contracted Collins to pursue 'urgent discussions with the Commonwealth to ensure that there is no delay in the rollout of funding for services delivered on the lands' (Rann, House of Assembly 4 May 2004, p. 1968). However, Collins' period of consultancy engagement was cut short by a road accident in June 2004, which left him seriously injured and unable to continue his work.

6.11 Report of the Select Committee on Pitjantjatjara Land Rights

The *Select Committee on Pitjantjatjara Land Rights Act*, which was established in August 2002, was originally to report back in October that year on the following Terms of Reference:

- a) the operation of the *Pitjantjatjara Land Rights Act 1981*;
- b) opportunities for, and impediments to, enhancement of the cultural life and the economic and social development of the traditional owners of the lands;
- c) the past activities of the Pitjantjatjara Council and Anangu Pitjantjatjara Executive in relation to the lands;
- d) future governance required to manage the lands and ensure efficient and effective delivery of human services and infrastructure;
- e) any other matters. (Legislative Council, 29 August 2002, p. 958).

After collecting evidence throughout September 2002 in Adelaide and on the Lands, and then preparing a report and recommendations in late 2003, the SC waited until 2 June

²¹⁰ To introduce a new category of offence and stronger penalties for selling or supplying regulated substances on the Lands.

2004 to table its Report. The SC noted that it was finalising its recommendations ready to report:

when in March 2004, the Government signalled its intention to intervene in the management of the AP Lands...consequently administrative matters associated with that intervention are not considered within this Report (SC, 2 June 2004, p. 8).

The Rann Government's March 2004 intervention appears to have been as much of a surprise to the SC as it was to others. The SC spent two years collecting the views of all major policy actors; they met on 28 occasions, received 60 written submissions and took evidence from 96 Anangu and non-Anangu witnesses (SC 2004, p. 9).

The Report is a comprehensive account of the operation of the PLRA, the program delivery on the Lands and the effect of petrol sniffing on people in communities. As a formal parliamentary document, it provides a rich repository of first-hand witness quotations chronicling the heterogeneity of Anangu voices.

The SC Report (2004) highlighted divergent views on governance and the delivery of human services on the Lands. Past AP Chair Owen Burton advocated for AP to be the 'umbrella' organisation on the Lands:

It is time to change the Act so that the Anangu Pitjantjatjara is recognised as an umbrella organisation and then when other government departments are making contact they know to come through the Anangu Pitjantjatjara, the umbrella organisation on the Lands (Evidence, Burton, 26 September 2002, p. 75).

Nganampa Health and the NPY Women's Council strongly opposed this model, arguing that it was the role of regional Anangu agencies to be the focus for the delivery of services. The NPY Women's Council asserted that regional Anangu organisations had been established by Anangu for this very purpose (SC 2004, p. 76). The then incumbent AP Chair, Lewis also opposed the 'umbrella model of governance', arguing that:

Anangu Pitjantjatjara should be retained as a land-holding entity and that a separate entity should be established to coordinate the delivery of human services and infrastructure...key functions of the new entity would be to determine what services are required, to arrange for their provision—either directly or through other organisations—and...maintain an advisory/coordinating role with government departments, agencies and service providers.... Anyone holding an elected or paid position with one entity would be precluded from simultaneously holding a position with the other (Submission 24: G Lewis; Submission 17: Y Lester; Submission 14: I Baker; Submission 13: Ascione, Hope & Associates, SC, p. 76).

Reflecting on the original intent of the PLRA, the SC noted that the framers of the original Act had not envisaged the increased demand over time for a range of human services on the Lands, and hence had provided no guidance in this area. Citing a representative of the Crown Solicitor's Office, the SC Report (2004, p. 72) noted that 'the Act is silent with respect to the delivery of infrastructure and human services to Anangu communities':

There is no function of AP which relates to anything other than land administration... It was meant to be a land rights act that is all. It was not meant to be a welfare act or a general service provider. The body was never set up for doing those things (SC 2004 [Evidence M Johns, 5 September 2002, Q55 & Q56], p. 72).

The SC Report (2004, p. 2) argued that a combination of: '(a) adverse conditions on the AP Lands, (b) a misplaced reliance on the Act [and] (c) confusion as to the role of the land-holding body corporate' had hampered effective government service delivery. It also recommended a strengthening of Parliamentary oversight through the reinvigorated Aboriginal Lands Parliamentary Standing Committee, noting that:

At times, the rhetoric of self-determination has obscured the need for Parliament to stay informed, and fostered an unhelpful spirit of laissez-faire (SC 2004, p. 3).

The SC recommended that the Act be amended to reflect the contemporary need for improved human service delivery on the Lands, who should coordinate this, how such services should be delivered and what governance mechanism should guide the delivery of such services. It canvassed local government for the Lands, noting that this had been suggested in Dodson's (2002) Report.

The Report recommended the inclusion of both Pitjantjatjara and Yankunytjatjara people in the Act's title, a clearer election and representative process, and means for the inclusion of more women on the Executive Board (SC 2004, pp. 3–7). It restated the urgency of the 2002 Coroner's Report recommendations—for more police on the Lands, triennial funding for agencies and programs, immediate development of a rehabilitation facility for petrol sniffers, and implementation of the recommendations of a review of disability services on the Lands by consultant Tregenza in 2002.

Finally, the SC Report contained a brief 'Dissenting Statement' by Liberal (Opposition) members of the committee, the Hon. Caroline Schaefer and the Hon. Robert Lawson, Shadow Minister (SC 2002, pp. 100–102). Their statement placed on record their view that the announcement of 15 March 2004—that 'self-rule' on the AP Lands was finished—had interrupted the work of the SC. Citing the censure motion that followed in the parliament, they stated their position that 'the grandstanding actions of the state government in seeking to lay the sole blame on the Executive and others working on the Lands was deplorable' (SC 2004, p. 101).

Calling this a 'shameful device to deflect blame' (SC 2004, p.101) for the Rann government's own failure to implement the Coroner's 2002 recommendations on tackling petrol sniffing, the 'Dissenting Statement' nonetheless stated its support for the SC Report's recommendations.

6.12 O'Donoghue and Costello Enter the Fray

After Collins' resignation in August 2004, Premier Rann turned to Lowitja O'Donoghue for advice. The daughter of a Yankunytjatjara woman, Lowitja O'Donoghue had been inaugural Chair of ATSIC from 1990 to 1996. O'Donoghue preferred to undertake the consultancy in partnership with the Rev. Tim Costello, CEO of World Vision Australia. Together on 25 August, they were appointed 'advisors to the Premier' and asked to 'review the progress of the taskforce and the whole of government approach and the recommendations made by Senator Bob Collins' (Roberts, LC Hansard, 14 September 2004, p. 10; O'Donoghue & Costello 2005, p. 1).

The appointment of Lowitja O'Donoghue was unusual. She was part of an active group of Yankunytjatjara women who formed a network that was concerned about what was happening on the Lands and that operated alongside the Yankunytjatjara Council (YC). Lester, an early instigator and key driver of the PC and PLRA, founded the YC in the 1980s to agitate for greater equity between Pitjantjatjara and Yankunytjatjara extended family groups in the politics and governance of the Lands.²¹¹ O'Donoghue was a well-known passionate advocate for self-determination. Having faced censure in parliament in March, Rann was perhaps looking for an unassailable shield in his approach to the Lands, or perhaps he simply respected Lowitja O'Donoghue's standing.

By the time the O'Donoghue–Costello consultancy commenced, the *Pitjantjatjara Land Rights (Executive Board) Amendment Act* had passed²¹², and a new AP Executive election was scheduled for 4 October 2004. O'Donoghue's first visit to the Lands in late August, accompanied by the Premier's Department and World Vision staff, took place as community tensions about the forced Executive elections escalated. O'Donoghue commented explicitly on this tension:

The disputes between community leaders about preferred management structures and how they perceived existing ones function were very explicit. There has been poor communication not just within the community but between the community and the government....

Support and assistance is desperately required to address areas such as petrol sniffing....

There is great frustration of what appears to be a lot of agency/Government talk about things being done but little action to be shown for it....

Dissatisfaction with the government was expressed and a plea for some quick action and results to at least restore some sense of hope and momentum....

²¹¹ The arbitrary state and territory colonial borders held little or no meaning for Anangu in relation to their connections to country (see the discussion of Yankunytjatjara and Pitjantjatjara country in, for example, Toyne & Vachon 1984).

²¹² *The Pitjantjatjara Land Rights (Executive Board) Amendment Act* was assented to on 15 July 2004

There are too many short term visitors and very few people stay and properly listen to the community issues and seem to deliver (O'Donoghue & Costello 2005, p. 2).

In her report with Costello, O'Donoghue noted diverse views about the role of the AP, suggesting that some saw it 'as just another service provider, not a peak body' (2005, p. 3), while others argued that the Executive should 'only deal with mining companies, grant permits and matters strictly pertaining to Land as opposed to [being] a separate peak body for welfare and service delivery' (O'Donoghue & Costello 2005, p. 8).

She also observed the jostling for power between competing protagonists, and with tongue-in-cheek humour, she noted that there were those who believed AP:

is the right governance instrument through which all of government funding can flow. *They say it just elects the wrong people!*

O'Donoghue and Costello (2005, p. 8) suggested that developing a local government model for the Lands was 'the critical piece of intellectual and policy work' needing to be done. She also suggested the need for a public forum 'where some of the large philosophical issues can be debated', such as:

What does self-determination actually mean and what model for self-governance best flows from that?...

how are the issues of long term partnership and consultation, capacity and community building to be reconciled to the political imperatives of further coroner's reports and the requirements for immediate and quick relief? (ibid).

O'Donoghue and Costello (2005, p. 6) expressed reservations about the over-reliance they had observed on the tri-state regional Anangu service providers, and suggested that clarification was needed of the multiple layers of accountability expected by the South Australian Government. O'Donoghue especially advocated for a more nuanced understanding of the dispersed governance on the Lands, whereby a range of Anangu service delivery agencies, community councils and Anangu governance bodies, including the Executive and AP itself, comprised of all TOs, formed a governance domain or system of interconnected and intersecting kinship, as well as functional organisational relationships (O'Donoghue & Costello 2005, p.8).

In O'Donoghue and Costello's view, this dispersed governance was culturally compatible with Anangu ways of decision-making, situational leadership and shared roles. While not linear, such a dispersed Aboriginal governance system need not be at odds with a 'rationalised' service delivery system or appropriate 'lines of accountability' (ibid).

O'Donoghue and Costello (2005, p. 8) also recommended the creation of an 'honest broker' for the Lands, 'with powers like an Ombudsman to range across every

Department area with access and power to intervene and unblock resources'. Such a position would be based on the Lands and cut through 'the various silos of Government departments' as well as 'any petty clan bitterness' (O'Donoghue & Costello 2005, p. 8).

The 'Anangu Pitjantjatjara and Yankunytjatjara Lands Report' (O'Donoghue & Costello 2005) was delivered to Rann on 21 October 2004 but not tabled until 23 March 2005 (see Lawson, Legislative Council 4 April 2005, p. 1472 and 6 April 2005, p. 1353). A lack of acknowledgement and lack of response to her recommendations caused O'Donoghue much anguish. It soured her relationship with Rann and his Government and led to a residual bitterness that surfaced in a series of public recriminations in the ensuing months.

6.13 Executive Board Elections—October 2004

6.13.1 Crisis exploitation

By October 2004, when the O'Donoghue–Costello Report was finished, the South Australian Government had largely already achieved its aims. Attention was now firmly fixed on questions of Anangu governance. A new Executive election was imminent, and it was likely the incumbent critics of the government would be unseated. The SC Report had set parameters for a full Review of the PLRA. The 'policy storyline' (Fischer 2003, p. 86) was firmly in the government's control and aligned to its agenda. With the passage of the 'Pitjantjatjara Land Rights (Executive Board) Amendment Bill' in July 2004, Rann had achieved a tactical victory. He had successfully positioned the (Lewis-led) AP Executive as being responsible for delays in the delivery of much-needed petrol sniffing support to the Lands.

t'Hart's (2007, p. 4) analysis of crisis management as a form of 'defensive containment', in which governments curtail fall-out from an unexpected emergency and policy processes move 'back to normal as soon as possible', is a useful conceptualisation here. t'Hart (2007, p. 4) observed that governmental actors who are 'bent on getting things done' will often frame 'problems' to promote their political authority or policy preferences as 'solutions'.

Katzenstein (cited in Maddison 2013, p. 38) elsewhere defines this 'politics of meaning making' as a form of 'discursive politics', pointing out that such conceptual changes also have material effects. The framing of Anangu governance as the problem served to not only obfuscate government culpability, but it also appealed to the latent everyday racisms in the broader community with a simple narrative and 'policy storyline' of Aboriginal

dysfunction, rather than a complex story about what Dillon and Westbury (2007, p. 53) termed ‘implementation incapacity’.²¹³

In polling reported in mid 2004, Rann had overcome an earlier slump to regain his position as Australia’s most popular Premier and extend his lead over SA’s Liberal Opposition. Rann’s decisive management of ‘a social crisis facing Anangu Pitjantjatjara communities in the state’s north’ was one of the issues listed by McGarry as contributing to his regaining his standing in the polls (*The Australian*, 7 July 2004, p. 6).

Lewis, Lester, Kumanara Thompson and other leading TOs in the campaign for the PLRA in the 1970s and 1980s felt increasingly aggrieved. The efforts of the Rann Government to blame AP and unseat the Executive could not have been more crushing.

6.13.2 The extraordinary elections—who votes, where and how?

The 2004 Executive elections were supported by the SA State Electoral Office (SEO).²¹⁴ Following the passage of the ‘*Pitjantjatjara Land Rights (Executive Board) Amendment Act 2004*’, the Electoral Commissioner was now formally identified in the legislation as the ‘Returning Officer’, along with specific ‘electorates’ being named:

- (a) an election of one member of the Executive Board from each of the following community groups (and each community group will constitute an *electorate* for the election):
 - (i) Pipalyatjara/Kalka;
 - (ii) Watarru;
 - (iii) Kanypi/Nyapari/Angatja;
 - (iv) Amata/Tjurma;
 - (v) Kaltjiti/Irintata/Watinuma;
 - (vi) Anilalya/Turkey Bore;
 - (vii) Pukatja/Yunyarinyi;
 - (viii) Mimili;
 - (ix) Iwantja;
 - (x) Amuruna/Railway Bore/Witjintitja/Walatina; and
- (b) an election of the Chairperson of the Executive Board.

Under the *Pitjantjatjara Land Rights Act 1981*, eligibility to participate in the elections had always been restricted to persons who were ‘Pitjantjatjara’ and ‘of or above the age of 18 years’. Now, given the amendment, a voter also had to be ‘a member of a community constituting an electorate’.

As in previous elections, the Chairperson was to be elected by the electorate at large. Eligible Anangu could now stand for the remaining 10 positions as representatives for their specific local ‘electorate’. Previously, elections for the Executive were held during

²¹³ It is interesting to note Peter Shergold, a key architect of the ‘whole of government’ approaches to service delivery, commented that ‘The challenge in short is implementation. It is very much harder than it sounds’ (Shergold 2003, p. 1).

²¹⁴ The Executive elections in 2002 and at the 2003 AP AGM were similarly supported by the SA SEO.

a Special Meeting of AP, with those present engaging in a long process of discussion, deliberation and assent.

The *Pitjantjatjara Land Rights (Executive Board) Amendment Act 2004*, propelled this open process into a more individualised private space that was imbued with presumptions about the importance of individualised choice—for example, one person, one vote. Familiar notions to Anangu of open decision-making, which for generations had centred on communal responsibility, with individuals nested together within their social, physical and cultural universe (Morphy 2007), were rapidly replaced by practices that were designed around Western notions of an atomised self. While not without precedent, as ATSIC and state and Commonwealth ballots worked on this basis, the change to customary decision-making on the Lands was perplexing for many older TOs.

The new election rules introduced challenging questions about voter eligibility: who was to be deemed a ‘Pitjantjatjara’ person for the purposes of being allowed to vote? How would residency or zoned constituencies as designated ‘electorates’ now fit into this new notion of eligibility to stand? Another administrative complexity was that, in the absence of an AP-wide electoral ‘roll’, how would the right to vote be determined? How would they then exercise that vote?

The SEO was concerned with how to ensure that people voted in their ‘electorates’, given that some people considered themselves part of a community due to cultural or family ties but lived elsewhere.²¹⁵ Anangu tended to move regularly between communities, and between communities and homelands. They were also connected to families and communities across the tri-state region. Would it be fair to allow or disallow someone to vote for a representative on the Executive if they were linked through song-lines or family/cultural history to a Lands community but lived in Alice Springs or just across the border in NT or WA?

There was also concern about how to ensure that people only voted once in one electorate/community. At one stage, the SEO considered stamping an ink mark (indelible ink or stain) on those who voted, and using ultra violet light to check people who presented to vote in order to reduce the chance of multiple voting across electorates, as

²¹⁵ Mobility of Anangu in and across the Lands and tri-state region is discussed in Chapter 1; see also Peterson (2004), James (2005), Taylor (2006), Prout (2008a, 2008b) and Habibis (2011).

had been trialled in Timor and other UN-monitored elections. Amidst strong protests from some Anangu at the prospect of being ‘treated like cattle’,²¹⁶ this idea was scrapped.

In evidence given by the then SA Electoral Commissioner (Steve Tully) to the Aboriginal Lands Parliamentary Standing Committee (detailed in its Annual Report, 2004/5, p. 53) regarding the conduct of the October 2004 AP Executive Board elections, Tully explained that after careful consideration, ‘self-identification’ was favoured in determining people’s eligibility to vote:

I opted to retain...self-identification with a community as being the overriding criteria.... Whilst the definition of membership of a community was an issue and will continue to be an issue, I also suspect that the requirement to be a Pitjantjatjara person could cause as much controversy.... I was quite relaxed with self-identification all along because, traditionally, that has been the way that things have happened. I knew that if we had tight criteria someone would have to make a judgment that was going to cause what I thought would be immense problems in deciding who is in and who is out (ALPSC 2004/5, p. 53).

The 2004/5 annual report of the SA SEO provided a detailed summary of the elections, including the ‘considerable organization and time spent in an election advertising what resulted in a display of election posters in each of the communities’ (p. 22) and broadcasts by PY Media.

²¹⁶ At a meeting the author was present for, AP leaders and SA electoral staff discussed the possibility of using electoral ink or stain on Anangu voters, one elder volunteered to be stamped to test its effects. Discussion continued until it was suddenly disrupted by this elder collapsing, rolling on the ground and holding the site of the stamp as if it was burning. People rushed to his aid. ‘Only kidding’ he said! ‘Just imagining what it might feel like if it was burning through my skin’. He chuckled with a big grin. ‘The speed you all moved at means to me you can’t guarantee it won’t cause an allergic reaction’ he said. Discussion resumed, with the elders enjoying this display of Anangu whimsy and good humour in the midst of seriousness. The meeting ruled out ink and opted for the use of marbles in the ballot.



Figure 6.2: SA State Electoral Office 2004, APY Lands election poster 2004, of SEO Annual Report 2004/5, p. 22

At the close of nominations on 6 September 2004, a total of 33 nominations had been received and accepted for the 11 vacancies, including three nominations for the position of Chairperson (SEO 2004/5, p. 22). With the assistance of local teachers and other volunteers, electoral ‘stations’ were located in each community, and the ballot took place on 4 October between 9.30 am and 3 pm (as proscribed by the Act).

In total, 703 people voted for the Chairperson; according to the SEO, this ‘compared favourably to the 220 people who voted for the Chairperson at the last AP elections’ (Tully cited in ALPSC 2004/5, p. 55). Bernard Singer (303 votes) was declared the Chairperson, having gained six more votes than Gary Lewis (297), with Stanley Douglas finishing third (103 votes).²¹⁷ The voting system used was ‘first past the post’, so there was no distribution of preferences.

In ballots to elect local representatives, 656 people voted across the 10 electorates.²¹⁸ This was an increase of 159 on the 497 people who participated in the pre-selection of local

²¹⁷ See p. 22 onwards in the SEO annual report; and *Aboriginal Lands Standing Committee Annual Report (2004/5, p. 53)*.

²¹⁸ Using the total numbers of people participating in both the pre-selection and the final AGM vote for the 2002 AGM, Hill and Alport (2010) suggested that 853 Anangu participated in the earlier 2002 AP Executive ballot.

representatives to the Executive in October 2002,²¹⁹ but 180 less than the 677 people from the Lands who voted in the SA state election held in February 2002²²⁰ (Tully cited in ALPSC 2004/5, p. 55; see also estimates cited in Hill & Alport 2010, p. 244). There was also a marked variance in voting across the designated local electorates; for example, 101 people voted in Iwantja, but only 11 voted in the electorate comprising Amuruna/Railway Bore/Witjintitja/Walatina.

6.13.3 Gender and representativeness

The new Executive comprised three women and eight men, an increase of one woman over the previous (2002) Executive. It is interesting to note the gender disparity on the Executive; for the October 2004 election, ‘approximately 56% of voters were female, 40% were male and 4% of names recorded were unreadable or were marks that could not be determined’ (Tully cited in ALPSC 2004/5, p. 56).²²¹ The proportion of women representatives on the AP Executive Board closely mirrored the proportion of women in the SA parliament at the time, and slightly exceeded that of women in Australia’s national parliament at the same time (National Museum of Australia 2002, p. 5).

As noted, the ballot for the Chairperson was close, with only six votes separating Singer and Lewis. This was similar to previous ballots on the Lands; in the 2002 ballot, Lewis had beaten Singer by just 10 votes (*The Australian*, 5 October 2004, p. 2). As in State and national elections, two main political tendencies regularly contested for ascendancy on the Lands, plus other smaller third groupings. On the Lands the major tendencies were often elected turn and turn-about in what were usually close elections outcomes.

The robust politics and dynamic democracy on the Lands at the time was reflected in high voter participation, with 60–70% of eligible voters regularly participating in (voluntary) AP elections.²²² Compared to the comparatively low voter turn-out for (voluntary) local government elections in SA, which at this time was approximately half of this level (30–

²¹⁹ After the community-based pre-selection of nominees for the Executive in October 2002, the names were then ratified at the 7 November 2002 AGM of AP, in which 236 people participated.

²²⁰ The figure of 677 includes people who listed the Lands as their place of residency at the time of the state election in February 2002; thus, it includes a number of non-Anangu, as well as Anangu voters. However, it is debateable whether this accounts for the total difference in voting numbers.

²²¹ ABS data (2006) suggest a breakdown overall of 49.4% male and 50.6% female for the Lands population (see Chapter 1).

²²² See SEO report (ALSC 2004/5) and ABS regarding the number of eligible voters at this time. See also Anangu Paper Tracker (2010) regarding state election trends for more information: <http://www.papertracker.com.au/archived/apy-lands-voting-in-state-elections/#_edn7>.

40%),²²³ the Lands constituency could be viewed as being actively engaged and representative.

6.13.4 Election fall-out

Despite the close election for Chairperson, media reports reproduced the discourse of dysfunction with headlines such as: ‘Blacks ditch “dysfunctional” council’:

hundreds of voters across the Anangu Pitjantjatjara Lands...dumped the region’s ‘dysfunctional’ governing body in an election forced by the Rann Government following the deaths of four youths in a month from petrol sniffing (*The Australian*, 5 October 2004, p. 2).

In this article, Commonwealth (Liberal) Indigenous Affairs Minister Amanda Vanstone congratulated new Chair Bernard Singer and expressed hope for a ‘productive relationship with the new body’. Similarly, SA (Liberal) Opposition Aboriginal Affairs spokesperson Lawson ‘welcomed’ the result as a ‘long overdue change for the Lands, plagued by petrol sniffing for the past 20 years’ (*The Australian*, 5 October 2004, p.2).

The Australian’s triumphalism at Lewis’s defeat seemed out of proportion given that he had been Chair for less than 20 months, and also given the closeness of the ballot. In contrast, the Aboriginal-run *Koori Mail* (20 October 2004, p. 4) and *The Bulletin* magazine (12 October 2004, p. 13) attacked the result, questioning the legitimacy of Singer for having ‘a history of significant criminal offending’ (*Koori Mail*, 20 October 2004, p. 4). Singer was reported at this time as being ‘on a two-year good behaviour bond for assaulting a young woman’ (*Koori Mail*, 20 October 200, p.44).

A legal challenge was also mooted on the basis of reports that ‘a number of people who voted in the elections no longer lived...on the Lands’ (*Koori Mail*, 20 October 2004, p.4). There were allegations that people had voted who were bused onto the Lands ‘from Coober Pedy and Port Augusta...where they lived’ (*Koori Mail*, 20 October 2004, p.4).

SA Minister Roberts acknowledged the role played by past Chair Lewis (South Australian Legislative Council, 18 October 2004, p. 193), while stressing that the government looked forward to working with Singer:

‘There is nothing in the *Land Rights Act* that precludes anyone convicted with an offence from holding office’, he said (*Koori Mail*, 20 October 2004, p. 4).

6.13.5 Centralising control

On 14 October 2004, less than two weeks after the forced Executive elections, Rann announced the transfer of ‘the division known as the Department of Aboriginal Affairs

²²³ See Russell (2004).

and Reconciliation (DAARE) to the Department of Premier and Cabinet' (Ministerial Statement, House of Assembly, 14 October 2004, p. 454). Narungga man Peter Buckskin,²²⁴ CEO of DAARE, was demoted in this move and now reported as a section director through a new Division of Indigenous Affairs and Special Projects, which was headed by public servant Joslene Mazel, a previous special adviser to Rann, to the CEO of the Department of Premier and Cabinet. For many people in Aboriginal communities across Australia, replacing Aboriginal leadership in this way was viewed as a backwards step, as reflected by the following *Koori Mail* headline:

BLACK BUSINESS IN WHITE HANDS...the creation of the new division has effectively stripped power from the head of DAARE (*Koori Mail*, 20 October 2004, p. 4).

While Minister Roberts kept his portfolio title, he too was effectively sidelined, with the carriage of Aboriginal Affairs now firmly in the hands of the Premier. Rann also abolished the cumbersome APLIICC machinery, establishing instead a cross-departmental Aboriginal Lands Task Force in the premier's department. Echoing the rhetoric of COAG, he explained that:

It makes good sense to place DAARE within the Department of Premier and Cabinet, which is well placed as a central agency to drive the 'whole of government approach' to Aboriginal Affairs (House of Assembly, 14 October 2004, p. 454).

Rann's rapid and somewhat ruthless response to the growing criticism of his government's tardy response to petrol sniffing on the Lands positioned him on the front foot and in control just as the Coroner's second inquest got underway.

6.14 Second Coronial Inquest

The second Coronial Inquest (Chivell 2005) into deaths from petrol sniffing commenced in November 2004. It covered the deaths of Kunmanara Ward and Kunmanara Ken, who had died in Indulkana on 22 May 2003 and in Amata on 19 December 2003 respectively, and the deaths of Kunmanara Ryan and Kunmanara Cooper, who died on 2 March and 24 March 2004 in Mimili.

In his Report published on 14 March 2005, Chivell found that Ward (19 years old) had hanged himself from the 'monkey bars at the playground at Indulkana' after he 'had been sniffing petrol and had been angry and upset that day' (Chivell 2005, p. i). Kunmanara Ken (35 years old) was found to have died of 'exposure' related to 'severe organic brain

²²⁴ As mentioned in Chapter 5, Peter Buckskin was a well-respected South Australian Narungga man who had worked for the Commonwealth Government and been adviser to Dr David Kemp (Liberal), the Commonwealth Minister for Education, Training and Youth Affairs in the first Howard Cabinet. He was specifically recruited by Labor Minister Terry Roberts, who worked closely with Buckskin on APY and other Aboriginal affairs issues during his term of office.

damage as a result of sniffing petrol since he was a boy' (Chivell 2005, p. ii). In the case of Kumanara Ryan (25 years old), who suffered from depression, there was no evidence that he had been 'sniffing petrol at any relevant time immediately before he died'; however, Ryan's psychiatrist had 'expressed concern regarding his ongoing drug abuse' (Chivell 2005, p. ii).

The Coroner found that Kunmanara Cooper (27 years old) had hanged himself after 'sniffing petrol prior to his death' (Chivell 2005, p. ii). Cooper had been in transit on the Lands after being held in correctional and secure care facilities in Port Augusta and Adelaide for some time, and he was thought to have been waiting for a lift home to Pipalyatjara at the time of his death near Mimili. The urgent provision of correctional and rehabilitation services on the Lands had been recommended by the Coroner's earlier findings.

In a confronting finding that was an indictment on the lack of action by successive governments since 1986, and particularly since his 2002 Inquest, Chivell stated that:

Many of the issues associated with Kunmanara Cooper's case could not have arisen if there had been a correctional facility available on or near the Anangu Pitjantjatjara Lands. It is impossible to know whether his death could have been prevented if such a facility had existed in March 2004, but it is reasonable to suggest that *it may have been* [author's emphasis] (Chivell 2005, p. iii).

Chivell (2005) found that there had been a 'marked increase in suicidal and self-harming behaviour on the Anangu Pitjantjatjara Lands since March 2004'. Petrol sniffing and other substance abuse, along with mental illness and family, domestic and sexual violence were listed as contributing factors, combined with 'socio-economic factors including poverty, hunger, illness, low education levels, unemployment, boredom, and feelings of hopelessness', which the Coroner said had not changed since his 2002 Inquest.

Chivell (2005, p. iii) argued that locating responsibility for the APLIICC with the Department for Aboriginal Affairs and Reconciliation (DAARe) had been 'a mistake', as it 'did not have sufficient resources, power and authority to drive major change in key government agencies'. While noting that a leaner and more proactive Aboriginal Lands Task Force in the premier's department had since replaced the APLIICC, Chivell (2005, pp. 99–103) stated that as the circumstances on the Lands had worsened rather than improved since his first inquest, 'it is appropriate that I should repeat the general recommendations I made in the 2002 findings', and he proceeded to list them in full again in this second Inquest Report.

Chivell (2005, p. iv) commented that it was only after he had signalled a further Coronial Inquest following the tragic spate of Anangu deaths in March 2004 that funding began to flow, stating that ‘these events appear to have galvanised the South Australian Government into more urgent action’:

It is very unfortunate that the optimism expressed by South Australian Government representatives during the 2002 inquests did not translate into the ‘prompt, forthright, properly planned, properly funded action’ which was called for, until March 2004.

As in 2002, the 2005 Coronial Inquest did not find fault with, nor recommend, any changes to Anangu governance. Nor was it suggested that the PLRA needed to be amended before the government could appropriately respond to petrol sniffing and other social welfare issues on the Lands.

While acknowledging that ‘political instability’ surrounding the Executive had been of some hindrance, Chivell (2005) levelled responsibility for ineffective action and delays in service provision unequivocally at the feet of the South Australian Government.

He was repeatedly critical of the Government’s penchant for committees and consultations without a clear focus on follow-through delivery. He chronicled a consistent lack of action on most of the critical recommendations he had identified for urgent action in 2002.

The 2005 Coronial Inquest Report was an indictment of the Rann government’s (*in*)action over urgently needed support for the Lands, which had resulted in further deaths from petrol sniffing. However, this aspect of the Inquest’s report received minimal media attention and little public discussion. Less publicity and less policy discussion attended the inquest’s findings than reported on the government’s racialised rhetoric blaming the AP Executive and demonising Anangu governance for the tragedies that the Lands had endured.

APY had been successfully constructed in the public domain as if it were a ‘failed state’ (Dillon 2007) in need of major reform. The Coroner’s careful weighing of evidence and his findings of fact did not disrupt the highly politicised dominant policy storyline. The stage was now set for the planned overhaul of the PLRA in the months ahead.

Chapter 7: Limiting Self-determination

The Pitjantjatjara Land Rights (Miscellaneous) Amendment Act 2005 and Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances) Amendment Act 2006

‘A person or a group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Non-recognition or *misrecognition* can inflict harm; can be a form of oppression, imprisoning one in a false, distorted, and reduced mode of being’ (Taylor 1994, p. 25)

7.1 Introduction

This chapter explores how the South Australian Government capitalised on the narrow win by new AP Chair Bernard Singer in October 2004 to push for significant amendments to the PLRA, which were achieved in October 2005. It examines these legislative changes and compares provisions of the amended Act with those of the original. It argues that the amendments limited the Anangu self-determination envisaged by the original framers of the PLRA 1981. This chapter asks how a crisis in Anangu–state relations, which began with media criticism of inadequate government service delivery in a series of tragic deaths by petrol sniffing on the Lands could be transformed in less than 12 months into a debate about ‘problems’ with Anangu governance justifying rushed changes to the PLRA.

The chapter then explores how shifts in policy framing served to stigmatise Anangu sociality, modes of organisation and cultural capacities. Longstanding health issues such as petrol sniffing, which were previously recognised as part of a legacy of systemic disempowerment from the destructive aspects of colonisation, were *reframed* as manifestations of Indigenous *incapacity* or promulgated as evidence of remote communities as ‘failed societies’ (Dillon 2007; Dillon & Westbury 2007).

Drawing on the work of theorists such as Kymlicka, Cairns, Tully, Taylor and Fraser on minority rights and the politics of recognition, this chapter concludes by reflecting on the possibilities and limitations of ‘self-determination’ within the context of the APY Lands. It contemplates the shifting constructions of APY throughout the 25-year period of changing national policy settings and locates this within broader questions of recognition, sovereignty, decolonisation and power.

7.2 Anger, Anguish, Acquiescence, as the PLRA is Again Amended

Following the release of the second Coronial Inquest Report in March 2005, Rann boldly pushed forward with plans to overhaul the PLRA. Nationally, the policy environment was

favourable to Rann's plans. Health Minister Tony Abbott had announced Commonwealth support for rolling out Opal fuel across the Lands in Adelaide in February, which was a welcome boost for Rann, who was under pressure in relation to petrol sniffing on the Lands (Abbott & Vanstone 2005;²²⁵ Lawson, SA Legislative Council, 3 March 2005, p. 132). Indigenous Affairs Minister Amanda Vanstone further extolled the Commonwealth's commitment to what she termed a 'quiet revolution in Indigenous affairs'²²⁶ away from self-determination and towards more 'whole-of-government' coordinated arrangements, whereby public servants would focus on direct engagement 'out in the field', charged with 'the responsibility of making individual agreements with individual communities' (Vanstone 2005, p. 6). Since abolishing ATSIC in 2004, Howard's government had absorbed Indigenous programs into mainstream departments and established 29 regionally located Indigenous Coordinating Centres (ICCs), tasking public servants in these offices:

to work together across departments, with Indigenous communities and with State/Territory government departments to develop formal agreements which would guide a more whole-of-government and whole-of-community approach to both funding and service delivery (Gray & Sanders 2006, p. 1).

7.2.1 Tjungugka Kuranyukutu Palyantjaku

Rann was keen to work with the Commonwealth's more interventionist agenda. In a joint press release,²²⁷ Rann, Abbott and Vanstone announced the formation of Tjungugka Kuranyukutu Palyantjaku (TKP),²²⁸ which exemplified these new partnership arrangements (Rann, Abbott & Vanstone, 1 April 2005). TKP was a COAG-driven service providers' forum comprising the state (Premier's Department, DAARe) and Commonwealth government officials (COAG, ICC and DoHA) and Directors of Anangu regional organisations such as the NPY Women's Council, Nganampa Health, AP Services and PY Media.

²²⁵ Minister for Health and Ageing (Hon. Tony Abbott) and Minister for Immigration and Multicultural and Indigenous Affairs (Senator Amanda Vanstone) (2005).

²²⁶ Sanders (2008a) has also referred to this period as a 'generational revolution' in which public commentators like Noel Pearson gave voice to policy ideas not antipathetic to those of the Howard government. See also Sanders (2014, p. 7).

²²⁷ Rann, Vanstone and Abbott (1 April 2005).

²²⁸ TKP is a Pitjantjatjara/Yankunytjatjara expression that means 'together towards the future'. For a further explanation, see 'Progress on the APY Lands' (February 2007).

Notably, this new TKP regional consultative forum had no direct lines of accountability to AP or its Executive, despite these being the designated (and elected) governance bodies—the Anangu ‘body corporate’—established by the PLRA.²²⁹

Rann heralded TKP as the forum that would improve the lives of Anangu ‘by sharing responsibility for planning and coordination of services as well as reporting [to government] on progress’ (Rann, Abbott & Vanstone, 1 April 2005).

Anangu organisations were being drawn ever further into processes of government decision-making. As von Sturmer (1985, p. 48) had earlier argued, the discourse of self-determination could easily conceal ways for the state to co-opt Aboriginal organisations into its agendas, including through indirect means, ‘namely by creating “Aboriginal” organizations which are then required or demanded or invited to participate in government decision-making’.

Although TKP was initiated and driven by Commonwealth and state government officials, it was also endorsed by Anangu at the AP AGM in early March (AP General Meeting Minutes, 8 March 2005). After negotiations with regional Anangu agencies, the Commonwealth offered a package of \$175,000 for a TKP secretariat to support the coordination of services, including \$43,000 earmarked for PY Media for a ‘communications strategy’ (TKP Minutes of Meeting, 1 April 2005, p. 5).²³⁰ Along with earlier COAG funding for Mai Wiru (Nganampa Health) and PY Ku (PY Media) projects,²³¹ these regional Anangu agencies were receiving a strong boost of Commonwealth resources.

While the Commonwealth worked to secure the cooperation of Anangu regional agencies, the South Australian Government pursued its legislative reform agenda. Officers of the Department of Premier and Cabinet had been liaising closely with the Singer-led Executive since its election in October 2004, and Rann’s intention to review the PLRA was signalled to AP in February 2005 with a request for PY Media to translate and broadcast notice of the review across the Lands. Rann charged the Director of DAARe,

²²⁹ AP had a representative on TKP, but in effect, AP, as the ‘body corporate’ of all TOs on the Lands, is viewed in this model as simply another regional agency rather than the body of all Anangu, as envisioned in the PLRA.

²³⁰ The budget was earmarked for the Anangu directors’ salary and travel with a further sum to PY Media to assist with the communications strategy about TKP and the government’s plans to review the PLRA.

²³¹ The COAG trial Mai Wiru and PY Ku projects are discussed in more detail in Chapter 6 of this thesis.

which had now become a division within the Department of Premier and Cabinet²³² with gaining support for legislative change at the AP AGM in March.

However, at the AP AGM, Anangu argued that while the South Australian Government could work with 'PY Media to organise a radio announcement of Land Rights Act Review', it was the responsibility of AP to conduct consultations with TOs. The AGM resolved:

That Anangu Pitjantjatjara (AP) supports the review of the Pitjantjatjara Land Rights Act 1981 and that AP will, through its Executive Board in accordance with its duties and responsibilities under sections 6 & 7 of the Act: Section 6: ascertain the wishes and opinions of traditional owners Section 7: consult with its members; and that AP supports the review of the Pitjantjatjara Land Rights Act happening in two parts: Stage 1: review of the AP structure and role; Stage 2: review of external commercial activity and AP's approach; and that AP supports its executive board continuing discussions with government about the Act and that AP executive report to Anangu through the consultation process (AP AGM Minutes, 8 March 2005).

7.2.2 'Undermining self-determination'

Anangu service providers were buoyed by the flow of Commonwealth funds and optimism around the introduction of Opal through the Commonwealth's new Petrol Sniffing Program.²³³ This caused some Anangu to consider the review of the PLRA an opportunity for renewal. Others were less convinced and saw a potential diminution of their voice.

Lowitja O'Donoghue, who had completed her stint as special adviser to Rann in October the previous year, was dismayed that her report on the Lands²³⁴ had not been made public, nor its recommendations enacted. By March 2005, Lowitja O'Donoghue was making her frustrations public:

Government adviser Lowitja O'Donoghue is frustrated it is taking so long to improve life in the Anangu Pitjantjatjara Lands, after last year's petrol sniffing related suicides. 'I mean the Premier

²³² See Chapter 6 for more details of the transfer of DAARE into the Department of Premier and Cabinet by Premier Rann in late 2004.

²³³ As cited above, the Commonwealth established the Petrol Sniffing Prevention Program in February 2005 as a means for providing low aromatic fuel like Opal to participating remote communities. The PSPP was implemented by the Department of Health and Ageing (DoHA) and became its contribution to the broader whole-of-government Petrol Sniffing Strategy (PSS). The PSS was further developed in September 2005 as a collaborative approach between the Commonwealth and WA, SA and NT governments, aiming to reduce the incidence and effect of petrol sniffing. Under the PSS, the respective jurisdictions agreed to develop: consistent legislation; appropriate levels of policing; further roll-out of LAF; alternative activities for young people; treatment and respite facilities; communication and education strategies; and strengthening and supporting communities and evaluation (see Hanson, Wells, Lansdowne & Pope 2015; ANAO Audit Report 2014–2015, <<http://www.anao.gov.au>>).

²³⁴ O'Donoghue and Costello (2015) was completed and provided to Premier Rann in October 2004, but not made public until late March 2005, invoking much criticism not only from Lowitja O'Donoghue (e.g., *Koori Mail*, 18 May 2005, p. 5), but also the South Australian Democrats (e.g., Hon. K Reynolds, LC Hansard, 20 September 2005, pp. 2616–2623) and Opposition (e.g., Hon. R Lawson, LC Hansard, 20 September 2005, pp. 2612–2616; Dr McFettridge, HA Hansard, 19 October 2005, pp. 2713–2716).

knows, I told him today, I'm totally frustrated by the lack of Government's quick response', she said (ABC News, 23 March 2005).

Lowitja O'Donoghue had recommended in her report the appointment of an 'honest broker' for the Lands with the access, legitimacy and powers of an 'Ombudsman' to intervene with, for and on behalf of Anangu (O'Donoghue & Costello 2005, p. 8). Increasingly worried at the complexity of bureaucratic issues compounding life on the Lands, she argued publicly that this position was urgently needed so Anangu could 'clarify governance confusion', determine what 'self-determination' might mean and identify the best models for 'self-governance' to strengthen, rather than dilute, self-determination.

Rann's response, with its imperial analogy, signalled the antithesis of Lowitja O'Donoghue's more empowering vision:

'We need a sort of a czar who's prepared to be tough!' Mr Rann said (ABC News, 23 March 2005).

O'Donoghue was not alone in her concerns about the levels of government control on the Lands. Immediate past AP Chair (and Chair of Pukatja Community Council) Gary Lewis, critical of the pressure on TOs to amend the PLRA, set about gathering signatures from Anangu across the Lands for a petition to Parliament condemning Rann for:

undermining the self-determination and authority of all Traditional Owners of the Pitjantjatjara Lands (Lewis cited in Lawson, South Australian Legislative Council, 5 April 2005, p. 1452).

Lewis's petition asserted the rights of TOs to freely express their views and opinions. It reminded Rann (and the AP Executive) of the statutory requirement (under the PLRA) that consultation and the approval of TOs was needed before any major decision could be taken. It criticised the Executive for not seeking separate legal representation and requested funding so that TOs could access independent legal representation about any proposed changes to the PLRA.

At this time, the Executive's legal advice came through a lawyer provided to the Executive by the South Australian Government to help advise and support the Executive with its deliberations. Lewis and other TOs argued that this constituted a conflict of interest, and that Anangu interests were insufficiently protected. Lewis argued that TOs needed independent legal representation in order to fully consider the implications of any changes to their rights to self-determination that might result from amending the PLRA.

Alternative legal advice was accessed with the support of the Uniting Church and its non-government arm UnitingCare Wesley, a coalition of supporters drawn from other

academic and social justice organisations.²³⁵ This allowed those TOs who were unhappy with, or sceptical of, advice from the government to push back against the Executive.

Tensions about proposed changes to the PLRA continued to mount during April and May as first the Executive and then the government (Department of Premier and Cabinet) held consultation meetings.²³⁶ Anxiety about the future was becoming widespread as views continued to polarise at hastily convened consultation sessions. Concern at the pace of change was expressed by staff at the Nganampa Health Council, who complained that the timelines for the review were ‘extremely short’ (NHC correspondence, 22 April 2005 cited in Reynolds, LC, 20 September 2005, p. 2621).

The NPY Women’s Council also wrote to the Department of Premier and Cabinet through DAARE, complaining that on the days the consultations about the PLRA were held, they were away for work in the NT. Australian Democrat Kate Reynolds raised this concern in parliament, arguing that while the consultations were taking place:

NPY Women’s Council members were at Finke attending general and executive meetings...[which] means that the most influential women on the lands were not able to participate because they had commitments elsewhere (Reynolds, LC, 20 September 2005, p. 2621).

In evidence given to the Aboriginal Lands Parliamentary Standing Committee²³⁷ about the consultation process,²³⁸ witnesses argued that Anangu TOs were concerned about the government’s motives:

There is also a perception that the Task Force within Premier and Cabinet has worked fairly secretly...people were saying they did not know what is happening and therefore were worried and suspicious. Many people were frightened that decisions were being made behind closed doors and they are fearful of deals being done (ALPSC Annual Report 2004/5, p. 86).

Despite growing resistance and protests about the pace of change, the South Australian Government released a *Draft Bill to Amend the Pitjantjatjara Land Rights Act 1981* in

²³⁵ A list of supporters on p. 34 of the Annual Report 2005/6 of the Aboriginal Lands Parliamentary Committee includes a network of people drawn from the Yankunytjatjara People’s Network, the University of South Australia, Adelaide University, UnitingCare Wesley Adelaide, Uniting Aboriginal and Islander Christian Congress, Australians for Native Title and Reconciliation (SA), Port Adelaide Greens, and the Australian Peace Committee (SA Branch), among others.

²³⁶ In May 2005, the government held consultation meetings at three locations on the APY Lands, which aimed to build on earlier consultation meetings conducted by the AP Executive in April (see p. 23 of the Annual Report of the Aboriginal Lands Parliamentary Standing Committee 2005/6 for more information on the consultation process).

²³⁷ As discussed in Chapters 4 and 5, the Pitjantjatjara Lands Parliamentary Committee was established after the 1987 amendments to the PLRA; however, the Committee ceased to meet after the Liberals came to office in 1993, and it expired in 1997. After the Rann Labor minority government took office in 2002, the passing of the *Aboriginal Lands Parliamentary Standing Committee Act 2003* enabled Minister Roberts to re-establish the Committee with a broader brief for the ALT Act, the MTLRA as well as the PLRA as the Aboriginal Lands Parliamentary Standing Committee. The Committee held its first meeting on 27 November 2003 with Roberts in the Chair.

²³⁸ 2 June 2005, Q1332, ALPSC Annual Report 2004/5, p. 86.

mid June. In a letter to the ALPSC,²³⁹ Joslene Mazel, the Executive Director for the Indigenous Affairs Division of the Department of Premier and Cabinet, stated that:

The content of this Bill reflects the outcomes of negotiations between the SA Government, the AP Executive Board (*and their lawyers*), traditional owners and Anangu generally, the Commonwealth Government and various persons/organisations who made written submissions. The AP Executive Board, and the SA Government have endorsed this Draft Bill (ALPSC Annual Report, 2005/6, p. 23. Italicised words in original letter).

Earlier debates on the Lands now escalated amidst general confusion about the Draft Bill. As the polarisation of views among Anangu deepened and conflicts broke out on the Lands, Lowitja O'Donoghue again criticised the South Australian Government's handling of AP issues, suggesting that:

'They are playing one group off against another', she said. 'It is very devious behaviour' (O'Donoghue, 13 June 2005, p. 5).

A Special AP General Meeting held at Umuwa in late June was well attended but acrimonious. Different versions of the role of government officials in the meeting emerged, with official minutes recording that only three aspects of the changes proposed received the unanimous support of Anangu present: i) the proposal to legislate a three-year term for the Executive; ii) the role definitions and terms proposed for General Manager and Director positions; and iii) 'amendments to the *Pitjantjatjara Land Rights Act 1981* to include *Yankunytjatjara*' (AP, Special General Meeting Minutes, 21–22 June 2005).

7.2.3 TOs travel to Adelaide to appear before the Aboriginal Lands Parliamentary Standing Committee

In August, just as in the lead-up to the inauguration of the PLRA 25 years earlier, dozens of Anangu TOs, their families, friends and supporters made the long journey to Adelaide to discuss their *Land Rights Act*. Indeed, some of the same elders present for the original negotiations around the Act formed part of one or other of the delegations that had formed around competing interpretations of both the need for, and the approach being taken to, legislative change. Anangu with divergent and conflicting views had requested an opportunity to speak to the ALPSC. Before representatives of the rival camps gave evidence before a special meeting of the Committee in the Old Parliament House chamber on 25 August, a large gathering of Anangu with their supporters, legal advisers, extended families and friends gathered in the gallery of this grand venue.

²³⁹ Letter from Ms J Mazel (15 June 2005) (D203). Italicised words as per original letter.

In the gallery of the Old Parliament House, Anangu representatives for and against change gathered to speak in the historic chamber. Tension was palpable among the gathering Anangu groups and between the non-Anangu party political rivals on the ALPSC. It was a privilege and enlightening to bear witness to what happened next.

Two of the most senior, intense and often spirited protagonists in the internal politics of Anangu community life, who held opposing views on the proposed amendments to the Act, stood up together and asked for silence. Together they began to sing, leading all of the Anangu present, who solemnly joined in. In unison, Anangu who were present all stood and sang together with one strong melodic powerful voice, first in Pitjantjatjara and then in English.

No one present that day could easily forget the sound of Anangu singing together before the tense and significant debate that was to follow about the future of their governance arrangements and their *Land Rights Act*. The powerful singing silenced all non-Anangu and filled the Old Parliament House with the passion and richness of the Pitjantjatjara language and resonance of united voices. The meeting and speeches proceeded with dignity and tolerance, despite the deeply entrenched and divided views held.

7.2.4 ‘Tjukurpa nyanganpa kampa kutjupankuku Pitjantjatjara Land Rights Actangka’

After starting proceedings by singing in unison, the large group of assembled Anangu broke into two groups: those speaking for the Draft Bill to amend the PLRA and those against. Those speaking in favour of amending the PLRA, led by AP Chair Singer, formed the largest group and gave evidence first. Singer tabled a document and read an opening statement to the Committee, first in Pitjantjatjara and then English.²⁴⁰ He argued that:

Members of Anangu Pitjantjatjara (AP), including Traditional Owners (TOs), support the current Anangu Pitjantjatjara Executive and the work that has been done to change the Pitjantjatjara Land Rights Act. We are providing the South Australian Government this week with a number of signatures attesting to this fact. To the Parliamentary Committee and Mr Minister, Anangu Tjuta across the Lands are really wanting the Parliament to really push this, to go into Parliament, so that it could be put into the Bill. So that is what Anangu Tjuta are wanting (ALPSC Annual Report 2005/6, p. 26).

A succession of speakers followed. Interestingly, the proponents for change appeared to be convinced that there were only four elements to the draft amendments—extending the Executive’s term from one to three years, electing a Chair from the Executive (and not

²⁴⁰ Evidence B Singer, 25 August 2005, Q1368. Singer tabled a copy of the six-page ‘plain English summary’ (D240). For full details, see ALPSC Annual Report (2005/6, p. 26).

separately from the whole of AP), ensuring the provision of governance training for the Executive and recognising Yankunytjatjara people in the name of the Act.

While Singer and related speakers were correct in asserting that most members of AP were agreeable to these changes (as indicated above in the discussion of the AP Special General meeting resolutions), they appeared to either not understand or deliberately obfuscate when others, even within their own ‘for change’ group, raised concerns that these were not the only amendments proposed in the Draft Bill. Makinti Minutjular (the Pukatja Council’s Municipal Services Officer) gave evidence that the consultations had been rushed and that many people were confused about the proposed changes. She specifically requested clarification as to whether the four items mentioned by Singer were the only parts of the PLRA to be amended. Singer replied that AP were definitely not seeking to ‘change everything that is in the *Land Rights Act*—only the four things that are going to be done...they are the four things we want to see put into the *Land Rights Act*’ (ALPSC Annual Report 2005/6, p. 28).

At this point, ALPSC Chair Minister Roberts intervened to state clearly to the whole assembled group that, in his view, all of the proposed amendments and their implications should have been properly canvassed at each of the consultation meetings because ‘the Bill [does] include matters other than the four issues that have been discussed more broadly’ (ALPSC Annual Report 2005/6, p.28).



Mr Bernard Singer (left) presents evidence to the Standing Committee on 25 August 2005.
Mr Trevor Adamson (right) provided English and/or Pitjantjatjara/Yankunytjatjara translation when required.

Figure 7.1: Source: Aboriginal Lands Parliamentary Standing Committee Annual Report
(2005/6, p. 26)

Pukatja Council Chair (and past AP Chair) Lewis led the speakers who were opposed to the Draft Bill. In a powerful opening statement, he asserted that:

The amendments the Government wants now will forever change our right to decide what happens on our land.... We want time to discuss this until all the old people and Traditional Owners can understand properly the full impact of these changes and make an informed decision—not this pushing way the Government is forcing on us. What is the rush? Changing the Act will not stop our young people dying from petrol sniffing or give us jobs. Changing the Act this way only helps the government control the use of our land more easily for mining and white people’s benefit. This is wrong. We want an independent lawyer to help the old people fully understand what is happening. We want time to negotiate properly. We want respect as Anangu people to decide what happens on our land. No government and no Act of this or any other parliament can tell us who is Anangu and who isn’t. That is our business and our law and our history, and it is wrong to try to label and define like this those in our own country. It is wrong to give yourselves— non-Anangu people—the right to take over our land, whether you think you are doing it to protect us or control us. You do not have the right to tell us what to do in our own land. You do not have the right to take away our dignity and self-determination like this (ALPSC Annual Report 2005/6, p. 32).

Lewis requested a further 6–12 months to allow for more in-depth discussion and negotiation of the details of the proposed changes, arguing that amending the PLRA this way was a matter affecting ‘our human rights as Anangu people’ (ALPSC Annual Report 2005/6). Other Anangu then spoke against the Draft Bill, arguing that TOs had not been properly informed about the amendments, which they argued went further than was currently generally understood, and that more time and separate paid legal representation was needed for people to fully appreciate the implications of planned changes to the PLRA. Shaun Berg,²⁴¹ a lawyer contributing pro bono support to the TOs concerned about the proposed amendments, briefly summarised a submission that outlined their appeal to the ALPSC to advocate for more time.²⁴²

Berg argued that the Draft Bill failed to ‘protect and preserve the culture of Anangu people’ and would ‘disenfranchise the Traditional Owners’ (ALPSC Annual Report 2005/6, p. 33). In concert with the group of TOs opposed to the Bill, he argued that the proposed amendments would fundamentally alter the nature of the PLRA, undermining the TOs’ leadership of AP, while at the same time placing ‘considerable control...in the hands of the Minister’ (ALPSC Annual Report 2005/6, p.34):

We submit that the Bill diminishes the rights of Traditional Owners, as we interpret it. It centralises additional powers with the Executive Board, and it provides the Minister with the ability to hang over the board and take decisions as described in the Act. Essentially, what we have is an assumption that the Indigenous decision-making process is unworkable and that it is inferior to the non-Indigenous decision-making process (ibid).

²⁴¹ Shaun Berg is also the author of texts on Land Rights issues in SA, see Berg: (2006; 2010).

²⁴² “Submission to Select Committee on Pitjantjatjara Land Rights [sic] by Traditional Owners of Pitjantjatjara Lands,” 25 August 2005, (D241) was tabled at this meeting (ALPSC Annual Report, 2005/6, p. 32).



The Committee receives formal evidence from the second group of witnesses from the APY Lands on 25 August 2005.

Figure 7.2: Source: Aboriginal Lands Parliamentary Standing Committee Annual Report (2005/6, p. 34)

7.2.5 Passing of the Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill 2005

With some reworking based on the concerns of those opposed to the Draft Bill released in June, a revised Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill 2005 was introduced into the SA Parliament on 14 September.²⁴³ Despite petitions, lobbying of politicians, national and local press coverage, an appeal letter to the Premier signed by hundreds of supporters (including prominent Australians) and a series of public protests held in Adelaide (including Anangu assembling with placards on the steps of Parliament House, Lowitja O'Donoghue leading people in to occupy the public galleries of the Legislative Council, and the House of Assembly wearing face masks of Dunstan and Tonkin),²⁴⁴ the legislation was destined to succeed.

Although they had issued a 'dissenting statement' to the 2004 Report of the Select Committee on Pitjantjatjara Land Rights²⁴⁵ and criticised Labor for pressuring TOs through rushed consultation processes, SA's Liberal Opposition locked in with the Rann Labor government to secure amendments to the PLRA. Given the significant role of

²⁴³ The 'Pitjantjatjara Land Rights (Miscellaneous) Amendment' Bill (100 100A) was introduced into the Legislative Council on 14 September 2005 by Minister Roberts.

²⁴⁴ The protest led by Lowitja O'Donoghue involved dozens of people with paper masks of Dunstan or Tonkin held in front of their faces chanting 'shame' simultaneously in both Houses. It was a peaceful rally and people desisted chanting when the Speaker in each chamber called for order. However, people kept their face masks on, and there was much interest from MPs.

²⁴⁵ Chapter 6 of this thesis contains a discussion of the SC Report, including the brief 'Dissenting Statement' made by Liberal (Opposition) members Hon. Caroline Schaefer and Hon. Robert Lawson, Shadow Minister (SC 2002, pp. 100–102).

Howard's (Liberal Coalition) Commonwealth Government in driving the policy agenda on the Lands through COAG agreements and their control of substantial funding, as well as the continuing minority status of Rann's government, it should be no surprise that the Liberal Opposition supported the amendments.

With the Labor government and the Liberal Opposition supporting the Bill,²⁴⁶ it was left to the Australian Democrats in the Legislative Council,²⁴⁷ and a single Greens representative (Kris Hanna) in the House of Assembly²⁴⁸ to take issue with amending the PLRA. Democrat Reynolds, a member of the ALPSC, chronicled what she viewed as a process of unfair and offensive 'blaming the [AP] Executive' for issues beyond its jurisdiction 'to get Government off the hook' (Reynolds, LC Hansard, 20 September 2005, p. 2618), and of promoting changes that were not sufficiently respectful or acknowledging of Anangu connections to, and 'ownership' of, the Lands (Reynolds, LC Hansard, 18 October 2005, p. 2745).

When the Bill entered the House of Assembly for its second reading debate on 19 October, the Green's Hanna, also a member of the ALPSC, set about pursuing the contradictions he saw in the Bill, including his critical assessment of the political economy behind the rush to amend the PLRA:

What then might be the real reason for chipping away at this principle of self-determination which was so nobly put forward 25 years ago? In a word: mining (Hanna, HA Hansard, 19 October 2005, p. 3717).

Arguing that the Musgrave Ranges were being targeted by powerful mining interests, Hanna cited the connections between multi-millionaire mining entrepreneur Robert de Crespigny, founder of Normandy Mining (later Newmont Mining) and the Rann government. de Crespigny occupied a unique, influential and controversial position at this time. Not only was he Chair of SA's Economic Development Board, but he was also a non-elected, non-government member of Rann's Executive Committee of Cabinet.

In a radical first, Rann had installed de Crespigny and Catholic Priest Monsignor David Cappo as members of his Cabinet's Executive Committee in April that year²⁴⁹ (Barlow, 2005). Hanna inferred that corporate mining had a strong interest, if not an active role, in promoting a policy shift away from self-determination on the Lands.

²⁴⁶ See Hon. R Lawson, LC Hansard, 20 September 2005, pp. 2612–2616; Dr McFettridge, HA Hansard, 19 October 2005, pp. 2713–2716.

²⁴⁷ See, for example, contributions of Hon. K Reynolds, LC Hansard, 20 September 2005, pp. 2616–2623.

²⁴⁸ See, for example, contributions of Hanna, HA Hansard, 19 October 2005, pp. 3716–3746.

²⁴⁹ This unusual move made world news, for more detail see Barlow (2005).

In a shock move, Opposition speaker Kotz, a past (Liberal) Minister for Aboriginal Affairs, supported Hanna's interpretation of mining's role behind the push to amend the PLRA. Kotz stated that she could 'well and truly assure the House that the discussions on mining' on the Lands were not new, and were definitely at play in the rush to amend the PLRA (Kotz, HA Hansard, 19 October 2005, p. 3721). Kotz stated her opposition to this 'paternalistically motivated Bill' and voted against its key tenets:

I am totally convinced that what we are seeing here is a removal of the land rights that were historically granted through this parliament in 1981. As a South Australian, I am offended by the fact that this bill is here tonight and that we are addressing it to take away what was given historically all those years ago (Kotz, HA Hansard, 19 October 2005).

Anangu TOs who had travelled down for the debate waited and watched in the public gallery as their lives, their legislation and the future of their governance relationships on the Lands were discussed back and forth, on and on, by a non-Indigenous parliament in Adelaide. The intense debate continued over many hours, necessitating extensions of time for the House to sit first past 10 pm, and then a further extension to continue past midnight. In the early hours of the morning, Hanna pursued another critical line of questioning leading to interesting admissions by the Government. Hanna revealed that:

In the discussions around the building tonight, it has been impressed upon me that we absolutely have to pass this legislation tonight because there is a promise of some \$10 million of Commonwealth funding hanging on the passage of this bill tonight.... It has been put to me by government members that, if we do not pass this bill tonight, there will be the loss of some \$10 million in funding.... It is totally incredible to me that the Commonwealth will make a decision about \$10 million of funding based on whether this bill is passed on this day, tomorrow, or next week (Hanna, HA Hansard, 19 October 2005, p. 3727).

Surprisingly, Minister John Hill, who was managing passage of the Bill for the government, verified this claim. Hill explained that of \$65 million of State and Commonwealth funding to the Lands, 60% came from the Commonwealth. He explained that the Commonwealth had conveyed to the South Australian Government that if the legislation to amend the PLRA was passed, some \$10 million in additional funding would be forthcoming 'for a range of specific programs, a coordinator for service delivery and...some assistance with sniffing...and there could be more':

The officer who is sitting next to me was informed of this by her colleague in Canberra, a Commonwealth officer, by telephone a couple of weeks ago (Hill, HA Hansard, 19 October 2005, p. 3727).

Hill then said that if the Bill was delayed, the Commonwealth officer had stated that they would consider:

that the governance arrangements in place in the APY lands were inadequate, and they have made it clear to us that they would not be putting additional funding in (Hill, HA Hansard, 19 October 2005).

Hanna's response to this revelation is noteworthy:

I find it absolutely extraordinary that Ministers of the Crown can come to me informally and say that we have to get this bill through tonight or lose \$10 million in funding. Yet when questioned, the Minister responsible for the passage of the bill through this House of Assembly this evening says that the assertion is made on the basis of a telephone call a few weeks ago from one bureaucrat in Canberra to a bureaucrat in Adelaide. I find it extraordinary that this threat of losing \$10 million of Commonwealth funding is made without anything in writing, without any representation from any Commonwealth Minister and without any representation directly to any State Minister... The other curious thing about this extraordinary assertion is that, on the basis of a telephone call from someone in Canberra—not a Minister but a bureaucrat—\$10 million of Commonwealth funding is in jeopardy if this bill is not passed tonight... We are talking about the executive of the Anangu Pitjantjatjara established under the Pitjantjatjara Land Rights Act 1981. According to that legislation, not only is the Executive established but it is established with considerable formality (Hanna, HA Hansard, 19 October 2005, p. 3728).

Incredibly, just as the basis for amending the PLRA was being argued to be about improving 'governance on the Lands' for better accountability in service delivery, it was revealed that millions of dollars were being promised, and threatened to be withdrawn if events did not go as planned, on the basis of alleged phone calls between Commonwealth and State public servants, which were relayed by Ministers to the Parliament as if they were worthy of serious consideration.

There seems little doubt that Hill and other government MPs who were present believed that much Commonwealth funding would be taken off the table if they did not pass the Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill before day-break.

With a tone of regret, noting that 'it is so unfortunate that it was seen as necessary to rush this legislation through tonight', and acknowledging that it would have been 'easier for all of us...most importantly for Anangu themselves...if it had not come to this', Hill closed the debate (HA Hansard, 19 October 2005, p. 3746).

The Bill, as amended, was passed at 4.19 am. One Anangu elder made the poignant observation that these dark still hours just before dawn are when silently, unseen, the *Kadaitcha* walks²⁵⁰.

²⁵⁰ There are many Central Australian versions of the story of the *Kadaitcha* as a person of great spirital powers with the capacity to walk silently unseen and unheard often just before dawn. Some Anangu speak of, '*tjina karpilpa* -an assassin with magicpowers – literally 'bound feet', and referring to the emu feather shoes he wears to cover his tracks' (Marshall, 2001, p. 238). *Kadaitcha* is more often an Arrente term for this same powerful figure but it was the term used in this pers com.

7.2.6 November 2005 AP Executive Board elections take place under the new rules

Before analysing the 2005 amendments to the PLRA in more detail, a brief analysis is provided of the AP Executive Board elections, which followed within weeks of the passing of the Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill.²⁵¹

On 28 November 2005, the SEO conducted an election for the AP Executive Board, as it had previously done in October 2004, but this time under the newly amended Act. During the 2004 elections, the SEO had followed statutory provisions of the Pitjantjatjara Land Rights (Executive Board) Amendment Bill, which included the creation of 10 electorates on the Lands, election of the Chair (separately) in addition to the 10 Executive members and supervision of the first past the post (FPTP) ballots by the SEO. The new amendments incorporated the same ‘electorates’ but specified that the Chair be elected from among the 10 Board members (not in addition to), and that the election of the Board was now for a three-year term.

At the close of nominations, there were 27 nominations for 10 Board positions²⁵² (SEO 2005/6, p. 25). As two electorates had only one candidate nominated, these two people was elected unopposed.²⁵³ A total of 595 votes were cast in the remaining eight electorates, compared to 656 in the previous year’s election (703 for the Chair’s position). The 2004 SC’s recommendation on amending the PLRA to ensure that ‘a significant number of Anangu women’ (2004, p. 4) were always on the Executive was not included in the 2005 Bill. While the previous ballot saw three women elected onto the Executive (and prior to this there was at least one woman), at the 2005 election following the passing of the amendments to the PLRA, an all-male Executive Board was elected for a three-year term.

Five incumbents were re-elected to the Board, including Singer, who was again voted in as Chair (this time by the 10 Executive members). Lewis, defeated by Singer in the ballot for Chair at the previous year’s election, was elected back onto the Board, along with Burton and others.

Overall, the AP Executive, now under the amendments to be termed the ‘APY’ Executive (with the specific inclusion of Yankunytjatjara in the title), remained much as it had been for many years—a reflection of the power distributed between families on the Lands, with the Singers, Burtons and Lewis mobs usually represented on the Board as rivals in a

²⁵¹ The Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill was assented to on 27 October 2005.

²⁵² This compares to 33 nominations for 11 positions in the October 2004 elections.

²⁵³ In two electorates—Watarru and Pipalyatjara/Kalka—only one candidate was nominated.

tightly poised balance with fluctuating ascendancy. The biggest change in outcome from the 2005 ballot following the Act's amendment was the absence of women on an Executive that was now in place for three years.

As discussed in chapter 4, on the Lands (as elsewhere) Anangu familial and kinship ties coexisted in an often uneasy relationship with the organisational rationalities of western modes of governance. Sutton (1998, p. 62) argues that what he describes as 'families of polity' are more enduring and stable forms of social organization than nuclear families, and that clusterings of kinship interests now form the 'backbone of rural, urban, and in some cases remote Aboriginal social organisation'. Yet, as O'Donoghue and Costello noted in their report to government in 2004, the politics of families on the Lands was often played out through fights over organizational ascendancy.

Commonwealth funding for tri-state Anangu bodies (like NPY; Nganampa Health and PC originally) strengthened their power and influence on the Lands. Subsequent Commonwealth backing of AP over PC (as revealed in the discussion about the AP Operational Review in chapter 4) saw key Anangu protagonists pitted against one another in competing agendas about the future roles of PC and AP on the Lands. With PC's rapid demise, Anangu leaders who had helped form PC and fought side by side in solidarity to petition for the PLRA, now battled fiercely for control of AP and its Executive.

Yet, despite the SA Government aligning in the early 2000s with Commonwealth COAG policy directions and escalating tensions through intervening in the Lands and amending the PLRA, within a little over a year, key Anangu protagonists were around the table again. The major family groupings who had been intensely involved in the prolonged disputation – over mining, over PC and over AP's role in governance - were elected onto the AP Executive by Anangu across the Lands, challenging them to work together again as the collective voice of Anangu.

7.3 Significance of the Pitjantjatjara Land Rights (Miscellaneous) Amendment Act 2005

The 2005 amendments to the PLRA were a mix of uncontroversial changes to update an Act passed nearly 25 years earlier, and more substantial changes aimed at recalibrating power relations between Anangu and the state. In summary, the amendments included:

- changing the name 'Anangu Pitjantjatjara' to 'Anangu Pitjantjatjara Yankunytjatjara' to recognise the Yankunytjatjara people;
- [providing for] more transparent financial reporting by the Executive Board, including a requirement for the board to annually provide Anangu and the Minister for Aboriginal Affairs and Reconciliation with audited accounts and financial statements;

- clarifying that the role of the Executive Board is as a land holding authority to manage the APY lands in accordance with the wishes of the traditional owners;
- three-year terms of office for members of the Executive Board;
- clearer operating procedures for the Executive Board;
- strict honesty and accountability requirements for the Executive Board;
- a power for the Minister for Aboriginal Affairs and Reconciliation to intervene when there is evidence that the Executive Board has refused to or failed to exercise a power, function or duty under the act or the APY constitution, where the refusal or failure results in the detriment of Anangu; and
- a power for the Minister for Aboriginal Affairs and Reconciliation to suspend the Executive Board for refusing or failing to comply with certain directions (Hill, HA Hansard, 19 October 2005).

The electoral changes—a three-year term, Executive of 10 and Chair to be elected from the Executive—were generally well supported, in some cases having been initiated or advocated by Anangu. The adoption of a three-year term for the Executive was recommended by Dodson in his 2002 Report and included in tripartite agreements struck between AP, state and the Commonwealth governments during the COAG ‘Working Together’ negotiations detailed earlier. As discussed in Chapter 6, the ‘about face’ by the South Australian Government in 2004, when it framed putative failures of AP governance for the lack of action on petrol sniffing, led to it moving unparalleled legislation to ‘force’ the Executive to an election, despite having earlier agreed to an extension of its term.

However, the pursuit of a three-year term for the elected Executive was quite consistent with Anangu wishes. Similarly, the inclusion of Yankunytjatjara in the Act’s title was unanimously supported by Anangu as recognition of the ‘two principal language groups that, by way of tradition, own the land’ (Morely 2005, p. 62). Ensuring that governance training was available and that annual audited reports were provided were simple positive enhancements to administrative practice and matters about which no one took exception.

The bigger change lay in the new powers that the amendments gave the government to intervene in the affairs and decisions of APY and its Executive, including a broad general power to suspend its operation if it failed to ‘comply with certain directions’ (Morely 2005). The amendments established the Executive Board as the ‘governing body of APY’ (s9B (1)), but then gave the minister of the day wide-ranging powers with respect to micro and macro functions of APY, including setting Board members’ remuneration (s9E), calling meetings of the Executive Board (s11(1)), overseeing the appointment of APY’s Director of Administration (s13 B (5)) and its General Manager, and the power ‘to approve or not approve their conditions of appointment’ (s13 D (5)).

The minister also gained the power to direct the Board regarding the termination of a Director or General Manager (s13G (4)), and most significantly to, direct and/or suspend the Executive Board (Div 4B, s13N and 13O)) and appoint an Administrator. While it is

implied that this power would only be used when the Minister was ‘satisfied’ that the Board had failed ‘in its duty’ or might act in ways that could result in some ‘detriment to Anangu generally’, these are subjective questions of judgement and open to interpretation. The power lies completely with the minister of the day.

In their analysis of the significance of the 2005 changes to the PLRA—now the *APY Land Rights Act* (APYLRA)—Berg and d’Assumpcao (2006, p. 9) asserted that the amendments contradicted ‘the purposes for which the 1981 Act was introduced’. Arguing that the original PLRA was unique in its recognition of the closeness of Anangu TOs with (and as) the ‘body corporate’, Berg and d’Assumpcao suggested that by centralising control to the Executive as ‘the governing body’, separating it from its constituency and giving the minister extraordinary powers to, direct, control or override the Executive, the state government ‘interposed itself into the relationship between the members and the corporate structure’ (2006, p. 8).

In *Gerhardy v Brown*, Justice Brennan observed that the purpose of the PLRA was to restore to Anangu the ‘use and management of the Lands *free from disturbance from others...* to foster traditional affiliations and discharge responsibilities in respect of the Lands’ (1985 [1159 CLR 70], 136). The 2005 amended Act undermined the previously strong control of TOs by imposing a ‘management structure akin to a non-Indigenous corporate structure’ along with the threat of ministerial intervention hanging over a land-holding body (Berg & d’Assumpcao 2006, p. 9).

Despite the consistent and persistent requests of Anangu for the South Australian Government’s assistance with the problem of petrol sniffing, and the significant role of the coronial inquests (2002 and 2005) in calling for urgent action, the *Pitjantjatjara Land Rights (Miscellaneous) Amendment Act 2005* did not tackle or even mention this critical issue. A further series of amendments were moved in a separate Bill in 2006 to respond to petrol sniffing and related substance abuse issues.

7.4 Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances) Amendment Act 2006

With a new APY Executive in place for three years and some relief that governance issues were perhaps now settled in the minds of the Commonwealth and state government protagonists, Anangu leaders and Anangu regional organisations Nganampa Health and the NPY Women’s Council continued to campaign for support to combat petrol sniffing on the Lands. In one of his last speeches to parliament, Minister Roberts acknowledged

that this difficult social policy issue was not new: ‘petrol sniffing has been with us for some 30 to 40 years.... It was a problem then, and it is still a problem’ (Roberts, LC Hansard, 23 November 2005, p. 3190).

Roberts stated what Anangu knew well—that petrol sniffing was not a recent issue. He recalled how when he was first elected some 20 years earlier, ministers and shadow ministers had been debating then how to respond to sniffing on the Lands. He acknowledged ‘that human service delivery...has not been successful in a wide range of areas where Aboriginal people have been affected’ (Roberts, LC Hansard, 23 November 2005).

In mid February 2006, Minister Roberts died after a short illness. A state funeral held later that month was well-attended by Anangu from all parts of the Lands and all factional or political tendencies. The Anangu choir sang in tribute to a minister who was well regarded, despite having presided over a turbulent period for the APY Lands. The Hon. Jay Weatherill took Robert’s place as Minister of Aboriginal Affairs and Reconciliation and as Chair of the ALPSC.

One month after Roberts’ death, the SA state elections were held. Labor won in a landslide result that saw it gain five seats and a 7.7% swing (two-part preferred). Rann was returned as Premier in what was now a majority government. The Rann government’s punitive stance on the Lands and sleight of hand in framing AP governance as being responsible for the entrenched tragedy of petrol sniffing appeared not to have damaged its electoral chances (Manning 2005; *The Australian*, 17 March 2006; Robbins 2006; Manwaring 2013).²⁵⁴

During the days before the SA election, APY’s AGM was taking place on the Lands. A key resolution to come from that AGM was a unanimous motion:

That the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act be amended to include a new section 42C about offences relating to the supply of regulated substances (APY, AGM Resolution 15–17 March 2006).

More than 25 years after first requesting government assistance with petrol sniffing, close to 20 years after the PLRA was first amended in 1987, and less than six months since the

²⁵⁴ In analysing Rann’s self-styled ‘right wing’ approach to law, order and security issues, Manwaring suggested that it is ‘instructive to compare Rann’s record on Indigenous issues to Don Dunstons’ (2013, p. 12). He goes on to state that one of Rann’s most cited achievements is to locate more police officers on the APY Lands, ‘whereas in comparison he states, “Don Dunstan’s ground breaking record on Indigenous policy was on issues such as Land Rights legislation”’ (2013, p. 13).

latest round of 2005 amendments, Anangu were still seeking ways to better manage this seemingly intractable issue.

In late May, Minister Weatherill introduced the Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances) Amendment Bill into the House of Assembly. The Bill sought to establish a new category of offence in the APY Land Rights Act (APYLRA) and increase penalties for the illegal sale, supply, possession (for sniffing) or trafficking of petrol and other regulated substances on the APY Lands.

As well as tougher terms of imprisonment and fines, the Bill aimed to give police power to seize vehicles that they believed were being used for purposes in conjunction with, or related to, substance offences. Weatherill explained that the APY Executive Board and Commonwealth Government supported the new sanctions (Weatherill, HA Hansard 31 May 2006, p. 333). The Bill duly passed without contention and was assented to on 7 September 2006.

These changes enabled police to arrest people engaged in perpetuating the cycle of petrol sniffing on the ‘private’ space of the Lands. Greater police presence on the Lands was of course another long-standing request of Anangu, and a promise that Rann made at the time of the 2004 intervention into the AP (Summers 2004; DiGirolamo 2004).

These amendments also provided a strengthening of the Executive’s ability to regulate public order on the Lands by defining specific offences about substance abuse within the APYLRA. At its June 2006 Special General Meeting, AP resolved to ask the government to locate the Substance Misuse Centre (promised in 1986 and only now in planning) ‘in or near Amata’ (APY Resolutions No. 27, June 2006). Interestingly, Amata had been the site of the first meeting of the PC in 1976, as discussed in Chapter 2. Substance misuse had been listed as a key issue needing government support at that time some 30 years earlier.

The Commonwealth Government had meanwhile expanded its commitment to the roll-out of Opal fuel, establishing an eight-point plan²⁵⁵ in concert with the SA, NT and WA state governments. Under this plan, respective jurisdictions committed to Opal across the region plus a range of associated initiatives, including legislating stronger penalties for offences relating to the sale or supply of substances for sniffing (d’Abbs & McLean 2008, pp. 35–36).

In 2006, the Commonwealth committed a further \$9.5 million for its Petrol Sniffing Prevention Program in Central Australian desert communities in the tri-state area (d'Abbs & McLean 2008). However, there is no record of any additional \$10 million of funding specifically for the APY Lands, as had been raised during the rushed passage of the Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill.

7.5 Reflections on Changes to the PLRA 1981–2006

7.5.1 Nganampa Manta²⁵⁶ Festival

Over the last weekend in October 2006, a Festival was held on the Lands to celebrate the twenty-fifth anniversary of the passing of the PLRA and to reflect on 25 years of legislative recognition of Anangu inalienable freehold title to their country:

Over 2200 people attended the celebrations held at Umuwa to celebrate the achievements over the last 25 years and to look towards the future for the Anangu Pitjantjatjara Yankunytjatjara Lands (APY Annual Report 2006/7, p. 12).

Songs, speeches, shared food and inma were had, as elders and young people from across the region mingled with state and Commonwealth politicians, public servants, church leaders, non-government agency representatives and others. Highlighting its uniqueness, Commonwealth Aboriginal Affairs Minister Mal Brough said the APYLRA 'from twenty-five years ago is something to be celebrated, it is something to be built on and it is something to be cherished' (PY Media 2006).

SA Minister Weatherill subtly acknowledged that recent changes had left some Anangu troubled:

SA was the first State to provide traditional owners with direct communal title to their Land, rather than ownership through a Lands Trust or Land Council—and *this Land can never be taken away from you*. Twenty-five years ago there was a shared optimism for a better future on the Lands. Today we recommit ourselves to working in partnership with the people of the Lands to recapture that hope and bring happiness to Anangu (cited in PY Media 2006).

Speakers recalled the dynamism of the struggle for a unique form of communal title where 'all the Land belongs to all the people', and how Dunstan's support was pivotal to framing policy to achieve this aim. As Tregenza explained:

It was formally put to Dunstan that the Pitjantjatjara Council did not want lease-hold land, they wanted free-hold land...this is what you have got to give us...inalienable free-hold title so it can never be taken away and the form of title that vested ownership in the whole of the people (cited in PY Media 2006).

Kunmanara Thompson reminisced about subsequently convincing Tonkin too:

²⁵⁶ Pitjantjatjara language for 'Our Land' Festival.

He said ‘This land is important for you. You’ve got the stories and everything there. I can’t say no to that.... This land is very strong land. Nobody is going to take the land away from you’ (ABC News, 6 November 2006).

Thompson spoke of Anangu being ‘lucky’ because of the unique nature of their Land Rights:

This is the best policy. We’re not leasing the land like in other parts of the country...we are owner, and we’ve got the power! (ABC News, 6 November 2006).

TO Fraser also reflected on a positive future, while not missing a chance to lobby for funds:

People are talking now about self-determination and being independent. We’ve got our own little state. The lacking is the funding (from government). We are proud and happy and we would like to continue on building the bridge together (ibid).

It was leading Anangu woman elder and TO Kunmanara Ward who brought an edge of critical analysis to reflections of the 25-year period:

We should have been the bosses of this Land, but when we got the Land from the government, we employed Europeans to look after it. We said: ‘Here you run this place. You tell me what I should do and I will do it’. Now we regret it. I am aware of the stories I have been told [of Anangu governance incapacity]. I have heard enough. Now I am not happy. I am actually very sad (cited in PY Media, 2006).

The 2005 amendments to the PLRA; the 2004 ‘crisis’ intervention; the relentless trauma of petrol sniffing deaths; the prolonged sadness, grief and suffering from addiction wrought on families in the region and the resulting effect on community life; and the constant pressure from inquiries, reports, consultancies, media and government oversight—much of which was critical of Anangu—had all taken their toll on this relatively small population of some 2500 people.

However, in the visual, text and oral records of this twenty-fifth celebration, there is an overriding, almost palpable belief in the communal strength of Anangu together; the power of their continuous, millennia-old connection to country and the fundamental importance of the state’s recognition of their rights to self-determination, as symbolised by, if not definitively codified in, the *Land Rights Act*.

7.5.2 Shifting concepts—self-determination or sovereignty?

It can be argued that the PLRA only ever afforded a limited kind of ‘self-determination’ to Anangu. Self-determination for colonised peoples ‘enclosed within the boundaries of the state that was the agent of their dispossession’ (Cairns 2003, p. 498) is a complex and

problematic concept, as is well recognised in salient literature.²⁵⁷ For example, Tully in Ivison, Patton and Sanders (2000, p. 57) argued that ‘internal self-determination is not a valid form of self-determination at all’:

The principle or right of self-determination is, on any plausible account of its contested criteria, the right of a people to govern themselves by their own laws and exercise jurisdiction over their territories, either exclusively or shared.

Proponents of self-determination to facilitate ‘fundamentally autonomous political communities’ (Maddison 2009, p. 45) and contemporary decoloniality movements endorse the principles of sovereignty as autonomous self-rule in asserting global Indigenous rights²⁵⁸ (Patton 2001; Moreton-Robinson 2007; Niezen 2003, 2009; 2010; Quijano 2007; Mignolo 2011; Prokhovnik 2015).

Canadian Tully, like Watson (2009, 2015) in the Australian context, argues that the right of peoples to govern themselves is a basic tenet of such sovereignty,²⁵⁹ by which peoples are said to be ‘free’. Internal self-determination, it follows, is not freedom but a form of indirect colonial rule whereby people remain primarily ‘governed and determined by a structure of laws that is imposed on them’ (Tully 2000, p. 55). As Moreton-Robinson noted, while policies seeking to eliminate, assimilate or accommodate have been trialled, in general in Australia, ‘public attitudes towards Indigenous sovereignty have changed very little since 1788’ (2007, p. xi).

From this critical perspective, the PLRA, which predated the Mabo High Court decision and Native Title legislation, as well as the policy settings that flowed from it by more than a decade, could only ever be what the ‘settler state’ was prepared to give.²⁶⁰ While enabling decision-making over development, the Act has never enabled Anangu to govern themselves or operate independently of the purview state. The PLRA created what Hughes termed ‘dependant autonomy’, which is a form of self-determination that

²⁵⁷ See the following indicative but not exhaustive list: O’Malley (1998), Schulte-Tenckhoff (1998), Attwood & Markus (1999), Ivison, Patton & Sanders (2000), Behrendt (2001;2002), Stokes & Gillen (2004), McHugh (2004), Hocking (2005), Rowse (2005), Maddison (2009), Maddison & Brigg (2011), Dodson & Pritchard (1998), Austin-Broos (2011, 2012), Ford & Rowse (2012), Sanders (2002; 2014).

²⁵⁸ See, for example, Article 4 of the UN Declaration of the Rights of Indigenous Peoples, <<https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>>. The Howard government initially refused to support the UNDRIP because it was opposed to the term ‘self-determination’ in the draft document. However, by 2009, the Rudd Labor government determined that Australia would become a signatory to the international rights declaration.

²⁵⁹ Watson prefers to use the term ‘raw law’, which represents the obligations and responsibilities flowing from an Aboriginal ontological sensibility (2015, p. 8).

²⁶⁰ For example, the Act covered a geographic area that accorded with state government borders, which are recent colonial constructs. It did not reflect—in fact, it cut across—the cultural topography preferred by and familiar to Pitjantjatjara Yankunytjatjara across the tri-state region. Government norms based on past colonial (imposed borders) were automatically concerned the dominance culture norm—and Anangu world views marginalised.

promotes autonomy while increasing dependency on the state (1995, p. 1). As Wolfe (2006, p. 388) states, ‘the colonisers come to stay, invasion is a structure not an event’. The logics of settler colonialism see the settler state unwilling or unable to genuinely support policy frameworks that enable Aboriginal peoples to gain separate autonomy (Wolfe, 1999; Veracini, 2008; 2010).

Derivative of state-based law, the Act relied on the affirmation of the South Australian Parliament and hence was vulnerable to its whims and vagaries. As is evidenced by its story across the 25-year period in this thesis, the PLRA could be amended, altered and reconfigured by the Parliament at any time, arguably with or without the consent of Anangu. As discussed in Chapter 3, the High Court decision in *Gerhardy v Brown* was historically significant for upholding Anangu group rights as a special measure;²⁶¹ however, it did so within the context of an external challenge to the legislation based on an appeal brought by the state jurisdiction.

Power still lay with the government, as Acting Premier Foley reminded Anangu in March 2004, when he argued that the time of ‘self-governance’ on the Lands was ‘over’. The notion that the PLRA was time-limited was the antithesis of the 1978 Pitjantjatjara Land Rights Working Party Report view of the ‘indisputable need for the Pitjantjatjara not only to own their own land, but to be facilitated to be in full control of access to it’, as ‘restitution’ and ‘fundamental and inalienable’ right (PLWP 1978, pp. 33–34).

Anangu were cognisant of this structural power (*im*)balance between their communities and government from the outset. For Anangu, sovereignty is not given or taken, it is embodied, entwined and eternal. Ancestral, spiritual, reciprocal and communal relations to one another and the Lands is a signifier of this interconnectedness, or ‘raw law’ as Watson (2015) termed such ontological sensibility.

Connection to country predates any laws or structures of the settler state. As shown in the work of Toyne and Vachon (1987) and outlined in the first two chapters of this thesis, the struggle for the PLRA was not just a quest to ‘get back’ Lands that were never ceded, but also for legal acknowledgement of Anangu rights to determine what development occurred on their Lands. As Edwards and Tregenza recalled of early 1980s discussions between TOs, lawyers and government officials:

Anangu said, ‘...what is this [lawyer] talking about...giving us this land? This land has always been here...you talk about bits of paper but that Land belongs here, in our heads...’. It wasn’t that TOs were asking the Government for title to their own Land...they were asking the

Government to give them the best English title they could give them, to match the absolute title they knew they had, still have [Anangu way] (cited in PY Media 2006).

7.5.3 Recognising group rights

Political theorist Kymlicka argued that acknowledgement and support of Indigenous group rights is not only possible within Western liberal democracies, but also essential to people's ability to exercise their individual human rights within liberal democratic nation states (1995a, 1995b, 1999, 2000, 2007). He argued that for Indigenous peoples who find themselves as 'nations within', group rights, including forms of self-determination, can be necessary for individuals to sustain the well-being that their sense of collective cultural belonging affords them. As Ivison, Patton and Sanders (2000, p. 7) explained:

Indigenous people are owed self-government and title to their Lands because without such rights (in addition to traditional liberal rights of freedom of movement, association and expression) they are in danger of losing access to a secure societal culture and hence to the context in which individual freedom is rendered meaningful.

Kymlicka (1995a, p. 31) supported 'special representation rights' for Indigenous minorities. Young (1989, p. 251) also argued for 'differentiated citizenship' rights with mechanisms that facilitate 'effective recognition and representation of the distinct voices and perspectives of those of its constituent groups that are oppressed or disadvantaged'.

However, in supporting special group rights and a differentiated conception of liberal citizenship, Kymlicka (1995a, p. 75) stipulated that collective rights should not override or diminish human rights: 'Liberals can only endorse minority rights insofar as they are consistent with respect for the freedom and autonomy of individuals'.

Privileging Western liberal ideology and promoting forms of internal group autonomy tends to accept colonial continuities rather than seeking to disrupt them. Kymlicka's (1995a) approach nonetheless provides a theoretical case for a form of 'citizenship plus' (Cairns 2000), whereby Indigenous group rights co-exist with normative citizenship entitlements in the liberal nation state.

Kymlicka's (1995a) conception of collective Indigenous minority group rights accords well with the early aims of the PC's pursuit of land rights: to achieve recognition of Anangu connection to country; to enable the preservation and protection of Pitjantjatjara ways of life, culture and tradition; and to take into account the interests, proposals, opinions and wishes of the Pitjantjatjara people in relation to the management, use and control of the Lands. This was not a manifesto for separate state status or extant sovereignty; rather, it was a campaign for the recognition of Anangu rights to negotiate

on their terms as equals for respect, dialogue and for ‘working together’ to advance Anangu well-being.

By gaining land rights, Anangu did not forgo their rights, responsibilities or entitlements as citizens of South Australia or the nation. They sought and gained legislative recognition of special Indigenous group rights—rights upheld by the High Court of Australia—and established a strong basis for leverage and advocacy based on the PLRA. As a first in Australia, the achievement of this level of state recognition was both unique and profound.

7.5.4 Relevance of recognition theory

Taylor’s (1994) take on the politics of difference is also useful here because it provides a theoretical framework not only for *how* Indigenous group rights can be understood within the tradition of western liberalism, but also *why* the recognition is of fundamental importance. In viewing differences, including ethnicity and culture, as factors that can influence access to dignity, respect and recognition, Taylor (1994, p. 66) argued that it is the normative hegemonic culture that determines respect and affords recognition or not, and that ‘dominant groups tend to entrench their hegemony by inculcating an image of inferiority in the subjugated’. Minority groups may then tend to conform to expectations of the dominant culture and relinquish their difference and/or become assimilated.

Taylor suggested that a lack of recognition does real damage as people absorb and then internalise oppression.²⁶² Citing the damage of colonial invasion and conquest specifically, he argued that:

misrecognition shows not just a lack of due respect. It can inflict a grievous wound, saddling its victims with a crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need (Taylor 1994, p. 26).

Honneth (1995, 2007) took Taylor’s arguments further, arguing that recognition plays out in different ‘spheres of interaction’, each with different patterns of how recognition is signified to minorities. He argued for an understanding of how recognition plays out as love (intersubjective), rights (as respect for individuals and groups) and solidarity (as esteem) (Honneth 1995, 2007). Again, the damage of non- or misrecognition is discussed, but for Honneth, such disrespect or misrecognition can also be a positive force for social struggles against injustice. In Honneth we see a commitment to Kymlicka’s minority

²⁶² See also Arabena (2005) for a discussion of the damage inherent in such discursive ‘non’recognition.

rights liberalism, which he took to include the ‘equality principle of legal recognition’ (Fraser & Honneth, 2003, p. 164).

Both Taylor and Honneth provided seminal contributions on the political theory of recognition and its importance to the struggles of cultural minorities. Predominately phenomenological²⁶³ (Hegelian) in orientation, their focus was largely on the intersubjective experience of difference, recognition and misrecognition (Thompson 2006, 2015). Fraser, drawing on Marxist philosophy, argued that recognition’s importance lies not just in its focus on social and cultural injustice, but it also needs to target economic injustices and representational issues such as linguistics and discourse (2000, 2003, 2010). ‘Recognition’ is one part of an approach to tackling social (in)justice. According to Fraser (2000, 2010), the others are ‘distribution’ and ‘representation’.

Following the reasoning of Taylor, Honneth and Fraser, it is argued that recognition of Pitjantjatjara Yankunytjatjara Land Rights at the time of the 1981 PLRA marked a significant acknowledgement of respect and esteem in law. This ‘act of simple justice’ (Dunstan 1978, p. 2236) was an act of recognition that provided a unique public affirmation within the Australian political landscape. It denoted respect, esteem and solidarity for the wishes of Anangu. It acknowledged the political ‘voice’ of people on the Lands, and it provided institutional recognition of the political rights of Anangu as a cultural group. This was a powerful act of political recognition that can be understood in Taylor and Honneth’s terms as validating and esteem-building. In Fraser’s more structural terms, it aimed at economic and social injustice. The Act’s ceding of (partial) control over development to APY can also be viewed as a distributive justice mechanism.²⁶⁴

Fraser (2010) took recognition politics further to argue that while recognition and distribution are themselves political, in that they are fields of power and contestation, the political sphere needs consideration in its own right:

The political in this sense furnishes the stage on which struggles over distribution and recognition are played out. Establishing criteria of social belonging and thus determining who counts as a member...the political dimension of justice...tells us who is included in, and who excluded from, the circle of those entitled to just distribution and reciprocal recognition (Fraser 2010, p. 17).

The 1981 PLRA was a means of leverage and a platform for Anangu political agency to be included within dominant culture political forums. The establishment of parliamentary

²⁶³ Hegel’s (1802) established notions of self-consciousness and the human need to find reflection back from ‘others’—that our subjectivity exists to be ‘acknowledged or ‘recognised’ (p. 229). This is, of course, a very specific Euro-centric /non-Indigenous ontological reasoning.

committees concerning the Lands from 1987 further entrenched the recognition of Anangu group rights within the SA polity. The APY Lands achieved a visibility and political currency arguably disproportionate to population size from a normative perspective, but following Kymlicka's model, it was commensurate with their 'minority group rights' standing. While surveillance can be perceived negatively as a means for control, such parliamentary committees also meant that the needs and wishes of this (special) group were formally politically 'recognised' in ways beyond the norm. Most significantly, the Act was a vehicle for Anangu voices to be 'heard' in both life and death.

The PLRA provided a platform for Anangu—through the efforts of distraught TOs such as Kunmanara Thompson (well respected as co-signatory to the Act) and the NPY Women's Council campaigns—to successfully petition for coronial inquests into Anangu deaths on the Lands from petrol sniffing. The lives (and deaths) of Anangu as a collective Indigenous group were recognised, and their human rights were considered, arguably in ways not always as easily or rightly accorded to all minority group 'others'. The Act contributed to Anangu perspectives on petrol sniffing, including causal factors of socio-economic disadvantage and related structural injustices being brought formally to the state's attention.

However, such attention was not all positive, as Chapters 5 and 6 of this thesis reveal. Legislating Anangu group rights with respect to land was a significant act of recognition and acknowledgement of social (in)justice in the 1980s. However, as the political climate shifted in the late 1990s and 2000s, this marker of difference was effectively turned against Anangu. The debilitating effects of petrol sniffing transformed into a debate about APY Lands governance and the reach of the Act. Anangu were reframed in political discourse of the 2000s. They were no longer lauded as being entitled to special minority rights considerations alone; they were labelled defective, and their governance was disparaged in the deficit discourse of 'failed state' rhetoric. The Lands were conveniently portrayed by the South Australian Government of the 2000s as authors of their own social exclusion - as less than equal 'citizens' minus'.

For Fraser, such misrecognition is not just detrimental to self or group realisation; it is part of the aetiology of power and a form of institutionalised subordination. She argued that 'meta-political injustices' occur when political space is bounded into polities—the more powerful of which can frame the 'other' and their issues: 'the result is a special meta-political, kind of misrepresentation that I call *misframing*' (Fraser 2010, p. 6).

7.6 Politics, Policy and Hypocrisy—A Critical Policy Perspective

As state government legislation, the PLRA has been subject to changing Commonwealth–state relations. Shifting balances of power between these levels of government, as well as changes to intergovernmental funding arrangements, have had a major effect on the efficacy of the Act across the 25-year period from 1981 to 2006. As the national policy settings shifted across this period, so did the South Australian Government’s framing of APY Lands issues and its responses to them.

The first four chapters of this thesis show how the development of the Act and associated policies in the 1980s and 1990s sought to empower and enhance Anangu control over, and self-management of, their Lands and organisations. The Proctor, Dunstan and Bonner Reviews aimed to gear government policies and programs around enhancing Anangu self-sufficiency and independence. Bonner in particular was specifically tasked by the Commonwealth Government to examine how external resources were provided to AP in terms of their contribution to supporting ‘Aboriginal self-determination’ (Bonner 1988).

The South Australian Government’s policy was generally consistent with Commonwealth policy contexts of self-determination or self-management originating in the early 1970s,²⁶⁵ and continued to be so until after the election of the national Howard Liberal Coalition in 1996. In locating this period within a model of competing policy principles,²⁶⁶ Sanders (2014) argued that the dominant principle throughout this period was one of ‘equality’ for all Australians. The principle of historical and cultural ‘difference’, which may have either positive or negative connotations, was also a feature of this period. In this sense, the PLRA emerged in a period where self-determination was the dominant national over-arching policy paradigm based on principles of equality of opportunity and (positive) difference, reflected in respect for group choice and mediated (if still dependent) autonomy. Self-determination was similarly the primary focus of the South Australian Government’s Aboriginal Affairs policy in this period (1970s–1980s) through the tenure of both Liberal and Labor governments, as discussed in the relevant chapters and marked by the extension of land rights to Maralinga peoples and the close working relationships with ATSIC.

Interestingly, as revealed in Chapter 4, ATSIC’s regional presence as an elected Aboriginal governance body with power to determine priorities and allocate funding cut across the standing and authority of the APY Executive and disrupted the role of other

²⁶⁵ In SA, arguably in the 1960s, given that Dunstan established the Aboriginal Lands Trust in 1966.

²⁶⁶ See Sanders (2008, 2010, 2014) regarding equality, choice and guardianship.

bodies in the Central Desert region, like the PC.²⁶⁷ The coming of ATSIC seemed to displace and subordinate APY rather than enhance its autonomy. Rowse (1996, p. 43) also noted that, ironically, rather than being viewed as the bastion of self-determination, ATSIC was critiqued by some who believed ‘it was not a true vehicle for self-determination but a tool of government’.

The 1996 election of the Howard government began a decade of significant change. The Howard government rejected self-determination and self-management in Aboriginal Affairs policy, dismantled ATSIC and sought to operationalise policies to underpin what Robbins (2007) termed an ‘imposed national unity’. Repudiating group claims, Howard’s goals were to mainstream Aboriginal Affairs policies, promoting a mix of individualism as equality and paternalism as guardianship (Robbins 2007; Maddison 2012; Sanders 2014). This decade marked a major shift in the external policy environment and was in many ways a turning point in the history of the PLRA.

7.6.1 Shifting contexts—from self-determination to ‘normalisation’?

From a critical perspective, Bacchi (2012, p. 22) argues that public policy-making is an issue of strategic framing:

policy is not the government’s best effort to solve ‘problems’; rather, policies produce ‘problems’ with particular meanings that affect what gets done or not done, and how people live their lives.

Policy in this sense is not a rational activity of implementing reasoned solutions for collective public good; rather, it is about the problematising of certain issues or behaviours and subsequent problem representation (Fischer 2003; Bacchi 2009; Shore & Wright 2011; Partridge 2013). All policies contain implicit, and at times explicit, representations of what the ‘problem’ is deemed to be (Bacchi 2009, 2012).

If the era of self-determination saw policies aimed at encouraging Aboriginal collective identity, supporting Aboriginal controlled organisations and promoting recognition of Aboriginal difference as a minority group right to participate in decisions over collective futures, this was premised on an understanding that the ‘problem’ to be addressed was the social injustice, exclusion and disadvantages experienced by Aboriginal people as a result of colonisation. The 1981 and 1987 versions of the PLRA were firmly rooted in a policy context that saw the promotion of Anangu land rights as integral to, and essential

²⁶⁷ Rowse (1996, p. 43) also noted that rather than being viewed as the bastion of self-determination, ATSIC was critiqued as a failure by some who considered ‘it was not a true vehicle for self-determination but a tool of government’.

for, the achievement of equality for people on the Lands—an equality that ‘recognised’ differences and acknowledged minority group rights.

The ascension of the Howard government saw the end of what Maddison (2012, p. 273) termed Australia’s ‘weak version of Indigenous self-determination’ and the advent of new narratives of ‘mainstreaming’ and forced interventions to improve Indigenous lives. Sullivan (2011) argued that Aboriginal organisations did not immediately disappear in the process of this policy shift; rather, they were forced towards demonstrating greater levels of ‘normalisation’. Chapter 5 and 6 of this thesis track the changes for regional Anangu organisations as policies of mainstreaming created quasi-competitive markets, placing new pressures on service deliverers and thus eliciting co-operation through a combination of coercion and funding enticements.²⁶⁸

Governance as a field of concern in Indigenous policy gained momentum in the late 1990s. Discourses about ‘mutual obligation’, ‘shared partnership agreements’ and ‘whole-of-government’ framed policy intent, as moral panic about dysfunction and disorder problematised ‘remote’ Indigenous Australia and popularised punitive policy responses. State government responses to the Lands in the early to mid 2000s were shaped in part by its symbiotic relationship with the Commonwealth Government, as illustrated by this chapter and the two preceding it.

7.6.2 Shifting stories—from governance to ‘governmentality’

Petrol sniffing had been experienced by Central Australian Aboriginal communities during the post war period, and especially from the 1960s onwards. It was identified as a chronic health and social problem by Anangu at the time the PLRA was being developed, and it was named by Anangu during the negotiations as an issue ‘introduced’ from the ‘outside’ and hence about which communities had no customary or cultural responses. Anangu were always clear and consistent in stating that petrol sniffing was an issue for which external government assistance was needed.

By considering events on the Lands between 1981 and 2006 from the perspective of debates about ‘contested governance’ (Hunt, Smith, Garling & Sanders 2008), the preceding chapters identify the development of what became a dominant ‘policy storyline’ (Fischer 2003, p. 86) about Anangu *in/capacity* (Tedmanson 2012). By re-framing the tragic cycles of petrol sniffing and coronial critiques of government service delivery failure as issues of Anangu polity and governance, the South Australian

²⁶⁸ See also Altman and Hinkson (2007) for a discussion of ‘coercive reconciliation’.

Government managed to position Anangu as *the* problem and shift attention from state failure.

A critical perspective informed by theorists such as Fischer, Fairclough, Colebatch and Bacchi is useful to an analysis of how ‘governance’ emerged as a central theme in policy and political discourse at this time. I argue that the rhetoric of ‘governance’ became a guise for what Dean and Hindess (1998), Rose, O’Malley and Valverde (2006) and Dean (2010, 2013), following Foucault (1975), referred to as a ‘governmentality’ of control in Indigenous policy administration.

Governmentality²⁶⁹ connotes the way in which the busy-ness of governance and the administering of the Lands took on a life of its own and became the focus of policy, rather than an issue of tackling petrol sniffing.²⁷⁰ The problem became Anangu rather than the ravages of petrol sniffing, which communities were experiencing. It is as if the focus of policy became a logic that argued to control, reorder and ‘normalise’ the people. This would remove the issues related to remote Pitjantjatjara Yankunytjatjara life and therefore minimise costs and prove more effective, less troublesome and less costly for the government.

This ‘logic of elimination’ (Wolfe 2006, p. 387) was embedded in the unfolding of policy that was aimed at ‘sorting out’ APY Lands issues, as if there were ‘issues to be sorted’ rather than, for example, in the case of petrol sniffing, a serious health issue to be supported. The thrust of the policy ‘storyline’ was one in which government administration, control and measurement were essential for Aboriginal well-being that was constantly ‘being “impeded” by Aboriginality’ (O’Malley 1998, p. 161). Despite the coronial inquests into petrol sniffing, not to mention APY governance and the *APY Land Rights Act*, governance of the Lands became the key focus of policy.²⁷¹

While particularly true for the South Australian Government, this approach dovetailed with the Commonwealth’s drive for ‘shared responsibility agreements’ and the systematic transfer of responsibility for achieving government-determined goals to communities. The APY Lands, its Executive and its organisational environments were caught in a form

²⁶⁹ Foucault suggested that governmentality is best ‘understood in the broad sense of techniques and procedures for directing human behaviour. Government of children, government of souls and consciences, government of a household, of a state, or of oneself’ (Foucault 1997, p. 82).

²⁷⁰ As evidenced in the seemingly endless series of consultative meetings after the first coronial inquest.

²⁷¹ Note here that while Dodson (2002) and PLRSC (2004) mentioned governance, this was in context of government confusion over roles of AP and the PC in the former, and the need to reform PLRA to enhance human services in the latter.

of collective cognitive dissonance within policy framing that rendered them ‘deficit’. As Hunt (2008, p. 27) explained, in such circumstances, Aboriginal organisations are:

between a rock and a hard place: the assumptions and principles of self-determination underlying the policy environment in which many of them were created have changed. Some new ideas like ‘mainstreaming’ have been introduced and organisations are finding themselves caught at an uncomfortable intersection between communities operating with one set of assumptions, and governments another. They are also squeezed in the shifting policy space between jurisdictions as different interests exert their influence around them. These organisations are the intercultural space where different ‘framings’ of the governance challenge...meet or, at times, collide.

The pressure placed on APY, which subsequently saw the 2005 amendments to the APYLRA eventually proceed, reveals the potency of the Rann government’s reframing of the petrol sniffing issue and queries raised by the coronial inquest about the adequacy of government responses into issues of Anangu governance. The South Australian Government’s shaping of the ‘policy storyline’ (ibid) enabled them to problematise Anangu and the Lands, and obvert the public gaze from the politics of Anangu–state relations. The pluralism of dispersed governance on the Lands was pathologised, and Anangu self-governance was denigrated in order to avoid attention falling on the failures of the government.

The pluralism of Anangu polity, its dynamism and high levels of political engagement, as illustrated by voter turn-out and participation, were pathologised as being illustrative of conflict and dysfunction. The sophistication, strength and capacity of APY Lands’ regional organisational infrastructure was reframed as being illustrative of internal divisions. Organisations and governance bodies found themselves in completion or being potentially played off against one another. Anangu leaders were usurped or pitted into regular electoral contests, perpetuating the dominant storyline. After decades of seeking assistance with petrol sniffing, Anangu found themselves being blamed for it.

Within the 25-year period between 1981 and 2006, the ‘genius of Anangu epistemology’ (WPPLR 1978, p. 34) had shifted into the putative failure of Anangu to ‘appropriately govern their Lands’ (cited in Kemp 2004, p. 1). The result of this reframing was that the APYLRA strengthened government control and limited Anangu self-determination.

Chapter 8: Conclusion: *'The Whole Aboriginal Problem in Microcosm'*²⁷²

Dunstan's pioneering land rights policies and lawmaking in the 1960s and 1970s in SA demonstrated his understanding of the diversity of Aboriginal contexts, particularly in SA (Rowse 2012). While explaining this policy field in SA as a microcosm of the 'Aboriginal problem' more generally, Dunstan perceived the policy challenge, or 'problem', as being one of 'restitution' and 'justice' (SA House of Assembly 22 November 1978, p. 2235).

As Chapter 2 reveals, Dunstan's legislative framing of the ALT Act 1966, followed by further progressive Aboriginal advancement policies such as the PLRA in 1981, illustrated a government 'seeking a way to deal with the Aborigines of the North-West Reserve as putative title holders, as subjects within a polity that respected their claims to justice' (Rowse 2012, p. 65). As Chapter 7 argues, recognition of the collective rights of Anangu and respect for their communal land title as an empowering and affirming element of their citizenship, underpinned the passing of the PLRA as 'an act of simple justice' (Dunstan 1978, p. 2235).

Tracing 'policy story-lines' (Fischer 2003, p. 86) through policy documents, Hansard transcripts, press commentary and reports on the public record, this thesis argues that 25 years after the passage of the PLRA, Anangu were being blamed for issues beyond their control, and framed as *the* 'problem to be solved' (Maddison 2009, p. 1).

Early chapters of this thesis chart the passage of the PLRA and its significance. The importance of special rights conferred by the Act are discussed in terms of their ultimate High Court validation (in *Gerhardy v Brown*). Chapters 3 and 4 reveal the effect of the Commonwealth's increasing role in Aboriginal affairs and explore the influence of ATSIC on APY Lands' political engagement. Chapter 5 argues that pressure for greater mining access exacerbated tensions within the AP Executive and between the Executive and the PC, thereby destabilising longstanding arrangements between organisations, and damaging relationships between key Anangu leaders.

Divide-and-conquer strategies of the South Australian Government are shown at play in the events detailed in Chapters 5 and 6. The Commonwealth and State Governments' push to liberalise mining access was accompanied by a preoccupation to establish a

²⁷² See Dunstan (1966) and Rowse (2012).

unitary mode of governance on the Lands. Self-determination through dispersed local governance arrangements was replaced by bureaucratic forms of governmentality (Foucault 1994b, 1997; Steinman 2012).

This thesis argues that by the time of the election of Rann's minority Labor government in 2002, the policy environment was changing considerably. While the first Coronial Inquest identified inadequacies in government service provision as a factor in the persistence of petrol sniffing on the Lands, Rann backed the Commonwealth Government's shift from self-determination towards 'normalisation' and 'shared responsibility agreements' (Sullivan 2011; McCausland & Levy 2006).

Chapters 6 and 7 explore these changes in state–Anangu relations, which culminated in contentious amendments to the PLRA that strengthened government control and limited Anangu self-determination. These amendments exemplified the actions of what McHugh and Ford refer to in another context as the 'shapeshifting crown' (2012, p. 23).

This thesis also explores the role of Anangu regional organisations, including the PC, AP, the NPY Women's Council, Nganampa Health and PY Media, across the 25-year period from 1981 to 2006. Chapters 6 and 7 argue that 'whole of government' approaches, which were led by the Commonwealth through the COAG, intensified tensions between Anangu organisations, thereby weakening some aspects of Anangu polity and strengthening others.

While it could be argued that increasing the SA Government's role in the oversight and administration of the Lands might at times be advantageous for Anangu by structurally forcing the Government to take more responsibility for policy outcomes, the critical focus of this thesis is on how the state's construction of APY shifted across this 25-year period, rather than on proposing policy prescriptions as 'solutions'. This thesis highlights the power imbalances in Anangu–state relations. It argues that diluting self-determination in the 2004–2006 amendments was an act of political expediency and a *misframing* of the persistence of petrol sniffing on the Lands as an Anangu problem, rather than a consequence of inadequate government service delivery.

Following Kymlicka, Taylor and Fraser on rights and recognition, this thesis questions the limitations of state-controlled legislative forms of 'self-determination'. It argues that settler state politics are often dominated by the immediacy of self-interest and power and hence reactive rather than responsive to higher-order policy considerations. In less than a generation Dunstan's vision for restitution and simple justice for Anangu, 'not only to

own but to control their own land’ (Dunstan 1978, p. 2234) shifted into a quest for ways to exert control over communities conveniently portrayed as ‘unable to deliver civil order’ and ‘a disgrace in terms of governance’ (Foley 2004, p.1).

Within the 25-year period between 1981 and 2006, the quest to recognise, respect and empower Anangu self-determination (WPPLR 1978, p. 34) regressed into a negative framing of Anangu as responsible for their own disempowerment. However, throughout this thesis, the potent consistent and considered voices of Anangu protagonists remain strong, clear and resolute. Despite the persistent trauma, violence and other deleterious effects of petrol sniffing; leadership divisions; and often hostile and denigrating portrayals in the media and public debate – Anangu quest for recognition of their land rights is unbowed.

There are no passive victims here, but rather a robust and agentic people fighting for their land rights and equitable access to the services available to all citizens. At every turn, there are powerful Anangu voices—people working across complex domains, managing internal and external expectations and striving to improve the independent standing and general well-being of their communities. As TO Minutjukur explained in her ‘Letter to all Australians’ in 2006:

Today, there are lots of bad stories in the newspapers and on television about the problems in our communities. We are worried about a lot of these problems. But we also know that a lot of strong things are happening because we have set up our own programs and we are sad when people forget about this and say that self-determination does not work (Minutjukur 2006).

The consistency of Anangu approaches to the state, compared to the changeability of government policy positions, is a strong finding in this thesis. People were not seeking sovereignty as complete independence from the government. Again and again, the motif of ‘working together’ was invoked in dialogue. High levels of cooperation are displayed through multiple consultation processes. Willing engagement with a multiplicity of consultants from Bonner to Proctor and Collins to Lowitja O’Donoghue is recorded. An active and pluralistic Anangu polity is revealed in high levels of electoral engagement and diversity of opinions.

Humility, patience and good humour are also displayed by Anangu in exchanges across the 25-year period. This gentle fortitude is an inspiring feature of APY resilience. As TO Lester said at the signing of the PLRA in 1981, ‘we are happy with the agreement...we will probably make some mistakes at first, but we want all white Australians to give us a

go' (*The Advertiser*, 5 September 1981, p. 1). By looking back critically, my hope is that we might move forward reflexively.

This thesis provides a contextualised narrative account and critical analysis of what happened, how and why in the period between the passing of the PLRA in 1981 and its amendment up until 2006. The 25-year period covered in this thesis marks a period of significant policy change. In closing, it is important to acknowledge that this is only a small period compared to many thousands of years of Anangu deep interconnection with each other and their country. As Kunmanara Nyangu²⁷³ explains, threads of *Mantu Anangu* and *Kurunpa* weave Anangu together with their Lands.

Ngangatja, apu wiya, ngayuku tjamu.... This is not a rock; it is my grandfather. This is a place where the dreaming comes up, right up from inside the ground (Tinamin, cited in Toyne & Vachon 1984, p. 5).

²⁷³ Nyangu & Tjalkurin 1994, *The Rope Story*, was performed at Womadelaide in 2003 as a participatory community arts piece explaining the nature of Anangu connection to country. *Mantu* (place), *Anangu* (people) and *Kurunpa* (spirit) are woven together in clay to represent an umbilical cord or life force of Anangu interconnection.

References

- <<http://www.austlii.edu.au/au/other/IndigLRes/car/1997/4/pmspoken.html>>.
- <<https://www.dpmc.gov.au/implementation/planning.cfm>>.
- ABC News 2003, 'Magistrate blasts government over inadequate help for petrol sniffers', 23 July, viewed 22 December 2013 online at, <<http://www.abc.net.au/news/2003-07-23/magistrate-blasts-govt-over-inadequate-help-for/1453074>>.
- ABC News 2008, 'Collins death deemed suicide', 14 February, viewed 13 November 2011 online at: <<http://www.abc.net.au/news/2008-02-14/collins-death-deemed-suicide/1044026>>
- Aboriginal and Torres Strait Islander Commission 1993, *Review of the operation of the Aboriginal and Torres Strait Islander Commission Act 1989*, Australian Government Publishing Service, Canberra.
- Aboriginal and Torres Strait Islander Commission 1995, *Annual Report 1994-1995*, Australian Government Publishing Service, Canberra.
- Aboriginal Legal Rights Movement 2003, 'Supplementary submission of Aboriginal legal rights movement, Adelaide', Australian Senate Legal and Constitutional References Committee Inquiry on Progress towards National Reconciliation, 24 June, p. 14.
- Aborigines Protection Board 1960, *Annual report to government*, Government of South Australia, Adelaide.
- Ahmed, S 1999, 'She'll wake up one of these days and find she's turned: passing through hybridity', *Theory, Culture and Society*, vol. 16, no. 2, pp. 87–106.
- Alcoff, L 1988, 'Cultural feminism versus post-structuralism: the identity crisis in feminist theory', *Signs*, vol. 13, no. 3, pp. 405–436.
- Alice Springs News 1999, 'Mining deal rocks Pitjantjatjara lands', 23 June, viewed 13 June 2013, <<http://www.alicespringsnews.com.au/0621.html>>.
- Allison, G & Zelikow, P 1999, *Essence of decision: explaining the Cuban Missile Crisis*, 2nd edn, Longman, New York.
- Allison, Harold 1979, South Australian House of Assembly, 8 February 1979, pp. 2507–2509.
- Altman, J 2002, Correspondence with Anangu Pitjantjatjara on review of 'Anangu Pitjantjatjara Lands: Strategic Economic Initiatives Plans' AP Executive Records, Umuwa.

- Altman, J & Hunter, B 2003, 'Evaluating Indigenous socioeconomic outcomes in the reconciliation decade, 1991–2001', *Economic Papers: A Journal of Applied Economics and Policy*, vol. 22, no. 4, pp. 1–15.
- Altman, J & Hinkson, M (eds) 2007, *Coercive reconciliation: stabilise, normalise, exit Aboriginal Australia*, Arena, North Carlton.
- Altman, J & Martin, D 2009, *Power, culture, economy: Indigenous Australians and mining*, Centre for Aboriginal Economic Policy Research, Research Monograph 30, Acton.
- Anangu Pitjantjatjara 1990, 'Response to the Dunstan Report', AP Executive Records, Umuwa.
- Anangu Pitjantjatjara 2004, *Executive media release*, 22 March.
- and national competition policy and its effect on rural and regional areas*. NSW Parliamentary Library Research Service, Sydney.
- Arabena, K 2005, *Not fit for modern society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous affairs*, Native Title Research Unit, Research Discussion Paper 16, ACT.
- Arnold, L 1987, *South Australian House of Assembly*, Hansard, 31 March, p. 3624.
- Arnold, L 1993, *South Australian House of Assembly*, Hansard, 17 September, p. 190.
- Arnold, L 1994, *South Australian House of Assembly*, Hansard, 8 September, p. 481.
- Ascione, M 2002, 'The future of mining on Pitjantjatjara Lands', paper delivered at Green Processing Conference, 29–31 May, Cairns.
- ATSIC 2002/3, Annual report, pp. 34–40.
- Attwood, B 1989, *The making of the Aborigines*, Allen & Unwin, Sydney.
- Attwood, B 2003, *Rights for Aborigines*, Allen & Unwin, Sydney.
- Attwood, B 2013, Returning to the past: the South Australian Colonisation Commission, the Colonial Office and Aboriginal Title, *Journal of Legal History*, vol. 34, no. 1, pp. 50–82.
- Attwood, B & Markus, A 1999, *The Struggle for Aboriginal Rights: a Documentary History*, Allen & Unwin, St Leonards NSW.
- Augoustinos, M & Penny, S 2001, 'Reconciliation: the genesis of a new social representation', *Papers on Social Representations*, vol. 10, pp. 4.1–4.18.
- Austin-Broos, D 2011, *A different kind of equality: the politics of debate about remote Australia*, Allen & Unwin, Sydney.

- Austin-Broos, D 2012 Economy, Change and Self-Determination: A Central Australian Case. In T. Rowse and L. Ford eds. *Between Indigenous and Settler Governance*. London and New York: Routledge, pp. 108-120.
- Australian Bureau of Statistics 2006, *2006 Census QuickStats: Anangu Pitjantjatjara (AC) local government area*, viewed 22 May 2012, <http://www.censusdata.abs.gov.au/census_services/getproduct/census/2006/quickstat/LGA40250>.
- Australian Government's House of Representatives Standing Committee on Aboriginal Affairs 1987, *Return to country: the Aboriginal homelands movement in Australia*, Australian Government, Canberra.
- Australian Public Service Commission 2007, *Tackling wicked problems: a public policy perspective*, Australian Government, Canberra.
- Bacchi, C 2000, Policy as discourse: what does it mean? Where does it get us? *Discourse: Studies in the Cultural Politics of Education*, vol. 21, no. 1, pp. 45–57.
- Bacchi, C 2009, *Analysing policy: what's the problem represented to be?* Pearson Australia, Frenches Forest.
- Bacchi, C 2012, 'Why study problematizations? Making politics visible', *Open Journal of Political Science*, vol. 2, no. 1, pp. 1–8.
- Barlow, K 2005, 'SA Premier makes bold move to improve State's performance' *The World Today* - Friday, 22 April, 2005 accessed online 5 February 2013 at: <http://www.abc.net.au/worldtoday/content/2005/s1351684.htm>
- Bannon, J 1980, South Australian House of Assembly, 25 November, pp. 2184–2186.
- Behrendt, L. 2001, Indigenous Self-Determination: Re-thinking the Relationship between Rights and Economic Development, *The University of New South Wales Law Journal*. Vol 24. No. 3 2001 pp 850-861.
- Behrendt, L. 2002, The Power We Bring: Indigenous Sovereignty and Self-Determination in the Treaty Process, *Balayi*, Vol 5 pp.1-10.
- Berhendt, L 2003, *Achieving social justice: Indigenous rights and Australia's future*, Federation Press, Sydney.
- Berg, S 2010, *Coming to terms: Aboriginal title in South Australia*, Wakefield Press, Kent Town.
- Berg, S and d'Assumpcao, K. 2006, *The Pitjantjatjara Land Rights (Miscellaneous) Amendment Act [2005]*. *Indigenous Law Bulletin*, vol. 6, no. 19, pp. 8–9.
- Bern, J 1989, 'The politics of a small Northern Territory town: a history of managing dependency', in P Loveday and A Webb (eds), *Small towns in Northern Australia*,

- North Australia Research Unit Monograph, Australian National University, Darwin.
- Blewett, N & Jaensch, D 1971, *Playford to Dunstan: the politics of transition*, Griffin Press Limited, Adelaide.
- Bobrow, D & Dryzek, J 1987, *Policy analysis by design*, University of Pittsburgh Press, Pittsburgh.
- Boin, A, t'Hart, P, Stern, E & Sundelius, B 2006, *The politics of crisis management: public leadership under pressure*, Cambridge University Press, Cambridge.
- Bonner, N 1988, *Always Anangu: a review of the Pitjantjatjara and Yankunytjatjara Aboriginal communities of Central Australia*, Department of Aboriginal Affairs, Canberra.
- Brady, M 1992, *Heavy metal: the social meaning of petrol sniffing in Australia*. Aboriginal Studies Press, Canberra.
- Braithwaite, V, Gatens, M & Mitchell, D 2002, 'If mutual obligation is the answer, what is the question?', *Australian Journal of Social Issues*, vol. 37, no. 3, pp. 225–245.
- Briton-Jones, S 2007, 'Interview with Sue Briton-Jones, Don Dunstan oral history project', Flinders University Academic Commons, viewed 21 February 2012, <<http://dspace.flinders.edu.au/dspace/handle/2328/3208>>.
- Broome, R 2002, *Aboriginal Australians: black responses to white dominance, 1788–2001* (3rd edn), Allen & Unwin, Crows Nest.
- Buchanan, J & Tollison, R (eds) 1984, *The theory of public choice II*, University of Michigan Press, Michigan.
- Burnett, R 1986, 'Government acts on petrol-sniffing "emergency"', *Adelaide Advertiser*, 1 December, p. 1.
- Burnside, S 2009, 'Macklin's special treatment', *newmatilda.com*, 4 November, viewed 22 May 2010, <<http://newmatilda.com/2009/11/04/macklins-special-treatment>>.
- Cairns, A 2003, 'Afterword: international dimensions of the citizen issue for Indigenous peoples/nations', *Citizenship Studies*, vol. 7, no. 4, pp. 497–512.
- Cameron, M 1987, *South Australian Legislative Council*, Hansard, 9 April, p. 4049.
- Chaney, F 1984, *Australian Senate*, Hansard, 6 March 1984, p. 468.
- Charles, C 2005, 'The 2004–05 South Australian Coronial Inquests into Deaths on the Anangu Pitjantjatjara Yankunytjatjara Lands: An Opportunity for Fortright Government Action' [2005] AUIndigLawRpr 73; (2005) 9(4) *Australian Indigenous Law Reporter* 77, accessed 22/11/2010 at: <http://www5.austlii.edu.au/au/journals/AUIndigLawRpr/2005/73.html>

- Chivell, W 2002, SA State Coroner, 'Inquest into the deaths of Kunmanara Ken, Kunmanara Hunt and Kunmanara Thompson', No. 11, 6 September, viewed 30 January 2006, <<http://www.courts.sa.gov.au/courts/coroner/index.html>>.
- Chivell, W 2005, SA State Coroner, 'Inquest into the deaths of Kunmanara Ward, Kunmanara Ken, Kunmanara Ryan and Kunmanara Cooper', Number 17, 18, 19 and 20 of 2004, 14 March 2005, viewed 30 January 2006, <<http://www.courts.sa.gov.au/courts/coroner/>>.
- Clarke, A 2005, *Situational analysis: grounded theory after the postmodern turn*, Sage, Thousand Oaks.
- Clarke, J 1996, 3(84) *Aboriginal Law Bulletin* 22.
- Cleland, JA 1936, *Natives of South Australia*. In 'The centenary history of South Australia'. Supplement to Proceedings of the Royal Geographical Society of Australasia, South Australian Branch 36 (pp. 16–29).
- Cocks, CA 1978, *Report of the Pitjantjatjara land rights working party of South Australia, June 1978*. Pitjantjatjara Land Rights Working Party of South Australia, Adelaide.
- Cohen, M, [March, J](#) & [Olsen, J](#) 1972, 'A garbage can model of organizational choice', *Administrative Science Quarterly*, vol. 17, no. 1, pp. 1–25.
- Cohen, S 1972, *Folk devils and moral panics*, McGibbon and Kee, London.
- Colebatch, HK 2005, 'Policy analysis, policy practice and political science', *Australian Journal of Public Administration*, vol. 64, no. 3, pp. 14–23.
- Colebatch, HK 2009, *Policy* (3rd edn), Open University Press, Berkshire.
- Collings, M, Thompson, P, Nganampa Health Council, SA Health Commission and Australian Government 1987, *Report of Uwankara Palyanyku Kanyintjaku: an Environmental and Public Health Review within the Anangu Pitjantjatjara Lands*, [The Committee], Adelaide.
- Collins, Bob 2004, 'APY Land Council and Community Safety in the Lands— Report by the Co-ordinator of Government Services to the APY Lands', Report tabled in SA House of Assembly 4 May 2004.
- Commonwealth of Australia 1985, *Report of the Senate Select Committee on Volatile Substance Fumes*, AGPS, Canberra.
- Commonwealth of Australia 1985, *Volatile substance abuse in Australia*, Senate Select Committee on Volatile Substance Fumes, AGPS, Canberra.

- Commonwealth of Australia 2006, *Beyond petrol sniffing: renewing hope for Indigenous communities*, Senate Community Affairs References Committee, AGPS, Canberra.
- Commonwealth Parliament of Australia 1987, Hon. GL Hand, 'Speech: foundations for the future', House of Representatives, Hansard, 10 December 1987, p. 3152.
- Commonwealth Parliament of Australia 1989, Hon. John Howard, 'Ministerial Statement: Administration of Aboriginal Affairs', House of Representatives, *Debates*, 11 April, p. 1328.
- Conklin, J 2003, *Dialog mapping: an approach for wicked problems*, Wiley, UK.
- Considine, M 2005, *Making public policy*, Polity Press, UK.
- Considine, M; Lewis, J & O'Sullivan, S 2011, 'Quasi-markets and service delivery flexibility following a decade of employment assistance reform in Australia', *Journal of Social Policy*, vol. 40, no. 4, pp. 811–833.
- Cooke, B & Kothari, U 2001, 'The case for participation as tyranny', in B Cooke & U Kothari (eds), *Participation: the new tyranny?* pp. 1–15, Zed Books, London.
- Coombs, HC 1976, 'Aboriginal Australians: 1967–1976: a decade of progress?', *Walter Murdoch Lecture Series 3*, Murdoch University, Perth.
- Coombs, HC 1977, *The Pitjantjatjara Aborigines: a strategy for survival*, Centre for Resource and Environmental Studies, ANU, Canberra.
- Coombs, HC 1994, *Aboriginal autonomy: issues and strategies*. Cambridge University Press, Melbourne.
- Council of Australian Governments 2002, Communiqué on 5 April 2002, as cited in D Tedmanson, S Fisher & M Muirhead 2011, 'Anangu serving Anangu – plenty ninti!' The PY Ku network on the Anangu Pitjantjatjara Yankunytjatjara Lands. DKCRC Research Report 68. Ninti One Limited, Alice Springs
- Crafter, G 1987, *South Australian House of Assembly*, Hansard, 8 April 1987, p. 3994.
- Cunneen, C 2007, 'Riot, resistance and moral panic: demonising the colonial other', in S Poynting & G Morgan (eds), *Outrageous! Moral panics in Australia*, pp. 20–29, ACYS Publishing, Hobart.
- d'Abbs, P & Brady, M 2003, 'Other drugs, other people, other places: the policy response to Indigenous petrol sniffing in Australia', Conference paper, Inhalant Use and Disorder Conference, Australian Institute of Criminology, Townsville, 7–8 July, p. 2.

- d'Abbs, PH & Brady, M 2004, 'Other people, other drugs: the policy response to petrol sniffing among Indigenous Australians', *Drug and Alcohol Review*, vol. 23, no. 3, pp. 253–260.
- d'Abbs, P & MacLean, S 2000, *Petrol sniffing in Aboriginal communities: a review of interventions*. Cooperative Research Centre for Aboriginal and Tropical Health, Darwin.
- d'Abbs, P & McLean, S 2008, *Volatile substance misuse: a review of interventions*, Commonwealth of Australia, Canberra.
- Daly, M 1984, 'Sniffing at death', *The Advertiser*, 29 December 1984, p. 21.
- Davis, P 1999, 'AP mining', *BRW Business Review Weekly*, 4 June, p. 2.
- Dean, Mitchell 1999, *Governmentality: Power and rule in modern society*. Sage, London.
- Dean, Mitchell & Hindess, Barry 1998, (eds.) *Governing Australia: Studies in contemporary rationalities of government*. Cambridge University Press, Melbourne.
- DiGirolamo, R 2004, 'Black land council scapegoated over suicides', *The Australian*, 25 March, p. 8.
- DiGirolamo, R 2004, 'Blacks dump dysfunctional council', *The Australian*, 5 October, p. 2.
- DiGirolamo, R 2004, 'Rann takes control from blacks', *The Australian*, 16 March, p. 6.
- Dillon, M & Westbury, N 2007, *Beyond Humbug: Transforming Government Engagement with Indigenous Australia*, Seaview Press, West Lakes, SA.
- Dillon, MC 2007, 'National security and the failed state in remote Australia', *Australian Policy Forum 07-01B*, Nautilus Institute at RMIT (25 January 2007) as cited in Anthony, T (2013) *Indigenous People, Crime and Punishment*, Routledge, London.
- Divakaran-Brown, C. & Minutjukur, A 1993, *Children of dispossession: an evaluation of petrol sniffing on Anangu Pitjantjatjara Lands.*, Department of State Aboriginal Affairs, Adelaide
- Dodson, M & Pritchard, S 1998, 'Recent developments in Indigenous policy: the abandonment of self-determination?', *Indigenous Law Bulletin*, vol. 4, no. 15, pp. 4–6.
- Dodson, M 2002, Letter of Report to Minister Terry Roberts, 29 August 2002.
- Dodson, P, Mowbray M & Snowdon, W 2003, 'Promise, confrontation and compromise in Indigenous affairs', in S Ryan & T Bramston (eds), *The Hawke government: a critical retrospective*, p. 299, Pluto Press Australia, North Melbourne.

- Dryzek, J 1997, *The politics of the earth: environmental discourses*, Oxford University Press, Oxford.
- Duncan, P 1993, 'Second reading: Native Title Bill 1993', House of Representatives, *Debates*, 24 November, p. 3608, cited in A Pratt 2005, *Practising reconciliation: the politics of reconciliation in the Australian Parliament 1991–2000*, Commonwealth of Australia, Canberra, p. 63.
- Duncan, S & Reutter, L 2006, A critical policy analysis of an emerging agenda for home care in one Canadian province, *Health and Social Care in the Community*, vol. 14, no. 3, pp. 242–253.
- Dunstan, D 1978, South Australian House of Assembly, 22 November 1978, pp. 2235–2236.
- Dunstan, D 1981, *Felicia: the political memoirs of Don Dunstan*, Macmillan, South Melbourne.
- Dunstan, D 1989, *Aboriginal Community Government, a Report by Don Dunstan*, SA State Aboriginal Affairs, Adelaide
- Dunstan, D 1989, *Aboriginal community government: a report by Don Dunstan*, SA State Aboriginal Affairs, Adelaide.
- Dunstan, D 2007, Interview with Sue Jaffe 1997 cited in 'Collaborating for Indigenous Rights', National Museum of Australia, viewed 22 May 2013, <http://indigenoustrights.net.au/people/pagination/don_dunstan>.
- Eames, GA 1976, *Land rights or a sell out? An analysis of the Aboriginal land rights (Northern Territory) bill, 1976* (Victorian Fabian pamphlet ; 30 ed.). Melbourne : Victorian Fabian Society and Society of Labor Lawyers (Victoria) by arrangement with the Central Australian Land Rights Bulletin, 1976.
- Edelman, M 1988, *Constructing the political spectacle*, University of Chicago Press, Chicago.
- Edwards, W 1983, 'Pitjantjatjara land Rights', in N Peterson & M Langton (eds), *Aborigines, land and land rights*, Australian Institute of Aboriginal Studies, Canberra.
- Edwards, W 1986, The church and Indigenous land rights: Pitjantjatjara land rights in Australia, *Missiology: An International Review*, vol. XIV, no. 4, pp. 473–486.
- Edwards, W 1987, *Traditional Aboriginal society: a reader*, MacMillan, Melbourne.
- Edwards, W 1992, Patterns of Aboriginal residence in the north-west of South Australia, *Journal of the Anthropological Society of South Australia*, vol. 30, no. 1–2, pp. 2–32.

- Eickelkamp U 1999, 'Don't ask for stories...': *the women from Ernabella and their art = 'Tjukurpa tjapintja wiya...': minyma anapalanya ngurara tjutangu warka palyantja craftroomangka*, Aboriginal Studies Press, Canberra.
- Elliott, M 1987, *South Australian Legislative Council*, Hansard, 9 April 1987, p. 4051.
- Escobar, A 1984, 'Discourse and power in development: Michel Foucault and the relevance of his work to the Third World', *Alternatives*, vol. 10, no. 3, pp. 377–400.
- Fairclough, N 1992, *Discourse and social change*, Polity Press, Cambridge.
- Fewster, S 2001, *Historic day in struggle to win land rights*, *The Advertiser*, 27 November, p. 1.
- Fischer, F 2003, *Reframing public policy: discursive politics and deliberative practices*, Oxford University Press, New York.
- Fischer, F & Gottweis, H (eds) 2012, *The argumentative turn revisited: public policy as communicative practice*, Duke University Press, Durham.
- Fitzgerald T 2001, *Cape York justice study: summary conclusions and recommendations*, vol. 1, Department of Premier and Cabinet, Queensland Government, Brisbane.
- Flyvbjerg, B 2006, Five misunderstandings about case-study research, *Qualitative Inquiry*,
- Foley, K (Hon) 2004, *Media Release*, 15 March.
- Ford, L & Rowse, T 2012, *Between settler and Indigenous governance*, Routledge, London.
- Forester, J & Fischer, F 1993, *The argumentative turn in policy analysis and planning*, Duke University Press, Durham, NC.
- Foucault, M 1975, *Discipline and Punish: the Birth of the Prison*, Random House, New York.
- Foucault, M 1994a, 'Genealogy and social criticism', in S Seidman (ed), *The postmodern turn: new perspectives on social theory*, Cambridge University Press, Cambridge, pp. 39–45.
- Foucault M 1994b, Two lectures in: Kelly M (ed), *Critique and power: recasting the Foucault/Habermas debate*, MIT Press, Cambridge, MA, pp. 17–46.
- Foxcroft, E 1941, *Australian native policy: its history, especially in Victoria*. Melbourne: Melbourne University Press in association with Oxford University Press.
- Franks, C 1989, Preventing petrol sniffing in Aboriginal communities. *Community Health Studies*, vol. 13, no. 1, 14–22.
- Fraser, N 2000, 'Rethinking Recognition'. *New Left Review*. 3: pp. 107-120

- Fraser, N 2010, *Scales of justice*, Columbia University Press, New York.
- Fraser, N & Honneth, A 2003, *Redistribution or recognition? : a political-philosophical exchange*, Verso, London
- Gamson, WA 1992, *Talking politics*, Cambridge University Press, New York.
- Gardiner-Garden, J 1997, 'The origin of Commonwealth involvement in Indigenous affairs and the 1967 Referendum', Background paper no. 11, 1996–97, Department of the Parliamentary Library, Information and Research Services, Canberra, ACT.
- Gerritsen, R 1982, 'Outstations, differing interpretations and policy implications', in P. Loveday (ed.), *Service Delivery to Outstations*, North Australia Research Unit, Darwin: pp. 57–69.
- Goold, S & Liddle, K (eds) 2005, *In our own right: black Australian nurses' stories*, e-content Management, Maleny, Qld.
- Grattan, Michelle 2000, ed. *Reconciliation: Essays on Australian Reconciliation*, Black Inc, Melbourne
- Gray, B & Sanders, W 2006, 'Views from the top of the 'quiet revolution'. Secretarial perspectives on the new arrangements in Indigenous affairs', CAEPR Discussion Paper 282, ANU, Canberra.
- Grimley, J 1986, 'Critical educational policy analysis: a discussion of perspectives', *Australian Journal of Teacher Education*, vol. 11, no. 2, pp. 19–26.
- Grube, D 2010, 'The rhetorical framing of policy intervention', *Australian Journal of Political*
- Gunn, G 1987, *South Australian House of Assembly*, Hansard, 31 March, p. 3625.
- Gunstone, A 2009, 'Indigenous rights and the 1991–2000 Australian reconciliation process', *Cosmopolitan Civil Societies: An Interdisciplinary Journal*, vol. 1, no. 3, pp. 35–51.
- Habermas, J 1973, 'Between philosophy and science: Marxism as critique', in *Theory and Practice*, Polity Press, Cambridge.
- Habermas, J 1984, *Theory of communicative action Volume One: Reason and the rationalization of society*, translated by Thomas McCarthy, Beacon Press, Boston.
- Habibis, D 2011, 'A Framework for Reimagining Indigenous Mobility and Homelessness', *Urban Policy and Research*, Vol. 29 No. 4, pp. 401–414
- Habitat Solutions 2002, 'NWKRC Homelands Implementation Plan' tabled by Anilalya Council Aboriginal Corporation to the Standing Committee 2004 report see page 57.

- Haraway, D 1988, Situated knowledges: the science question in feminism and the privilege of partial perspective, *Feminist Studies*, vol. 14, no. 3, pp. 575–599.
- Haraway, D 1991, *Simians, cyborgs and women: the reinvention of nature*, Routledge, New York.
- Hartley, J & McKee, A 2000, *The Indigenous public sphere: the reporting and reception of Aboriginal issues in the Australian media*, Oxford University Press, Melbourne.
- Healthy Aboriginal Life Team 1991, *Anangu way*, Nganampa Health Council, Alice Springs.
- Heclo, H 1974, *Social policy in Britain and Sweden*, Yale University Press, New Haven.
- Hill L & Alport, K 2010, 'Voting Attitudes and Behaviour Among Aboriginal Peoples: Reports from Anangu Women', *Australian Journal of Politics and History*: Volume 56, Number 2, 2010, pp. 242–258
- Hilliard, W 1968, *The people in between: the Pitjantjatjara people of Ernabella*. Hodder and Stoughton, London.
- Hindess, B 2001, 'The Liberal Government of Unfreedom', *Alternatives*, vol. 26, no. 2, pp. 93–111
- Hiskey, G 2003, Police v Yakiti, cited in “‘These people can't be allowed to die’”: *Magistrate speaks out on petrol sniffing*, Koori Mail, 30 July, p5.
- Hocking, B 2005 ed. *Unfinished Constitutional Business: Rethinking Indigenous Self-Determination*, Aboriginal Studies Press, Canberra.
- Holcombe, S 2004, Traditional owners and 'community-country' Anangu: distinctions and dilemmas, *Australian Aboriginal Studies*, No. 2, pp.64-71
- Hollinsworth, D 2005, 'My island home: riot and resistance in media representations of Aboriginality', *Social Alternatives*, vol. 24, no. 1, pp. 16–20.
- Honneth, Axel 1995, *The Struggle for Recognition: The Grammar of Social Conflicts*. Polity, Cambridge, UK.
- Honneth, Axel 2007, *Disrespect: The Normative Foundations of Critical Theory*. Polity, Cambridge, UK.
- Hood, C 2010, *The Blame Game: Spin, Bureaucracy, and Self-Preservation in Government*. Princeton University Press, Princeton, NJ.
- Hope, D 1983, 'Dreams contested: a political account of relations between South Australia's Pitjantjatjara and the government, 1961–1981', PhD Thesis, Flinders University of South Australia.
- House of Representatives Standing Committee on Aboriginal Affairs [HRSCAA] 1987, *Return to Country—The Aboriginal Homelands Movement in Australia*. Australian Government Publishing Service, Canberra

- Howard-Wagner, D 2012, 'Reclaiming the northern territory as a settler-colonial space', *Arena Journal*, no. 37/38, pp. 220–240, viewed 14 January 2015, <<http://search.informit.com.au.access.library.unisa.edu.au/documentSummary;dn=641299213998479;res=IELAPA>>.
- Howard, J 1997, 'Opening address to the Australian Reconciliation Convention, The Hon John Howard MP, The Prime Minister', viewed 19 November 2011, Howard, J 2000, 'Practical reconciliation', in M Grattan (ed), *Essays on Australian reconciliation*, Bookman Press, Melbourne.
- Howarth, D 2010, 'Power, discourse, and policy: articulating a hegemony approach to critical policy studies', *Critical Policy Studies*, vol. 3, no. 3–4, pp. 309–335.
- Howlett, M 2012, 'The lessons of failure: learning and blame avoidance in public policy-making', *International Political Science Review*, vol. 33, no. 5, pp. 539–555.
- Human Rights and Equal Opportunities Commission (HREOC) 1995, *Alcohol Report: Race discrimination, human rights and the distribution of alcohol*, (Race Discrimination Commissioner), AGPS, Canberra.
- Human Rights and Equal Opportunities Commission (HREOC) 1996, *Annual Report 1996*, AGPS, Canberra.
- Human Rights and Equal Opportunities Commission (HREOC) 1997, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, AGPS, Canberra.
- Human Rights and Equal Opportunity Commission (HREOC) 2003, *Social Justice Report 2003*, Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, New South Wales, accessed online on 22nd May, 2012 at: <<https://www.humanrights.gov.au/publications/social-justice-report-2003>>
- Human Rights and Equal Opportunity Commission (HREOC) 2004, *Social Justice Report 2004*, Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, New South Wales, accessed online on 30th June, 2014 at: <https://www.humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport04/social_justice_report_2004.pdf>.
- Human Rights and Equal Opportunity Commission (HREOC) 2011, *Guidelines to Understanding Special Measures in the Racial Discrimination Act 1975* (Commonwealth) (2011) accessed online 3rd July 2011 at: <<https://www.humanrights.gov.au/publications/guidelines-understanding-special-measures-racial-discrimination-act-1975-cth-2011>>

- Hunt, J 2008, 'Between a rock and a hard place: self-determination, mainstreaming and Indigenous community governance', in J Hunt, D Smith, S Garling & W Sanders (eds), *Contested governance: culture, power and institutions in Indigenous Australia*, ANU, Canberra.
- Hunt, J, Smith, D, Garling, S & Sanders, W (eds) 2008, *Contested governance: culture, power and institutions in Indigenous Australia*, ANU, Canberra.
- Hunter, B 2007, 'Conspicuous compassion and wicked problems', *Agenda*, vol. 14, no. 3, pp. 35–51.
- Iverson, D, Patton, P & Sanders, W 2000 eds. *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press, Cambridge, UK.
- Jaensch, D (ed) 1986, *The Flinders history of South Australia: political history*, Wakefield Press, Adelaide.
- James, D 2005, 'Kinship with country: acts of translation in the cross-cultural performance space: a case study on the Anangu Pitjantjatjara Lands of Central Australia', PhD thesis, Australian National University, Canberra.
- James, D 2015, 'Tjukurpa time', in A McGrath & A Jebb (eds), *Long history, deep time: deepening histories of place*, Australian National University, Canberra.
- Jamrozik, A 2001, *Social policy in the post-welfare state: Australians on the threshold of the 21st century*, Pearson Education, Frenchs Forest.
- Jennett, C 1990, 'Aboriginal affairs policy', in C Jennett & RG Stewart (eds), *Hawke and Australian public policy: consensus and restructuring*, Macmillan Press, South Melbourne, p. 255.
- Jensen, K & Glasmeier, A 2010, 'Policy, research design and the socially situated researcher', in D DeLyser, S Herbert, S Aitken, M Crang & L McDowell (eds.), *The Sage handbook of qualitative geography*, Sage, London, pp. 82–93.
- Johnston, E 1991, *Royal Commission into Aboriginal Deaths in Custody: national report*, Australian Government Publishing Service, Canberra.
- Jonas, W 2004, 'An agenda for change: launch of the Social Justice Report 2003 and Native Title Report 2003', Speech delivered by Darren Dick on behalf of Dr William Jonas AM, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Tandanya, Adelaide, 25 March 2004.
- Kavanagh, M 1999, *Curtin Springs roadhouse: ten years of community struggle*, *Indigenous Law Bulletin*, vol. 24, no. 4, viewed 22 March 2012, <<http://www.austlii.edu.au/au/journals/ILB/1999/24.html>>.

- Kelton, G 2006, 'Pageant, drama as Dunstan quits in his pyjamas', *The Advertiser*. 31st October, p.13.
- Kemp, M 2004, 'DISGRACE! Funding to save lives tied up by red tape', *The Advertiser*, 15 March, p. 1.
- Kemp, M 2004, 'Fight takeover, urges lands' boss', *The Advertiser*, 17 March, p. 2.
- Kemp, M 2004, 'Self-rule is finished', *The Advertiser*, 16 March, p. 1.
- Kerr, R 1991, *Aboriginal land rights: a comparative assessment* (Vol. Background information brief No. 23). Brisbane: Queensland Parliamentary Library.
- King, L 1970, 'Politics and the Aborigine', mimeo notes, 3 August, Adelaide.
- Koori Mail 2003, 'These people can't be allowed to die: magistrate speaks out on petrol sniffing', 30 July, p. 5.
- Koori Mail 2004, 'Concerns over new chairman', 20 October, p. 4.
- Kymlicka, W 1995a, *Multicultural citizenship: a liberal theory of minority rights*, Clarendon Press, Oxford.
- Kymlicka W 1995b, *The rights of minority cultures*, Oxford University Press, Oxford.
- Kymlicka W 1999, Theorizing Indigenous Rights *University of Toronto Law*, Spring 99, Vol. 49 Issue 2, p281. 13p.
- Kymlicka W & Norman W 2000, *Citizenship in Diverse Societies*, Oxford University Press, Oxford.
- Kymlicka, W 2007, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, Oxford University Press, Oxford.
- Larkin, C & Hayes, B 1998, *Anangu Pitjantjatjara operational review: final report for Anangu Pitjantjatjara, Aboriginal and Torres Strait Islander Commission and SA Department of Environment, Heritage and Aboriginal Affairs*, Planning Advisory Services, Adelaide.
- Last, M 2001, *Pitjantjatjara Council resource centre*, working notes and records of meetings, viewed 22 November 2012, <<http://www.anangu.com.au/>>.
- Law, J 2004, *After method: mess in social science research*, Routledge, London.
- Lawrence, R & Gibson, C 2007, 'Obliging indigenous citizens? Shared responsibility agreements in Australian Aboriginal communities', *Cultural Studies*, vol. 21, no. 4-5, pp. 650-671.
- Lawson, R 2002, *South Australian Legislative Council*, Hansard, 15 October, p. 1022.
- Lawson, R 2003, *South Australian Legislative Council*, Hansard, 10 November, p. 473.
- Lawson, R 2003, *South Australian Legislative Council*, Hansard, 13 November, p. 572.
- Lawson, R 2004, *South Australian Legislative Council*, Hansard, 18 February, p. 990.
- Lawson, R 2004, *South Australian Legislative Council*, Hansard, 22 March, p. 1141.

- Lawson, R 2004, *South Australian Legislative Council*, Hansard, 24 March, p. 1203.
- Lawson, R 2005, *South Australian Legislative Council*, Hansard, 4 April, p. 1472.
- Lawson, R 2005, *South Australian Legislative Council*, Hansard, 6 April, p. 1353.
- Le Grande 2000, 'Quasi markets and social welfare' in Goodwin, R. and Mitchell, D (eds), *The foundations of the welfare state*, Edward Elgar, Cheltenham.
- Lea, T 2008, *Bureaucrats and bleeding hearts: Indigenous health in Northern Australia*, University of New South Wales Press, Sydney.
- Lee, Y-K & Chang, C-T 2010, 'Framing public policy: the impacts of political sophistication and nature of public policy', *Social Science Journal*, vol. 47, no. 1, pp. 69–89.
- Limerick, M 2009, 'What makes an Aboriginal council successful? Case studies of Aboriginal community government performance in Far North Queensland', *Australian Journal of Public Administration*, vol. 68, no. 4, pp. 414–428.
- Linder, S 1995, 'Contending discourses in the electric and magnetic fields controversy: the social construction of EMF risk as a public problem', *Policy Sciences*, vol. 28, no. 2, pp. 209–230.
- Litster, J 2004, *Interview*, radio broadcast, ABC News, 25 March.
- Lucas, R 1996, *South Australia Legislative Council*, Hansard, 5 November, p. 300.
- Maddison, S 2009a, 'Lessons to be learned: Reviving advocacy organisations after the neo-con men', *Cosmopolitan Civil Societies: An Interdisciplinary Journal*, vol. 1, no. 2, pp. 18–29.
- Maddison, S 2009b, *Black politics: inside the complexity of Aboriginal political culture*, Allen & Unwin, Sydney.
- Maddison, S 2012, 'Evidence and Contestation in the Indigenous Policy Domain: Voice, Ideology and Institutional Inequality', *Australian Journal of Public Administration*, vol. 71, no. 3, pp. 269–277
- Maddison, S 2013, 'Discursive politics', in S Maddison & M Sawyer (eds), *The women's movement in protest, institutions and the Internet: Australia in transnational perspective*, Routledge, London, pp.37-53
- Maddison, S and Brigg, M 2011, *Unsettling the Settler State: Creativity and resistance in Indigenous settler-state governance*, Federation Press, Sydney.
- Manning, H 2005, 'Mike Rann: A fortunate 'King of Spin'', in J Wanna & P Williams (eds.), *Yes, Premier; Labor Leadership in Australia's States and Territories*, UNSW Press, Sydney.

- Manwaring, R 2013, 'Reinventing Labor: the South Australian Rann government (2002-2011)' Australian Political Science Association Conference, 30th September – 2nd October, 2013, Perth
- Maralinga Tjarutja Land Rights Act SA* (1984)
- Marshall, A 2001, 'Ngaparti-Ngaparti: Ecologies of Performance in Central Australia' unpublished PhD thesis, University of Western Sydney.
- Martin, R 2009, *Responsible government in South Australia: Vol 2: Playford to Rann 1957–2007*, Wakefield Press, Kent Town.
- McCarthy, G 2002, *Things fall apart: a history of the State Bank of South Australia*, Australian Scholarly Publishing, Melbourne.
- McCausland, R 2005, 'Shared responsibility agreements', Briefing Paper No. 1, Ngiya Institute for Indigenous Law, Policy and Practice, Jumbunna Indigenous House of Learning, University of Technology, Sydney.
- McCausland, R and Levy, M 2006, 'Indigenous policy and mutual obligation: shared or shifting responsibility agreements?', *Australian Journal of Social Issues*, vol. 41, no. 3, pp. 277–294.
- McGarry, A 2004, 'Setbacks fail to trip Rann as he regains prized popularity', *The Australian*, 7 July, p. 6.
- McHugh, P 2004, *Aboriginal Societies and the Common Law*, Oxford University Press, Oxford
- McHugh, P and Ford, L 2012, 'Settler Sovereignty and the Shapeshifting Crown' in Ford, L & Rowse, T (eds) *Between Indigenous and Settler Governance*, Routledge, pp.23-34.
- Mickler, S 1998a, *The myth of privilege: Aboriginal status, media visions, public ideas*, Fremantle Arts Centre Press, Fremantle.
- Mickler, S 1998b, 'News, governmentality and Aboriginality: beyond pathologies of othering in media studies', *Critical Arts*, vol. 12, no. 1–2, pp. 45–77.
- Mignolo, W 2011 *The Darker Side of Western Modernity: Global Futures, Decolonial Options*, Durham, Duke University Press.
- Miller, M 1985, *Report of the Committee of Review of Aboriginal Employment and Training Programs*, Australian Government Publishing Service, Canberra.
- Minutjukur, M 2001, Letter to all Australians, *The Australian*, 8 December, p. 4.
- Mohan, G & Stokke, K 2000, 'Participatory development and empowerment: the dangers of localism', *Third World Quarterly*, vol. 21, no. 2, pp. 247–268.

- Moran, M 2010, 'The intercultural practice of local governance in an Aboriginal settlement in Australia', *Human Organization*, vol. 69, no. 1 pp. 65–74.
- Moran, M; Porter, D & Curth-Bibb, J 2014, *Funding Indigenous organisations: improving governance performance through innovations in public finance management in remote Australia*, Issues paper no. 11, Australian Institute of Health and Welfare, Canberra.
- Morely, R 2005, The Pitjantjatjara Land Rights Amendment Act: Addressing Governance on APY Lands, *Indigenous Law Bulletin*, vol. 6, no. 15, pp. 10-11.
- Moreton-Robinson, A 2007, (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Allen & Unwin, Sydney.
- Morphy, F 'The language of governance in a cross-cultural cultural context: what can and can't be translated', *Ngiya Talk the Law: Governance in Indigenous Communities*, vol. 1, no. June, pp. 93–102.
- Morton Consulting and Associates 1994, 'Local councils belong to Aboriginal people too'. Local Government and Aboriginal Populations Access and Equity Project, 1994 Prepared for the Local Government Association of Australia, Canberra.
- Mosse, D 2001, "'People's knowledge", participation and patronage: operations and representations in rural development', in B Cooke & U Kothari (eds), *Participation: the new tyranny?*, pp. 16–35, Zed Books, London.
- Mowbray, M 1986, 'Black and white councils: Aborigines and local government in the Northern Territory, for the Central and Northern Land Councils', Central Land Council, Alice Springs.
- Myers, F 1986, *Pintupi country, Pintupi self: sentiment, place & politics among Western Desert Aborigines*. AIHS, Canberra.
- National Museum of Australia and Ryebuck Media 2002, *Women and equality as citizens*, viewed 15 June 2011, <<http://www.nma.gov.au/>>.
- National Museum of Australia 2007, *Collaborating for Indigenous Rights: Don Dunstan Interview with Sue Jaffe 1997*, viewed 22 May 2013, <http://indigenoustrights.net.au/people/pagination/don_dunstan>.
- Ngaanyatjarra, Pitjantjatjara, Yankunytjatjara (NPY) Women's Council 2012, 'Notable achievements and activities', viewed 12 December 2012, <<http://www.npywc.org.au/about-npywc/achievements/>>.
- Nganampa Health Council 1996, *Annual report 1995–6*. Nganampa Health Council, Alice Springs.

- Nganampa Health Council 1997, *Annual report 1996–7*. Nganampa Health Council, Alice Springs.
- Niarchos, N 2004, ‘Human rights in Australia: a retreat from treaties’, Paper prepared for the Human Rights Committee of the Law Society of SA, Adelaide.
- Nicholls, J 2009, UHF story, viewed 12 December 2012, <http://www.papertracker.com.au/index.php?option=com_content&task=view&id=208&Itemid=57>.
- Niezen, R 2003, *The Origins of Indigenism: Human Rights and the Politics of Identity*. University of California Press, Los Angeles
- Niezen, R 2009, *The Rediscovered Self: Indigenous Identity and Cultural Justice*, McGill Queens University Press, Montreal
- Niezen, R 2010, *Public Justice and the Anthropology of Law*, Cambridge University Press, Cambridge
- NPY Women’s Council 2004, Media Release, 16 March.
- O’Donoghue, L 2000, ‘A Journey of Healing or a Road to Nowhere?’, in Michelle Grattan, ed. *Reconciliation: Essays on Australian Reconciliation*, Black Inc, Melbourne, 2000, pp 289–90
- O’Donoghue, L 2005a, *Government searches for AP Lands Coordinator*, ABC Radio News, 23rd March, 2005.
- O’Donoghue, L 2005b, *APY Act Divisions*, Koori Mail, 13th June, 2005, p.5.
- O’Donoghue, L 2005, ‘Racism often comes from patients, not colleagues’, in Goold, S & Liddle, K (eds) 2005, *In our own right: black Australian nurses’ stories*, e-content Managment, Maleny, Qld.
- O’Donoghue, L & Costello, T 2005, *Anangu Pitjantjatjara Yankunytjatjara Lands Report*, tabled in SA House of Assembly on 25 March 2005.
- Ohlin, J 1998, *Will privatisation and contracting out deliver community services?* Research Paper 15 Social Policy Group, Commonwealth of Australia, Canberra.
- O’Malley, P 1998, ‘Indigenous Governance’, chapter 9 in Dean, Mitchell & Hindess, Barry (eds), *Governing Australia: Studies in contemporary rationalities of government*. Cambridge University Press, Melbourne, pp.156-172.
- Pal, L 1992, *Public policy analysis: an introduction*, 2nd edn, Nelson, Scarborough
- Parkin, A 1981, ‘The Dunstan governments: a political synopsis’, in A Parkin & A Patience (eds), *The Dunstan decade: social democracy at the state level*, Longman Cheshire, Melbourne, pp. 1–21.

- Parkin, A 1986, 'Transition, innovation, consolidation, readjustment: the political history of South Australia since 1965', in D Jaensch (ed), *The Flinders history of South Australia: political history*, Wakefield Press, Adelaide, pp. 292–338.
- Parkin, A 1992, 'Looking back on the Bannon decade', in A Parkin & A Patience (eds), *The Bannon decade*, Allen & Unwin, Sydney, pp. 4–24.
- Parliament of South Australia 1983, *Report of the Select Committee on Maralinga Tjuratja Land Rights*, The Committee, Adelaide.
- Parliament of South Australia 1987, *Select Committee Report on the Pitjantjatjara Land Rights Act Amendment Bill 1987*, The Committee, Adelaide.
- Parliament of South Australia 1988, *Pitjantjatjara Lands Parliamentary Committee Report 1988*, The Committee, Adelaide
- Parliament of South Australia 1989, *Pitjantjatjara Lands Parliamentary Committee Report 1989*, The Committee, Adelaide.
- Parliament of South Australia 1991, *Pitjantjatjara Lands Parliamentary Committee Report 1990–1991*, The Committee, Adelaide.
- Parliament of South Australia 1992, *Pitjantjatjara Lands Parliamentary Committee Report 1991–92*, The Committee, Adelaide
- Parliament of South Australia 2004, *Report of the Select Committee on Pitjantjatjara Land Rights*, The Committee, Adelaide
- Patton, P 2001 'Reconciliation, Aboriginal Rights and Constitutional Paradox in Australia', *Australian Feminist Law Journal*, 15, 25–40.
- PDP Australia 2002, *Final draft strategic economic initiatives plan phase II*, PDP, Adelaide.
- Perera, S 2000, 'Future's imperfect', in I Ang, S Chalmers, L Law & M Thomas (eds), *Alter/Asians: Asian Australian identities in art, media and popular culture*, Pluto, Sydney, pp. 3–24.
- Peterson, N (ed) 1981, *Aboriginal land rights: a handbook*, Australian Institute of Aboriginal Studies, Canberra.
- Peterson, N & Langton, M (eds) 1983, *Aborigines, land and land rights*, Australian Institute of Aboriginal Studies, Canberra.
- Peterson, N 2004, 'Myth of the walkabout: Movement in the Aboriginal Domain', in John Taylor and Martin Bell (ed.), *Population Mobility and Indigenous Peoples in Australasia and North America*, Routledge, Taylor & Francis Group, London, pp. 223-238.
- Pike, D 1967, *Paradise of dissent: South Australia 1829–1857*, 2nd edn, Melbourne University Press, Melbourne.

- Pitjantjatjara Council (PC) 1994, *Mayatja Manta Nyangaku Kutju: Local government for Aboriginal Communities* Report prepared for Aboriginal and Torres Strait Islander Commission (ATSIC), Adelaide.
- Pitjantjatjara Council 1991, *Submission concerning placing conditions on liquor licences for the purpose of reducing availability of alcohol in Anangu communities to the Human Rights and Equal Opportunity Commission*. [Submission 1.7 RDA, 1995]
- Pitjantjatjara Council 1991, *Submission Concerning Placing Conditions on Liquor Licences for the Purpose of Reducing Availability of Alcohol in Anangu Communities to the Human Rights and Equal Opportunity Commission*, January 199. [Submission 1.7 RDA, 1995].
- Pratt, A 2003, 'Make or Break? A Background to the ATSIC Changes and the ATSIC Review', *Current Issues Brief*, no. 29, Department of the Parliamentary Library, Canberra
- Pratt, A 2005, 'Practicising Reconciliation? The Politics of Reconciliation in the Australian Parliament 1991-2000', Commonwealth of Australia, Canberra
- Pratt, A & Bennett, S 2004, 'The end of ATSIC and the future administration of Indigenous affairs', Department of Parliamentary Services, Information & Research Services, Commonwealth of Australia, Canberra
- Proctor, I 1987, *Report of the Committee of Review of the Delivery of Human Services to the Aboriginal Community in South Australia*, SA Government, Adelaide.
- Prokhovnik, R 2015 From Sovereignty in Australia to Australian Sovereignty, *Political Studies*, Vol 63. P.412-430, pp.412-430.
- Prout, S 2008a, 'The entangled relationship between Indigenous spatiality and government service delivery', CAEPR Working Paper No. 41, Australian National University, Canberra, viewed 25 October 2013, <<http://caepr.anu.edu.au/Publications/WP/2008WP41.php>>.
- Prout, S 2008b, 'On the move? Indigenous temporary mobility practices in Australia', CAEPR Working Paper No. 48, ANU, Canberra, viewed 25 October 2013, <<http://caepr.anu.edu.au/Publications/WP/2008WP48.php>>.
- PY Media 2006, 'Alala Radio Wangka Kulintjaku: turn on your radio and listen to our voice', Submission to the Australian Government, *House of Representatives' Inquiry into Community Broadcasting*, Sub 51, pp. 10–11.
- Pybus, C 2012, 'We grew up this place': Ernabella Mission 1937–1974', unpublished doctoral thesis, University of Tasmania.

- Quiggin, J 2005, 'Economic liberalism: fall, revival and resistance', in P Saunders & J Walters (eds), *Ideas and influence: social science and public policy in Australia*, University of New South Wales, Sydney, pp. 21–43.
- Quijano, A 2007 Coloniality and Modernity/Rationality, *Cultural Studies* 21 (2-3) pp.168-178.
- Race Discrimination Commissioner 1995, *Alcohol report: race discrimination, human rights and the distribution of alcohol*, Australian Government Publishing Service, Canberra.
- Rann, M 2004a, *South Australia House of Assembly Hansard*, 4 May, pp. 1967–1968.
- Rann, M 2004b, *Ministerial Statement*, House of Assembly, 14 October, p. 454.
- Rees, N 1983, 'Gerhardy v Brown' AboriginalLawB 33; (1983) 1(9) *Aboriginal Law Bulletin* 8
- Rees, N 1983, *The Aboriginal justice issues conference*, Australian Institute of Criminology, 23–25 June 1992, Canberra.
- Rees, N 1985, 'Gerhard v Brown' AboriginalLawB 20; (1985) 1(13) *Aboriginal Law Bulletin* 7
- Reid, S 2003, 'You just can't allow people to die, says magistrate', *The Advertiser*, Thursday, July 24, 2003, p. 23
- Reynolds, H 1992, *The law of the land*, 2nd edn, Penguin, Melbourne.
- Reynolds, H 1998, *This whispering in our hearts*, Allen and Unwin, Sydney.
- Reynolds, K 2004a, *State Government Legislative Council Hansard*, 24/3/2004, p. 1215
- Reynolds, K 2004b, *State Government Legislative Council Hansard*, 31/5/2014, p. 1677
- Richards, E (ed) 1986, *The Flinders history of South Australia: social history*, Wakefield Press, Adelaide.
- Rittel, H & Webber, M 1973, 'Dilemmas in a general theory of planning', *Policy Sciences*, vol. 4, no. 2, pp. 155–169.
- Robbins, J 1993, 'Volatile substances: coordinating petrol-sniffing programs for Aboriginal communities in a federal system', *Australian Journal of Public Administration*, vol. 52, no. 1, pp. 65–74.
- Robbins, J 2004, 'The failure of ATSIC and the recognition of Indigenous rights', *Journal of Australian Indigenous Issues*, vol. 7, no. 4, pp. 3–15.
- Robbins, J 2006, *State of South Australia Trends and Issues 2006 Updates: Indigenous Issues*, Australian Institute for Social Issues, Don Dunstan Foundation, Adelaide
- Robbins, J 2007, 'The Howard government and Indigenous rights: an imposed national unity?', *Australian Journal of Political Science*, vol. 42, no. 2, pp. 315–328.

- Roberts, R 1996, *South Australia Legislative Council*, Hansard, 5 November, p. 299.
- Roberts, T 1999, *South Australia Legislative Council*, Hansard, 8 July, p. 1630.
- Roberts, T 2003, 'State government action on petrol sniffing', Media release, 23 July.
- Roberts, T 2004, *South Australian Legislative Council*, Hansard, 16 February, p. 938/9.
- Roberts, T 2003, *South Australian Legislative Council*, Hansard, 26 May, p. 2370.
- Roberts, T 2003, *South Australian Legislative Council*, Hansard, 3 April, p. 2086.
- Roberts, T 2004a, *South Australian Legislative Council*, Hansard, 18 October, p. 193.
- Roberts, T 2004b, *South Australian Legislative Council*, Hansard, 22 March, p. 1146.
- Roberts, T 2004c, *South Australian Legislative Council*, Hansard, 24 March, p. 1211.
- Roberts, T 2004d, *South Australian Legislative Council*, Hansard, 25 May, p. 1573.
- Roper, S & Shaw, G 1996, *Moving on: a report on petrol sniffing and the introduction of Avgas on the Anangu Pitjantjatjara lands*, Nganampa Health Council.
- Roper, S 1998, Petrol sniffing and preventative intervention on the Anangu Pitjantjatjara Lands [MSc thesis]. Flinders University, Adelaide.
- Rowse, T 1990, 'The revolution in Aboriginal affairs', *Australian Society*, vol. 9, no. 3, pp. 15–18.
- Rowse, T 1992, *Remote possibilities: The Aboriginal domain and the administrative imagination*, North Australia Research Unit, Australian National University, Darwin.
- Rowse, T 1996, 'The Political Identity of Regional Councillors.' *In Shooting the Banker: Essays on ATSIC and Self-Determination*, ed. P. Sullivan. North Australia Research Unit, Australian National University, Darwin.
- Rowse, T 1998, *White flour, white power: from rations to citizenship in Central Australia*, Cambridge University Press, Melbourne.
- Rowse, T 2001, 'Democratic systems are an alien thing to Aboriginal culture', in M Sawyer & G Zappala *Speaking for the people: representation in Australian politics*, pp. 103–133, Rowse, T 2002, *Nugget Coombs: a reforming life*, Cambridge University Press, New York.
- Rowse, T 2005, *Contesting assimilation*, Curtin University of Technology, Perth.
- Rowse, T 2012, *Rethinking social justice: from peoples to populations*, Aboriginal Studies Press, Canberra.
- Ruddock, P Patterson, K, Roberts, T & Lewis, G 2003, 'Anangu Pitjantjatjara (AP) lands communities to work together with federal-state partnership', Joint media release, 22 May, p. 1.

- Russell, B 2004, 'Voter Obligation and Voter Turn Out: Paper Prepared for the South Australian Local Government Association', 16th August 2004, LGA, Adelaide.
- Sadurski, W 1986, 'Gerhardy vs Brown v The Concept of Discrimination: reflections on the landmark case that wasn't', *Sydney Law Review*, vol. 11, no. 5, pp. 5–43.
- Sanders, W 1994, 'Reconciling public accountability and Aboriginal self-determination/self-management: is ATSI succeeding?', *Australian Journal of Public Administration*, vol. 53, no. 4.
- Sanders, W 2002a, Journey without end: Reconciliation between Australia's Indigenous and settler peoples, *Discussion Paper No. 237/2002*, Centre for Aboriginal Economic Policy Research, ANU, Canberra.
- Sanders, W 2002b, *Towards an Indigenous order of Australian government: Rethinking self-determination as Indigenous affairs policy*. Centre for Aboriginal Economic Policy Research (CAEPR) Discussion Paper No. 230/2002, ANU Canberra.
- Sanders, W 2004, 'Thinking about Indigenous Community Governance', CAEPR Discussion Paper No. 262, ANU, Canberra.
- Sanders, W 2007, 'Changes to CDEP under DEWR: Policy substance and the new contractualism', CAEPR Topical Issue 6, ANU, Canberra.
- Sanders, W 2009, *Ideology, Evidence and Competing Principles in Australian Indigenous Affairs: From Brough to to Rudd via Pearson and the NTER*. CAEPR Discussion Paper No. 289/2009 ANU Canberra.
- Sanders, W 2014, 'Experimental governance in Australian Indigenous affairs: From Coombs to Pearson via Rowse and the competing principles', CAEPR Discussion Paper No. 291, ANU, Canberra.
- Schulte-Tenckhoff, I 1998 Reassessing the Paradigm of Domestication: the Problematic of Indigenous Treaties, *Review of Constitutional Studies*, Vol IV No. 2, pp.240-289
- Scruton, R & Brennan, F 1985, *Land rights and legitimacy: three views*, Australian Institute of Public Policy, Perth.
- Self, P 1985, Report of the National Inquiry into Local Government Finance, Australian Government Publishing Service (AGPS), Canberra.
- Shapiro, I 2002, 'Problems, methods, and theories in the study of politics, or: what's wrong with political science and what to do about it', *Political Theory*, vol. 30, no. 4, pp. 596–619.
- Shapiro, M 1992, *Reading the postmodern polity: political theory as textual practice*, University of Minnesota, Minneapolis.

- Shaw, G 2002, *Documentation of NPY Women's Council (Aboriginal Corporation) petrol sniffing project at Kaltjiti (Fregon) Community, AP Lands, SA*. NPY Women's Council, Kaltijiti, SA.
- Shaw, G, Armstrong, W & San Roque, C 1994, *Petrol Link-up*, Australian Government Publishing Service, Canberra.
- Shepherd, N 2004, *Sojourn on another planet*, Collinswood, SA.
- Shergold, P 2003, 'A foundation of ruined hope? Delivering government policy', Address to the Australian Public Service Commission SES Briefing, 15 October, viewed 22 May 2013, Shore, C & Wright, S (eds) 1997, *Anthropology of power: critical perspectives on governance and power*, Routledge, New York.
- Sidey, D 1986, 'The increase in radio and telex usage in the Pitjantjatjara communities', in B Foran et al. (eds), *Science and technology for Aboriginal development*, Centre for Appropriate Technology.
- Simon, H 1991, 'Bounded rationality and organizational learning', *Organization Science*, vol. 2, no. 1, pp. 125–134.
- Singleton, G, Aitkin, D, Jinks, B and Warhurst, J 2013, *Australian political institutions*, Pearson Australia, Frenchs Forest.
- Smith, D 2008, 'The business of governing: building institutional capital in an urban enterprise', in J Hunt, D Smith, S Garling & W Sanders (eds), *Contested governance: culture, power and institutions in Indigenous Australia*, CAEPR Monograph No. 29, Australian National University, Canberra.
- Smith, D 2010, 'Cultures of Governance and the Governance of Culture', unpublished PhD thesis, Australian National University, Canberra.
- Smith, S & New South Wales Parliamentary Library Research Service 2001, *Deregulation*, Australian Government Publishing Service, Canberra.
- Snowden, W 1989, *Aboriginal people and mainstream local government: an Issues Paper*, House of Representatives Standing Committee on Aboriginal Affairs, Australian Government Publishing Service, Canberra.
- Snowdon, W 1990, *Our future, our-selves: Aboriginal and Torres Strait Islander community control, management and resources*, House of Representatives Standing Committee on Aboriginal Affairs, Australian Government Publishing Service, Canberra.
- South Australian Government 1987, *Report of the Committee of the Review of the Delivery of Human Services to the Aboriginal Community in South Australia*. The Committee, Adelaide

- South Australian Government 2007, 'Progress on the APY Lands', Newsletter update, Department of Premier and Cabinet, February 2007, Adelaide.
- South Australia Parliament House of Assembly 1980, Parliamentary Debates, 4 March, p.3454.
- South Australia Parliament 1994, *Estimates committee*, 15 September, p. 106, The Committee, Adelaide.
- South Australia.Parliament 1999, *Legislative Council*, Hansard, 8 July, p. 1630.
- South Australia Parliament 1978, Pitjantjatjara Land Rights Working Party (SCPLR). 1978, *Report of the Pitjantjatjara Land Rights Working Party*, The Working Party, Adelaide.
- South Australia Parliament 2004, Select Committee on Pitjantjatjara Land Rights (SCPLR). 2004, *Report of the Select Committee on Pitjantjatjara Land Rights*, The Committee, Adelaide.
- South Australia Parliament 2005, Aboriginal Lands Parliamentary Standing Committee (ALPSC), Annual Report 2004/5, Adelaide.
- South Australia Parliament 2006, Aboriginal Lands Parliamentary Standing Committee (ALPSC) , Annual Report 2005/6, Adelaide.
- State Electoral Office 2005, *Annual report 2004/5*, SEO, Adelaide.
- State Electoral Office 2006, *Annual report 2005/6*, SEO, Adelaide.
- Steinman, E 2012, Settler Colonial Power and the American Indian Sovereignty Movement: Forms of Domination, Strategies of Transformation, *American Journal of Sociology*, Vol. 117, No. 4 (January 2012), pp. 1073-1130
- Steketee, M & Saunders, M 2000, 'Sorry: the people's apology', *The Australian*, 29 May, p. 1.
- Stevenson, S 2007, 'Public libraries, public access computing, FOSS and CI: there are alternatives to private philanthropy', *First Monday*, vol. 12, no. 5, viewed 13 June 2007, <http://firstmonday.org/issues/issue12_5/stevenson/index.html>.
- Stokes, Geoffrey & Gillen, Karen 2004, 'Self-determination in Aboriginal political thought', chapter 4 in *Politics of Australian society : political issues for the new century*, Pearson Education Australia, Frenchs Forest, N.S.W., pp.62-78.
- Strakosch, E 2011, *Neoliberal Indigenous policy in Australia: government, sovereignty and colonialism*, PhD Thesis.
- Sullivan, P 2006, 'Indigenous governance: the Harvard project on native American economic development and appropriate principles of governance for Aboriginal Australia', AIATSIS Discussion Paper, No. 17 AIATSIS Press, Canberra.

- Sullivan, P 2007, *Indigenous governance: the Harvard project, Australian Aboriginal organisations and cultural subsidiarity*, Working Paper 4, Desert Knowledge CRC, Alice Springs.
- Sullivan P 2011, *The policy goal of normalisation, the National Indigenous Reform Agreement and Indigenous National Partnership Agreements*. DKCRC Working Paper 76. Ninti One Limited, Alice Springs.
- Summers, J 1980, 'Political chronicle: South Australia', *Australian Journal of Politics and History*, vol. 26, no. 3, pp. 424–432.
- Summers, J 1981, 'Political chronicle: South Australia', *Australian Journal of Politics and History*, vol. 27, no. 1, pp. 74–82.
- Summers, J 2004, 'The future of Indigenous policy on remote communities', Paper presented to the Australasian Political Science Association, University of Adelaide, 29 September–1 October. viewed 3 December 2012, <http://www.adelaide.edu.au/apsa/docs_papers/Pub%20Pol/Summers.pdf>.
- Sutton, P 1998, 'Families of polity: Post-classical Aboriginal society and native title', in National Native Title Tribunal (NNTT), *Native Title and the Descent of Rights*, NNTT, Perth.
- t'Hart, P 2007, 'Crisis exploitation: reflections on the "national emergency" in Australia's Northern Territory', *Dialogue* (Academy of the Social Sciences in Australia), vol. 26, no. 3, pp. 51–58, viewed 27 December 2013, <http://search.informit.com.au/documentSummary;dn=200801837;res=IELAPA>
- t'Hart, P 2008, 'The limits of crisis exploitation: the NT intervention as a reform boomerang', *Arena Journal*, vol. 29/30, pp. 157–174.
- Tambling, G & McDonald I 2000, '\$186,000 Federal Funding to Help Social and Economic Development in Anangu Pitjantjatjara Lands' Joint Press Release 6 June, Parliamentary Secretary to Minister For Regional Services; For Health And Aged Care Territories And Local Government Senator Grant Tambling and Minister for Regional Services, Territories and Local Government Hon Senator Ian McDonald, 6 June, Canberra.
- Taylor, C 1992, *The Ethics of Authenticity*, Harvard University Press, Cambridge, Mass.
- Taylor, C 1994, 'The politics of recognition', in C Taylor & A Guttman (eds), *Multiculturalism, examining the politics of recognition*, pp. 25–73, Princeton University Press, Princeton.

- Taylor, J 2006, 'Population and diversity: policy implications of emerging Indigenous demographic trends', CAEPR Discussion Paper No. 283, CAEPR, ANU, Canberra.
- Tedmanson, D and Maher, C 2003 *Report to the SA Minister for Aboriginal Affairs on Community Responses to the Coroner's Findings into Deaths from Petrol Sniffing on the APY Lands and Community Capacity*, South Australian Policy Research Group, University of South Australia, Adelaide.
- Tedmanson D, Fisher S & Muirhead M 2011, 'Anangu serving Anangu – plenty ninti!' The PY Ku network on the Anangu Pitjantjatjara Yankunytjatjara Lands. DKCRC Research Report 68. Ninti One Limited, Alice Springs.
- Tedmanson, D 2012 'Whose capacity needs building?', in A. Prasad, *Against the Grain - Advances in Postcolonial Organization Studies*, Copenhagen School of Business Press, Copenhagen, pp. 249-275.
- The Advertiser, 1981, 'Blacks given title to 10% of SA: historic handing over ceremony', 5 September, p. 1.
- The Advertiser 1984a, 'Aid plan to help petrol-sniffers', 21 December 1984, p. 5.
- The Advertiser, 1984b, 'The boy with very little; the child with no ope at all', 24 December 1984, p.1
- The Advertiser, 1984c, 'Sniffing at death', 29 December 1984, p. 1
- The Advertiser 2001a, 'Petrol sniffing deaths inquiry', 28 August 2001, p. 23.
- The Advertiser 2001b, 'Petrol sniffing epidemic on lands', 3 September, 2001, p. 2.
- The Advertiser 2002a, 'Lands conflict', 28 January 2002, p. 2.
- The Advertiser 2002b, 'Rathman leaving', 4 June 2002, p. 4.
- The Advertiser 2002c, Letter to the Editor, Brian Butler, ATSIC, 6 June 2002, p. 18.
- The Advertiser 2003, 'Grant to foster self-help' Lloyd, T, 12 March 2003, p. 111.
- The Advertiser 2004a, 'Disgrace! Funding to save lives tied up by red tape', 15 March, 2004 p.1.
- The Advertiser 2004b, 'Fight takeover, urges lands' boss', 17 March, p. 2.
- The Advertiser 2004c, 'Self rule is finished', 16 March, p. 1.
- The Advertiser 2004d, Editorial, 15 March, 2004, p. 16.
- The Age 2004, 'Trapped in a cycle of poverty', DeBelle, 24 April, p. 1.
- The Australian 2001, 'Land rights body under siege', 5 June 2001, p. 6.
- The Australian 2002a, 'Chairman hits back', 30 August 2002, p. 4.
- The Australian 2002b, 'Rival groups talk over tribal services', 15 May 2002, p. 19.
- The Australian 2004a, 'A new Indigenous politics', Paul Kelly, 8 December, p. 1.

- The Australian 2004b, 'Black land council scapegoated over suicides', DiGioralano, 25 March, 2004, p. 8.
- The Australian 2004c, 'Blacks dump dysfunctional council', 5 October, p. 2.
- The Australian 2004d, 'Rann takes control from blacks', DiGioralano, 16 March, p. 6.
- The Bulletin Magazine 2004, 'AP Lands Council Turmoil', 12 October, p. 13.
- The Bulletin Magazine 2004, *AP Lands Council Turmoil*, 12 October 2004, p. 13.
- The Sydney Morning Herald 2004, 'Sacking silences Aboriginal voice', *The Sydney Morning Herald*, 16 April, p. 1.
- The Weekend Australian 2003, 'Royalties lure for blacks on mining', 25 Jan 25, p. 3.
- Thompson, K 2001, 'Concern over land rights', Letters to the Editor, *The Advertiser*, 28 July, p. 27.
- Thompson, S 2006, *The Political Theory of Recognition*, Polity Press, Cambridge
- Thompson, S 2015, On claims of culture and duties of recognition in democratic states
Critical Review of International Social and Political Philosophy, Vol 18 Issue 3
pp328-348
- Tonkin, D 1981, *South Australian House of Assembly*, Hansard, 3 March, p. 3379.
- Toyne, P & Vachon, D 1984, *Growing up the country: the Pitjantjatjara struggle for their land*, McPhee Gribble Publishers, Fitzroy, Melbourne.
- Tragenza, E (ed) 2010, *Tjukurpa Pulkatjara: the power of the law*, Wakefield Press, Adelaide.
- Tregenza, J 2002, 'Review of the delivery of services to people with disabilities on the Anangu Pitjantjatjara lands', Nganampa Health Council, Umuwa, SA.
- Trudinger, R 1991, *Commemorating ten years of the Pitjantjatjara Land Rights Act, November 1991*, Anangu Pitjantjatjara, Umuwa via Alice Springs.
- Tully, J 1995, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge University Press, Cambridge, UK.
- Tully, J 2000, 'The Struggles of Indigenous Peoples for and of Freedom', Chapter 3 in Ivison, D; Patton, P and Sanders, W (eds) *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press, Cambridge, UK, pp. 36-59.
- United Trades and Labour Council of SA (UTLC) Letter to the Premier and Public of SA, 18 March, 2004.
- Urbis Keys Young, 2006. *Review of the CAOG trial in the APY lands*, Office of Indigenous Policy.
- Van Krieken, R 2011, 'Kumarangk (Hindmarsh Island) and the politics of natural justice under settler-colonialism', *Law and Social Inquiry*, vol. 36, no. 1, pp. 125–149.

- Vannini, P 2008, 'Situatedness', in L Given (ed.), *The Sage encyclopedia of qualitative research methods*, p. 816, SAGE, Thousand Oaks.
- Veracini, L 2008, 'Settler collective, founding violence and disavowal: the settler colonial situation', *Journal of Intercultural Studies*, Vol. 29, no. 4 pp. 363-379.
- Veracini, L 2010, *Settler Colonialism, A Theoretical Overview*, Palgrave, London.
- Victoria, Legislative Assembly 2000, *Parliamentary debates*, vol. 447, pp. 2144–2149. vol. 12, no. 2, pp. 219–245.
- Wagenaar, H 2007a, Philosophical hermeneutics and policy analysis: theory and effectuations, *Critical Policy Studies*, Vol 1, Issue 4. pp. 311-341.
- Wagenaar, H 2007b, 'Interpretation and intention in policy analysis', in F Fischer, G., Miller & Sidney, M (eds), *Handbook of public policy analysis: theory, politics and methods*, pp. 429–443,
- Wakelin, B 2004, *Many ways forward*, The Committee, Canberra.
- Wallace, N 1977, 'Change in spiritual and ritual life in Pitjanjatjara (Bidijandjadjara) society 1966–1973', in R Berndt (ed), *Aborigines and change in Australia*, Australian Institute of Aboriginal Studies, Canberra.
- Watson, 2009, Sovereign Spaces, Caring for Country, *South Atlantic Quarterly*, 108:1, Winter 2009
- Watson, 2015, *Raw Law: Aboriginal Peoples, Colonialism and International Law*, Routledge, Oxon
- White, M & Hunt, A 2000, 'Citizenship: care of the self, character and personality', *Citizenship Studies*, vol. 4, no. 2, pp. 93–116.
- Wickham, G & Kendall, G 2008, 'Critical discourse analysis, description, explanation, causes: Foucault's inspiration versus Weber's perspiration', *Historical Social Research*, vol. 33, no. 1, pp. 142-161.
- Williams, G 2004, Evaluating participatory development: tyranny, power and (re)politicisation, *Third World Quarterly*, vol. 25, no. 3, pp. 557–578.
- Williams, R 2003, *APY Strategic Plan, April 2003—Gongan Consultancy Report*, Gongon Consultants, Adelaide.
- Wilson, S & Turnbull, N 2002, 'Wedge politics and welfare reform in Australia', *Australian Journal of Politics & History*, vol. 47, no. 3, pp. 384–404.
- Wolfe, J 1989, *'That community government mob': local government in small Northern Territory communities*, North Australia Research Unit, Australian National University, Darwin.

- Wolfe, P 1999, *Settler Colonialism and the Transformation of Anthropology: the Politics and Poetics of an Ethnographic Event*, Cassell, London.
- Wolfe, P 2006, Settler colonialism and the elimination of the native, *Journal of Genocide Research*, 8:4, pp. 387-409
- Yanow, D 1993, 'The communication of policy meanings: implementation as interpretation and text', *Policy Sciences*, vol. 26, no. 1, pp. 41–61.
- Yanow, D 1996, *How does a policy mean? Interpreting policy and organizational actions*, Georgetown University Press, Washington, DC.
- Yanow, D 2000, *Conducting interpretive policy analysis*, Sage University Paper Series on Qualitative Research Methods, vol. 47, Sage, Thousand Oaks, California.
- Yanow, D 2003, *Constructing 'race' and 'ethnicity' in America: category-making in public policy and administration*, London, Routledge.
- Young, D 2006, 'Water as country in the Pitjantjatjara Yankunytjatjara lands', in A Garner & V Strang (eds), *World views: environment, culture, religion*, vol. 10, no. 2, pp. 239–258.
- Young, I 1990, *Justice and the Politics of Difference*. Princeton University Press, NJ
- Young, I 1989, 'Polity and Group Difference: A Critique of the Ideal of Universal Citizenship', *Ethics*, Vol. 99, No. 2 (Jan., 1989), pp. 250-274
- Young, J 2009, 'Moral panic, its origins in resistance, resentment and the translation of fantasy into reality', *British Journal of Criminology*, vol. 49, no. 1, pp. 4–16.