PARTIES:	**ALICE SPRINGS TOWN COUNCIL**
	v
	MPWETEYERRE ABORIGINAL CORPORATION, ANTHEPE HOUSING ASSOCIATION INC. ILYEPERENYA ASSOCIATION INC. YARRENYTY ALTERE ASSOCIATION INC. APER ALWERRKNGE ASSOCIATION INC. ILPERLE TYATHE ASSOCIATION INC, MT NANCY HOUSING ASSOCIATION INC, KARNTE ABORIGINAL CORPORATION AKNGWERTNARRE ASSOCIATION INC, EWYENPER ATWATYE ASSOCIATION INC, ILPARPA ABORIGINAL CORPORATION, NYEWENTE ASSOCIATION INC. and ILPIYE-ILPIYE ASSOCIATION INC.
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	COURT OF APPEAL
FILE NO:	CA 6/96
DELIVERED:	19 June 1997
HEARING DATES:	1 November 1996
JUDGMENT OF:	MARTIN CJ, MILDREN AND THOMAS JJ

CATCHWORDS:

Appeal - against His Honour's finding that the Local Government Tribunal had erred in law - whether each of the appellants used or occupied the land owned by it for the purpose of a benevolent institution or charity.

Cross-Appeal - against His Honour's refusal to make more substantial orders than he did, as a consequence of allowing the appeal.

Appeal to the Supreme Court limited to a question of law - what is a question of law - jurisdiction of appeal court - requirement of reasons for the decision.

Powers of the Supreme Court - Powers of the Court of Appeal in deciding the appeal - where a right or power is created - implied is the power to do everything which is indispensable for the purpose of exercising the right or power or fairly incidental or consequential to the power itself - whether the error vitiates the decision appealed from - remedy.

Administrative Law - No evidence to support the Tribunal's finding - who may be members - to whom were the beneficiaries of the associations activities.

Equity - Incorporated corporations - constitutions of the associations - charitable corporations - constructive trust - objects of the associations - charitable purposes - meaning of "poverty" - class of beneficiaries - public benevolent institutions.

Legislation:

Local Government Act 1985
Local Government Act 1993
Work Health Act
Supreme Court Act
Workers Compensation Act 1926 (NSW)
Aboriginal Councils and Associations Act 1976 (Cth)
Associations Incorporation Act (N.T.)
Income Tax Assessment Act
Statutes of Charitable Uses 43 Elizabeth I, C4
Fire Brigade Act (QLD)
Limitation Act
Payroll Tax Act 1978 (N.T.)

Cases:

Tracy Village Sports and Social Club v Walker (1992) 111 FLR 32 approved
Tiver Constructions Pty Ltd v Clair (1992) 110 FLR 230 approved
Wilson v Lowery (1993) 110 FLR 142 approved
Collector of Customs v Pozzolanic Enterprises Pty Ltd (1993) 43 FLR 280 referred to
Hope v Bathurst City Council (1980) 144 CLR 1 referred to
Australian National Railway Commission v Collector of Customs (SA) referred to
Cowell Electric Supply Company Ltd v Collector of Customs (1995) 127 ALR 257 referred to
Commissioner of Taxation v Cooper (1991) 29 FLR 177 referred to
Aboriginal Hostels Ltd v Darwin City Council (1985) 75 FLR 197 applied
Joyce v Ashfield Municipal Council (1959) 4 LGRA 195 referred to
Mombasa Pty Ltd v Nikic (1987) 47 NTR 48 followed

Carlson v King (1947) 64 WN (NSW) 65 followed
Wormald International (Aust) Pty Ltd v Aherne (unreported 23/6/95) approved
Holmes v Angwin (1906) 4 CLR 297 considered
Da Costa v Cockburn Salvage and Trading Pty Ltd [1970] 124 CLR 192
Re Sterling (1978-9) 30 ALR 77 approved
Australian Securities Commission v Bell (1991) 104 ALR 125 approved
Johns v Conner (1992) 104 ALR 465 approved
Zuijs v Wirth Brothers Pty Ltd (1955) 93 CLR 561 approved
Yates Property Corporation Pty Ltd (In Liquidation) v Darling Harbour Authority (1991) 24 NSWLR 156 followed
McMorrow v Airsearch Mapping Pty Ltd (Court of Appeal, unreported 7/3/97) approved
Smith v Mann (1932) 47 CLR 426 considered
Thompson v Federal Commissioner of Taxation (1959) 102 CLR 315 distinguished
College of Law (Properties) Pty Ltd v Willoughby Municipal Council (1978) 38 LGRA 81 approved
Liverpool and District Hospital for Diseases of the Heart v A-G [1981] Ch 193 applied
Income Tax Special Purposes Commissioners v Pemsel [1891] AC 531 approved
Re Gillespie [1965] VR 402 approved
Dingle v Turner [1972] AC 601 approved
Re Compton (1945) Ch 23 approved
Oppenheim v Tobacco Securities Trust Co Ltd [1951] AC 297 approved
Metropolitan Fire Brigade Board v Federal Commissioner of Taxation (1990) 97 ALR 335 distinguished
Pettitt v Dunkley (1971) 1 NSWLR 376 distinguished
Re Sterling; Ex Parte Esanda Ltd (1980) 30 ALR 77 considered
Dunkel v DCT (NSW) (1990) 99 ALR 776 considered
Australian Securities Commn v Bell (1991) 104 ALR 125 considered
Johns v Connor (1992) 107 ALR 465 considered

Texts:

Craies on Statute Law, 7th Edition
Pearce and Geddes, *Statutory Interpretation in Australia*, 4th Edition
Halsbury's Laws of England (4th Edition, reissue) Volume 5(2) para 211
Halsbury's Laws of Australia, Volume 4 para 75-810
Shorter Oxford English Dictionary

REPRESENTATION:

Counsel:

Appellant:	T. Riley QC & J. Reeves
Respondent:	D.J. Bleby QC & C.H. Goodall

Solicitors:

Appellant:	Poveys Barristers & Solicitors
Respondent:	Turner and Deane

Judgment category classification:	A
Judgment ID Number:	MIL970004
Number of pages:	57

IN THE COURT OF APPEAL

OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. CA 6/96

BETWEEN:

ALICE SPRINGS TOWN COUNCIL
Appellant

AND

MPWETEYERRE ABORIGINAL CORPORATION, ANTHEPE HOUSING ASSOCIATION INC. ILYEPERENYA ASSOCIATION INC. YARRENYTY ALTERE ASSOCIATION INC. APER ALWERRKNGE ASSOCIATION INC. ILPERLE TYATHE ASSOCIATION INC, MT NANCY HOUSING ASSOCIATION INC, KARNTE ABORIGINAL CORPORATION AKNGWERTNARRE ASSOCIATION INC, EWYENPER ATWATYE ASSOCIATION INC, ILPARPA ABORIGINAL CORPORATION, NYEWENTE ASSOCIATION INC. and ILPIYE-ILPIYE ASSOCIATION INC.

Respondents

CORAM: MARTIN CJ, MILDREN AND THOMAS JJ

REASONS FOR JUDGMENT

(Delivered 19 June 1997)

MARTIN CJ

I have had the benefit of the draft reasons prepared by Mildren J. and agree with them. I concur with the orders proposed.

MILDREN J

Each of the respondent Associations is the lessee or occupier of land within the municipality of the appellant council.

In 1991, the appellant's clerk entered the respondents' names as owners of land and the respondents' lands in the rate book kept for the purposes of s. 103 of the *Local Government Act 1985* (the "*1985 Act*"). Only rateable land is to be entered into the rate books, and land which ceases to be rateable must be deleted from the rate book (s. 104(2)). All land within the municipality is rateable except for land which falls with the exceptions set out in s. 97 (1)(a) to (g) or s. 97 (3) of the 1985 Act. In 1991, one category of exception was, vide s. 97 (1)(d), "land used or occupied for the purposes of a public hospital, benevolent institution, or charity."

If the owner or occupier of land, whose name is entered into the rate book, wishes to object to the land being entered into the rate book, he may appeal to the Council on the ground, inter alia, that the land is not rateable land (ss. 107 and 108). In March 1991 the respondents appealed to the

appellant. On 10 September 1991, the appellant disallowed the respondents' appeals.

On 2 October 1991, the respondents appealed to the Local Government Tribunal.

Ss. 109(2) and (3) of the Act provided that:

> "(2) A person to whom a notice is given under sub section (1) may, within 28 days after and including the date on which the notice is received, apply to the Tribunal against the decision of the council and the Tribunal has jurisdiction to hear and determine the application.
>
> (3) The Tribunal may, upon hearing an application under this section, confirm, reverse or vary the decision of the council and make such order, as to costs or otherwise, as it thinks fit."

The Local Government Tribunal was created by s. 185 of the Act. Each magistrate was a member of the Tribunal (s. 185(2)) and the Chief Magistrate was the President (s. 185(3)). The powers of the Tribunal were set out in s. 186. These included a power, vide s. 186(4), to order the clerk to make an alteration to the rate book as a consequence of the determination of the Tribunal. The Tribunal may have been constituted by one or more members (s. 187(1)). S. 188, which is in a familiar form, provided that the Tribunal was not bound to act in a formal manner, is not bound by the rules of evidence, may inform itself on any matter in such manner as it thought fit, and shall act without regard to technicalities and legal forms. S. 190 specifically permitted the Tribunal to receive hearsay evidence.

Before the applications to the Tribunal could be heard, each respondent changed the objects of their respective constitutions.

The Tribunal constituted by Mr Hook SM commenced to hear the applications on 17 August 1992, which hearings concluded on 10 March 1993. The nature of the "appeal" before the Tribunal was discussed by the learned Magistrate in his written reasons for decision, (at AB 1915-16) as follows:

> "At the time of the appeal to the Alice Springs Town Council the material before the Council included the then constitutions of each of the appellants. On February 1992, that is after the Council disallowed the present appeals, each appellant changed the objects of their respective constitutions. Both sides agreed that the appeals before me were hearings de novo. Counsel for the appellants agreed that whilst the altered constitutions should be considered as part of the appeal in reaching a decision, that decision would date from the time of the hearing and not relate back to the date the appeal to the Council was disallowed."

Each of the notices of appeal to the Tribunal relied upon the same ground, viz., that the subject land was used or occupied for the purposes of a benevolent institution or charity.

However, the issue which his Worship seems to have decided, was stated in this form, (AB, p 1909):

> "The ground for appeal, as I have already stated, claims each of the several Town Camps were a benevolent institution or a charity."

It is to be noted that his Worship used the expression "Town Camps," rather than "land", and seems to have focussed on the question of whether the respondents were benevolent institutions or charities, rather than on whether the land in question was "used or occupied for the purposes of" a benevolent institution or charity. At the conclusion of his reasons, his Worship said, (AB 1937):

> "There is no charity or benevolent institution in the case of any one of the several associations."

It is necessary to explain the reference to "Town Camps". At AB 1910 to 1915, his Worship set out the history of the establishment of "the Town Camps". It is not necessary at this stage to discuss this in detail. Suffice it to say, that each of the respondents has apparently obtained a residential lease over separate areas of land, of which they are severally the lessees from the Crown. These areas of land are apparently referred as the "Town Camps"; although I note also, at AB 1913, that there is reference to some of the camps being incorporated, which would suggest that the expression "Town Camps" may mean either the land or the incorporated association which either leases or occupies the land, or both. Indeed, his Worship also seems to use the expression in both senses. At AB 1925 he says:

> "Each town camp consists of a special purpose lease granted over the particular area of land occupied. A number of dwellings ablutions and in some cases tin sheds have been erected .... No dwellings have been constructed on any of the town camps for a number of years."

Yet at AB 1926, his Worship said:

> "There is no doubt that certain monies are received by way of grant from Aboriginal and Torres Strait Islanders Commission "A.T.S.I.C." Such grants in the financial year 1991/92 ranged from $1,200 to Palmers (Apen-Alwerrknge) Camp to $28,200 to Charles Creek (Anthelk-Enlpaye) Camp. Each of the several town camps received various amounts between those mentioned."

The leases do not appear to have been in evidence before his Worship, but it is a reasonable inference that the reference to "Palmers (Apen-Alwerrknge") is meant to be short hand for "Palmers Camp", the lessee of which is "Aper-Alwerrknge Association Incorporated" and the reference to "Charles Creek (Anthelk-Enlpaye) Camp" is meant to be a reference to "Charles Creek Camp, the lessee of which is Anthelk-Ewpaye Association Inc."

The appeals were all heard together, and in the result, his Worship dismissed the appeals.

From that decision, the respondents appealed to the Local Government Appeal Tribunal by notice of appeal filed in the registry of the Supreme Court on 11 April 1994.

At that time, s. 198(1) of the *1985 Act* provided that "where the Tribunal hears and determines an application or matter, a person aggrieved by the decision of the Tribunal may appeal to the Appeal Tribunal against an order or decision of the Tribunal on a question of law."

S. 199 established the Local Government Appeal Tribunal which is required to be constituted by a Judge of the Supreme Court appointed by the Chief Justice . The powers of the Appeal Tribunal were, according to s. 200(2), "to hear the appeal and -

(a) Remit the matter to the Tribunal for determination by the Tribunal in accordance with decision of the Appeal Tribunal; or

(b) make such order in relation to the appeal as it sees fit."

S. 201 provided that the decision of the Appeal Tribunal was final and not capable of review by any court of law by prerogative writ or otherwise.

On 1 June 1994, the *Local Government Act 1993* (the "1993 Act") came into force. By s. 266 of the 1993 Act, the *1985 Act* was repealed. The effect of the repeal on the appeal, was to convert it, vide s. 267(1) and s. 240(1), to an appeal to the Supreme Court. The learned Judge who heard the appeal below described the consequences of these provisions in this way:

> "It appears to be common ground that in hearing this appeal, I sit not as the Local Government Appeal Tribunal constituted under s199 of the old Act, but as the Supreme Court. This comes about, despite s12 of the Interpretation Act, by virtue of the combined effect of the "as if" provision in ss267 (1) and 240 (1) of the current Local Government Act of 1993 ("the current Act") which came into force on 1 June 1994 before the appeal was heard. The Local Government Tribunal continues to exist, under s225 (1) of the current Act. Appeal from that Tribunal is (as it was under the old Act) limited to a "question of law only"; see s240 (1). Accordingly, since under s199 of the old Act the Appeal Tribunal was constituted

> by a Judge of the Supreme Court, and under s240 (1) of the current Act appeal lies from the Tribunal "to the Supreme Court", there is no difference in substance between the old Act and the current Act as regards the appeal."

This, with respect, appears to be an accurate statement of the position, and is not challenged; however it is pertinent to observe that the 1993 Act is utterly silent about the powers of the Supreme Court when determining the appeal; i.e. there is no statutory provision similar to s. 200(2) of the *1985 Act*, nor does the Act otherwise state what the powers of the Court are.

After hearing the appeal, the Court below considered that the present respondents had established that the Tribunal had made an error of law, quashed and set aside that decision, and then heard argument as to the terms of the order which should be made. After hearing submissions, the Court below concluded that the powers of the Court were very restricted. His Honour then quashed an order as to costs made by the Tribunal, (however no such order had apparently been made) ordered the present appellant to pay the respondent's costs of the appeal, and directed that the present respondents pay the appellant's costs of a summons of 27 August 1996 upon which the present appellants had substantially succeeded.

The appellant has appealed to this Court against his Honour's finding that the Tribunal had erred in law; the respondents have appealed against his Honour's refusal to make more substantial orders than he did, as a consequence of allowing the appeal. There is no notice of contention by the respondents; however the respondent's notice of appeal raised questions

which, in effect, seek to show that the Court below found inter alia, that his Worship erred in not finding that the appellants were public benevolent institutions or charities, and to seek an order, inter alia, that the respondents' names be removed from the rate book.

In order to understand this case, it is necessary to set out the grounds of appeal in the amended notice of appeal and the relief sought therein in the Court below, which are as follows:

> "1. The Tribunal erred on a question of law in failing to hold that each of the appellants used or occupied the land owned by it for the purpose of a benevolent institution or charity within the meaning of those terms s. 97(1)(d) of the Local Government Act.
>
> 2. The Tribunal erred on a question of law in that it misdirected itself that the power of the members of the various associations comprising the appellants to select new members rendered such associations non-charitable.
>
> **PARTICULARS**
>
> 2.1 The Tribunal wrongly equated each of the associations comprising the appellants with voluntary associations which admit or exclude members of the public according to some arbitrary test which it sets up in its rules.
>
> 2.2 The Tribunal wrongly found that a limitation on the number of people who might enter or reside in the camps at any given time constituted a restriction of membership in the sense that a voluntary association would restrict membership when it was instead simply a mechanism of day-to-day control.
>
> 3.1 The Tribunal erred on a question of law in holding that because:-
> (a) the monies and benefits received by the appellants were received for the benefit of members; and

(b) members of the appellants could decide to admit visitors or not;

there is no public benefit in the sense required to satisfy the requirements of s. 97(1)(d).

3.2 In holding that there was no public benefit the Tribunal reached a conclusion which was contrary to a conclusion on the same or substantially similar facts reached by the Northern Territory Supreme Court in Tangentyere Council Inc -v- The Commissioner of Taxes (1990) 99 FLR 363 ("Tangentyere case") and therefore an error of law. The Tribunal was bound to hold that the permanent and transient residents of the Alice Springs town camps and the relevant remoter communities constitute an appreciably needy class in the Northern Territory community and that membership of the associations comprising the appellants upon aboriginality.

4. The Tribunal erred on a question of law in failing to hold that the purposes for which the land was used or occupied by the appellants were those of a benevolent institution or charity on the grounds that:-

(a) the appellants received their resources from the Tangentyere Council, a body held to be a public benevolent institution for the purposes of the Payroll Tax Act 1978 (NT): see Tangentyere Council Inc. -v- Commission of Taxes (1990) 99 FLR 363;

(b) the appellants each provided essential services to a class of persons "in need of protection and assistance", in conformity with Aboriginal Hostels Ltd -v- Darwin City Council (1985) 75 FLR 197, 211 and the Tangentyere case at p.369.6; and

(c) the methods of governess of the Appellants were appropriate to such purposes in that they promoted self-help: Tangentyere case at p.373.7

5. The Tribunal was bound to hold that the provision of accommodation to Aboriginal persons in the Northern Territory had a special character which rendered such a purpose charitable.

In failing to so hold the Tribunal:-

5.1 misdirected itself as to the authorities which were binding on it; or

5.2 reached a conclusion which was contrary to a conclusion previously reached by the Supreme Court of the Northern Territory on the same or substantially similar facts and therefore constituted an error of law.

6. The Tribunal erred on a question of law in rejecting as inadmissible evidence of the results of a survey tendered to demonstrate the usage of the facilities of the Appellants by non-members.

ORDERS SOUGHT:-

1. An order setting aside the decision of the Local Government Tribunal in respect of each appellant.
2. A declaration that the land used or occupied by each appellant is:-
   (a) land used or occupied for the purpose of a benevolent institution or charity within s.97(1)(d) of the Local Government Act; and
   (b) is not rateable under the Local Government Act.
3. An order requiring that the respondent remove from the rate book all entries relating to land used or occupied by the appellants.
4. In the alternative to 3, an order remitting the matter of each appellant to the Local Government Tribunal in accordance with the decision of the Appeal Tribunal.
5. An order for costs in this Tribunal and in relation to proceedings in the Tribunal below."

In the judgement of the Court below, the present respondents' submissions were set out at considerable length, as were the submissions of the appellant, and his Honour commented upon these submissions from time to time throughout his judgement. It is difficult to summarise adequately the present respondents' submissions as they appear from the judgement; but, in short, they appear to have concentrated on three broad areas. First, it was submitted that the Tribunal's finding that the present respondents were neither charitable nor benevolent was in error. This submission was advanced in a

number of ways, including the allege failure of the learned Magistrate to consider the effect of *Tangentyere Council Inc v The Commission of Taxes* (1990) 99 FLR 363. Secondly it was submitted that the learned Magistrate erred in failing to consider benefits flowing to persons who were not members of the associations, in deciding whether or not the associations were sufficiently public in nature. It is not clear, but this submission could have been in reference to the question of whether or not the associations were charities or public benevolent institutions, or it could have referred to the question of the use to which the land was being put, or both. Thirdly, it was submitted that his Worship erred in determining that the associations were not charitable because the source of their funds were non-charitable, whereas the proper determinant should have been the object of expenditure.

The Court below considered that:

> "... the application of s. 97(1)(d) raises two questions: whether the appellants fell within the description of one of the bodies there set out; and, if so, whether they were using or occupying their lands for the purposes of such a charitable body."

His Honour concluded as follows:

> "It can be seen that the appeal was argued in great detail. It is sufficient, however, to say that I accept Mr Bleby's [counsel for the present respondents'] submissions. I consider that his Worship's conclusion that "any benefits received [are received] exclusively for the benefit of the respective members of the association" was contrary to the evidence placed before me, and constitutes an error of law. His resulting conclusion that "there is no public benefit" is similarly vitiated."

The grounds of the present appellant's appeal to this Court are:

"... that his Honour erred in law by:-

2.1 applying the incorrect test as to what constituted an error of law;

2.2 finding that the decision of Mr. Hook S.M. sitting as the Local Government Tribunal constituted an error of law in that two of his Worship's conclusions were contrary to the evidence placed before his Honour;

2.3 accepting that the matters put by Mr. Bleby in his submissions as errors of law were errors of law;

2.4 finding that the respondents were public benevolent institutions; or

2.5 in the alternative, failing to give adequate reasons for his decision."

The grounds of the present respondent's cross-appeal are:

"The Learned Judge erred in that he:-

3.1 Failed to make Orders which gave effect to his decision of 9th April, 1996 whereby he quashed and set aside the Local Government Tribunal's decision of 14th March, 1994 as constituting a finding that the appellants were public benevolent institutions or public charities;

3.2 Failed to regard his decision of 9th April, 1996 whereby he quashed and set aside the Local Government Tribunal's decision of 14th March, 1994 as constituting a finding that the appellants were public benevolent institutions or public charities;

3.3 Held that the Court's powers under s.240 of the *Local Government Act* 1993 were not as extensive as its powers under s.116(2) of the *Work Health Act*;

3.4 Held that the orders sought by the appellants for repayment of rates already paid and interest were substantive new issues rather than consequential matter referable to his decision of 14th March, 1994;

3.5 Held that the Court was limited in the orders which it would make on an appeal on a question of law pursuant to s.240 of the *Local Government Act* 1993 to matters which are properly classified as necessary consequences of the answer to the "question of law" when it was not by reasons of sections 14 and 19 of the *Supreme Court Act*;

3.6 Held that the Court had no power to award the costs of the hearing before the Local Government Tribunal to the appellants and therefore failed to make an order for costs in favour of the appellants in respect of the hearing before the Tribunal."

The appeal to the Supreme Court is limited to a question of law. It is not necessary to refer in detail to the authorities which discuss what is, and what is not, a question of law. The principles to be applied are discussed in *Tracy Village Sports and Social Club v Walker* (1992) 111 FLR 32 at 37-39; *Tiver Constructions Pty Ltd v Clair* (1992) 110 FLR 239; and *Wilson v Lowery* (1993) 110 FLR 142 at 145-147.

On appeal to this Court, Gallop J said *Tiver Constructions Pty Ltd v Clair*, supra, at 242,

> "... the exercise is the review of the Supreme Court's decision as an intermediate court of appeal. The appeal to the Supreme Court was on a question of law. The appeal from the Supreme Court to this Court ought to be similarly confined... Our jurisdiction should be confined to whether the Supreme Court was right or wrong."

However that does not mean that this Court is confined to examining whether the Supreme Court's reasons for arriving at its conclusion were correct. If this Court considers that the Supreme Court's conclusion is correct, but for a reason which differs from that given by the Supreme Court, it may nevertheless dismiss the appeal, even if the reason given by the Supreme Court for arriving at its conclusion is wrong in law.

Mr Riley Q.C., counsel for the present appellant, submitted that his Honour erred in that the question of whether or not the benefits received by the appellants were received exclusively for the respective members of the associations was a question of fact, which cannot be disturbed on the basis that it was contrary to the evidence placed before the Supreme Court. He relied upon proposition number 4 in *Wilson v Lowery*, supra, at 146;

> "…. a finding of fact cannot be disturbed on the basis that it is "perverse", or "against" the evidence or the weight of the evidence". Nor may this Court review a finding of fact merely because it is alleged to ignore the probative force of evidence which is all one way, even is no reasonable person could have arrived at the decision made, and even if the reasoning was demonstrably unsound."

Mr Riley Q.C. submitted that his Honour, in reaching this conclusion, posed the wrong test. The question, he submitted, was not whether his Worship's finding was contrary to the evidence available to the Supreme Court, but whether or not his Worship's findings were open to him on the evidence, i.e. whether there was some, as opposed to no evidence, to support them. In support of this submission, it was submitted that his Honour made findings of fact which were not made by the Tribunal at all; and that his

Honour did not suggest that there was no evidence to support the magistrate's conclusion that there was no public benefit element in the use to which the land was being put.

Counsel for the respondents, Mr Bleby Q.C., submitted that the error of law found by his Honour, was an error of a kind discussed in *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FLR 280 at 287:

> "The question whether facts fully found fall within the provision of a statutory enactment properly construed is generally a question of law: *Hope v Bathurst City Council* (1980) 144 CLR 1 at 7 per Mason J with whom Gibbs, Stephen, Murphy and Aickin JJ agreed; *Australian National Railway Commission v Collector of Customs* (SA) at 379 (Sheppard and Burchett JJ)."

Mr Bleby Q.C. further relied upon the decision of the Full Court of the Federal Court of Australia in *Cowell Electric Supply Company Ltd v Collector of Customs* (1995) 127 ALR 257 for the proposition that a question of law will arise in any case where, the facts not being in dispute, the only question is whether the case fell within or outside the statute: see also *Tiver Constructions Pty Ltd v Clair*, supra, at 245 per Martin and Mildren JJ. In *Commissioner of Taxation v Cooper* (1991) 29 FCR 177 Hill J, at p 194:

> "The rationale for this view is particularly apparent in a case where, only one conclusion being open on the facts, the Board arrives at a different conclusion. Since the facts were not in dispute, it follows that the Board must have applied some wrong principle of law, albeit that it has not stated the principle upon which it has relied."

Mr Bleby Q.C. submitted therefore, that, as the facts before the Tribunal were not in dispute, whether or not the land is used or occupied for the purposes of a public charity, is a question of law. Indeed, Nader J in *Aboriginal Hostels Ltd v Darwin City Council* (1985) 75 FLR 197, accepted that that very question did involve a question of law. His Honour's approach in that case began with an analysis of the facts to see whether there was a trust, if so, whether the trust is charitable, and if so, whether the charity was of a public nature for the public benefit. If these questions are answered affirmatively, his Honour said:

> "The question whether the land *is used or occupied for the purposes* of a public charity is determined by comparing the purposes of the trust as evinced in the relevant instruments with the actual use to which the land is put. If the land were used for purposes falling outside the ambit of the trust it could not be said to be used for the purposes of the charity even though its legal title might be vested in the trustee: see generally *Joyce v Ashfield Municipal Council* (1959) 4 L.G.R.A. 195"

Mr Bleby Q.C. submitted that on the uncontested facts, the question of law raised by ground 1 of the Notice of Appeal in the Court below must be answered in favour of the present respondents. Further, he submitted that the Tribunal's finding that there was no public benefit was wrong in law, in that, it was not in accordance with the proper interpretation to be given to the respondents' present constitutions, and there was no evidence to support it.

Mr Riley Q.C. submitted that his Honour did not approach the appeal in the way suggested by Mr Bleby. He further submitted that his Honour did not find that the Tribunal had erred because, on the uncontested facts before the

Tribunal, the proper conclusion was, as a matter of law, that the associations fell within the exemption. I accept this proposition. In his reasons relating to the orders to be made consequential upon upholding the appeal his Honour said:

> "I should point out that it is not the case that I found ... that the appellants were public benevolent institutions or public charities; rather, I found that the Tribunal had erred in law in reaching its conclusion that they were not. That is not a positive finding that they were."

Mr Riley Q.C. further submitted that his Honour erred because, apart from his specific finding concerning the Tribunal's decision that the benefits received were exclusively for the benefit of the respective members of the association, there were no other clear findings as to error by the Tribunal, and no reasons given as to why the Tribunal had erred, other than that his Honour accepted the submissions of counsel for the present respondents.

Mr Riley Q.C. said that it is plain that his Honour did not accept all these submissions, and therefore it is not clear which submissions he accepted and which he did not; and further, his Honour gave no explanation as to why he rejected the submissions of counsel for the present appellant.

In *Mombasa Pty Ltd v Nikic* (1987) 47 NTR 48, this Court held that a trial Judge who fails to give reasons sufficient for the parties to understand the basis of the verdict, commits an error of law. At p. 50, the Court (O'Leary C.J. Kearney J and Muirhead ACJ) said:

> "The common law in Australia has, however, developed to the point where, at least in cases where there exists a right of appeal, judges are now, we consider, required by law to state their findings of fact and the reasons for their decision. This does not mean, though, that a failure to do so will always result in a successful appeal; it may be that the appellate court will be able to review the evidence and satisfy itself that the decision was properly reached."

The reasoning in *Mombasa v Nikic* supports the view that the same general approach should apply when a judge is sitting on appeal from a Tribunal on a question of law. Reasons are required so that the legal representatives of the parties can see why it was that the case was decided, and advise their clients, particularly in relation to rights of appeal; secondly, to promote confidence in civil trial procedures, and thirdly to enable appeal courts to determine any further appeals. As was said by their Honours, at p 51:

> "The absence of reasons for judgement impedes the rights of appeal, confuses the issues, makes it difficult to decide whether any error occurred, tends to increase the costs of appeal, and, above, all, tends to protract litigation by the necessity of new trials."

So, too, with an intermediate court sitting as a Court of Appeal, even if the court's functions are limited to questions of law. It is not sufficient, as a general rule, to say simply that the submissions of counsel for the appellant are accepted, any more than it is sufficient for a trial judge to simply say 'I do not agree with the submissions on behalf of the defendant:' c.f. *Carlson v King* (1947) 64 WN (NSW) 65.

The problem with his Honour's approach is exemplified by this case. The hearing of this appeal took 3 days. The appeal books ran into 6 volumes. Both counsel referred us extensively to the evidence before Tribunal. The arguments on both sides were wide-ranging. It was difficult to define the issues, and difficult to decide whether his Honour was right in deciding that an error of law had been made by the Tribunal. The matter was even more complicated by the approach taken by the counsel for the present respondents. In effect, we were invited to find, first that his Honour found that the respondents fell within the exception - it is plain that his Honour did not do this; secondly, that his Honour ought to have so found, and therefore, should have ordered, inter alia, that the respondents' names be removed from the ratebook.

The appellant drew our attention to the lack of any notice of contention by the respondents, and submitted that this point is therefore not properly before us. However, a notice of contention is not required if the point has been taken in a cross-appeal: see Rule 84.06.

Before proceeding further with the merits of the appeal and the cross-appeal, it is necessary to consider the powers of the Supreme Court, and of this court, in deciding the appeal. I have already pointed out the extraordinary omission of the legislature to state what powers the Supreme Court has on appeal from the Tribunal. It is suggested that the consequence of this is to severely tie the judge's hands. In *Wormald International (Aust) Pty Ltd v Aherne* (unreported, 23/6/95), I said:

> "It is well established that whenever a new court is established, there is no appeal from it unless it is conferred by statute: *Holmes v Angwin* (1906) 4 CLR 297 at 304, per Griffiths CJ. It is a necessary corollary of that principle that both the nature of the appeal and the powers of the court in disposing of the appeal must be found in the wording of the statute: *Da Costa v Cockburn Salvage and Trading Pty Ltd* [1970] 124 CLR 192 at 202 per Windeyer J."

It goes without saying that the same principles apply to appeals from Tribunals.

The Court below decided that, in these circumstances, the powers of the court were very severely restricted. If an error of law was established, all that could be done was to quash the decision of the Tribunal and make orders for costs in the Tribunal and in the proceedings. Presumably the basis for making even these orders is that they must be implied from the fact that an appeal to the court on a question of law is created by the statute. Similarly, if there had been no error of law demonstrated, I expect that the appeal would have been dismissed with appropriate orders as to costs.

In principle, I consider this approach to be correct, as otherwise the right of appeal would be illusory. But I do not consider that the court's powers are as restricted as the decision in the Court below would suggest. Where, by an Act of Parliament, a right or a power is created, there must by implication carry with it the power to do everything which is indispensable for the purpose of exercising the right or power, or fairly incidental or consequential to the power itself: see *Craies* on Statute Law, 7th Edn., pps 258-9; Pearce and Geddes, *Statutory Interpretation in Australia*, 4th Edn., para 2.21; *Re Sterling*

(1978-9) 30 ALR 77 at 83 per Lockhart J, (who applied the principle to imply a power in the Federal Court of Australia to set aside a bankruptcy notice); *Dunkel v Deputy Commissioner of Taxation* (NSW) (1990-91) 99 ALR 776 at 780; *Australian Securities Commission v Bell* (1991) 104 ALR 125, esp at 137 per Sheppard J; *Johns v Conner* (1992) 104 ALR 465 at 473; *Zuijs v Wirth Brothers Pty Ltd* (1955) 93 CLR 561 at 574.

The question, then, is what is indispensable, or fairly incidental or consequential upon a power conferring a right of appeal upon a question of law? The answer to this question must depend upon whether an error of law is found by the court, and if so, the nature of the error. Obviously if there is no error, the court has power to dismiss the appeal. If error is disclosed, this does not necessarily mean that the appeal must be allowed. An appeal will only succeed on an error of law if the error is one upon which the decision depends and is such as to vitiate the decision appealed from: *Yates Property Corporation Pty Ltd (In Liquidation) v Darling Harbour Authority* (1991) 24 NSWLR 156, esp. at 177 per Handley JA. If the error does vitiate the decision appealed from, then the remedy must be tailored to meet the nature of the error identified. If the Tribunal had made no decision on contested facts, but had erroneously rejected the appeal to it on some legal principle, the court must have a power to order a fresh hearing: see *McMorrow v Airsearch Mapping Pty Ltd* (Court of Appeal, unreported, 7/3/97) where this course was taken in respect of an appeal under the *Work Health Act*. If the error of law is, as suggested here, that on the facts as found or not in dispute, the correct conclusion, as a matter of law, is that the respondents are entitled to the

exemption, the court must, by implication, have the power to substitute the decision of the court for that of the Tribunal. This is supported by the decision of the High Court in *Zuijs v Wirth Brothers Pty Ltd,* supra, which dealt with the powers of the Supreme Court of New South Wales when dealing with a case stated vide s. 37(4) of the *Workers Compensation Act, 1926* (NSW). Apart from empowering the statement of the case, that Act said nothing about the court's powers, although s. 37(7) provided that the decision of the court was binding on the Commission. In *Smith v Mann* (1932) 47 CLR 426, the High Court held that the Supreme Court's decision was not an advisory or consultative opinion but a final determination of the rights of the parties. In *Zuijs v Wirth Brothers Pty Ltd*., supra, at 574 the High Court considered the matter further and said:

> "It remains to consider what order should be made. The nature of the proceeding before the Supreme Court under s. 37(4) of the *Workers Compensation Act* 1926-1948 was discussed in *Smith v Mann* (1932) 47 CLR 426 where it was pointed out that the statement of a case after award is a means of invoking the jurisdiction of the Supreme Court so that it may revise or reconsider within the limits of the question of law raised the determination of the commission. "If the decision of the Supreme Court upon any of those questions means that the order or award of the Commission was erroneously made, that order or award can no longer remain in operation as a determination of the proceedings before the Commission" (1932) 47 CLR, at p 446. On an appeal to this Court, we exercise the function of the Supreme Court anew. The passage quoted describes the position in the present case. The finding that there was no contract of service but an independent contract for the performance of an act cannot stand. For it has an erroneous basis. But what should now be done? There has been no finding that there was a contract of service and although all the facts proved point to that conclusion, the evidence is so bare and meagre that to say that

> the tribunal of fact was bound in point of law to be satisfied of the issue may be going too far. Sections 37(4) and (7) are expressed very compendiously but there seems no reason to suppose that the powers of the Supreme Court do not extend to what is incidental to giving effect to the decision. In the present case the proper course is to answer the questions as stated and to remit the case to the commission with a direction that the application be reheard by the commission."

It is clear from this passage, and also from the judgement of McTiernan J at 576, that if, as a matter of law, the facts as found or not in dispute fall within or outside of a statutory enactment, so that the fact-finder was legally bound to decide the question only one way, the appellate court has, by implication, on an appeal such as the present, a power so to find and declare.

Turning to the merits of the appeal and the cross-appeal, I consider that it has been amply demonstrated that the Tribunal's finding that the beneficiaries of the respondents' activities were restricted to their members is an error of law, on the basis that there was simply no evidence to support that finding, and the evidence to the contrary was not rejected. I consider that the Tribunal must have confused the question of who may be members, and whether the members were of a restricted class, with the question as to whom were the beneficiaries of the associations' activities. In fact, the Tribunal found, in effect, that the beneficiaries of the activities were not restricted to the members, because it found that "each camp entertains a considerable number of visitors which places a strain of (sic) the resources of the several associations. However, the decision to admit visitors or not is one for the members". The fact that the members may decide to refuse admission to

certain visitors cannot have the consequence in law that the only beneficiaries are the members themselves. There is nothing in the Tribunal's decision to suggest that the visitors were restricted to close blood relatives of the members, so that the inference of benefit could be restricted to the members themselves as was the case in *Thompson v Federal Commissioner of Taxation* (1959) 102 CLR 315. There was no evidence that, in order to become a tenant on the land, or to stay on the land or use the facilities available, one had to first become a member. Indeed, not only was the evidence to the contrary, but in order to become eligible to be a member, one has to be either a resident, frequent visitor, or past resident of the town camps in question.

As this was the sole basis on which the Tribunal dismissed the appeals, it follows that the decision of the Tribunal is wrong in law, and that the Supreme Court was right to allow the appeals.

The question then, is whether on the uncontested evidence and the findings, such as they were, of the Tribunal, the Tribunal was bound to have found, as a matter of law, that the lands were exempt from rating.

Four of the respondent corporations, Ilparpa Aboriginal Corporation, Mpwetyerre Aboriginal Corporation, Karnte Aboriginal Corporation and Ilpeye-Ilpeye Aboriginal Corporation, were incorporated pursuant to the *Aboriginal Councils and Associations Act 1976* (Commonwealth). That Act

provides that corporations under the Act may be formed for carrying out any lawful object, and may be carried on for profit. Only Aboriginal persons and their spouses are permitted to be members (s. 49). On a winding up, surplus assets are to be distributed according to the rules of the association (s. 65).

The remaining respondent corporations are incorporated pursuant to Part II of the *Associations Incorporation Act* (N.T.). Associations under Part II are required to be associations, inter alia:

> "formed or carried on for a religious, educational, benevolent or charitable purpose ..."

S. 10 provides that upon incorporation, personal property, (other than land), is vested in the association, "subject to any trust ... affecting the property." S. 22A provides that prescribed property is not an asset in a winding up. Prescribed property is defined to mean "property that was acquired -

(a) from; or

(b) using funds obtained under a grant from,

the Territory or the Commonwealth, and includes an interest, whether legal or equitable, in such property ..."

Pursuant to s. 26A, prescribed property cannot be disposed of without the consent of the Minister. S. 20 provides that, subject to certain exceptions, the provisions of the corporations law relating to the winding up of Part 5.7 bodies apply. One exception is s. 22, which provides a mechanism for the members by resolution, to dispose of surplus assets, subject to the order of a Judge. S. 22(2)(a) requires the Judge to consider whether the resolution is just, and to make such order as is just, having regard to the objects and purposes of the association.

The constitution or rules of each association is identical. The objects and purposes are stated to be, by clause 5:

> "1. The central objects of the associations are to relieve the poverty, sickness, destitution, distress, suffering, misfortune or helplessness of Aboriginal people in Central Australia and in particular:
>
> 2. In recognition of the severe problems encountered by Aboriginal people in Central Australia, and the unfortunate circumstances in which they find themselves, the Association shall advance its central objects by the following means:
>
> (a) obtaining land, housing and other community facilities for the members of the Association and other needy Aboriginal people.
>
> (b) acting and/or promoting programs in accordance with Aboriginal law that advance the living conditions, health,

economic status, education, training, and well-being of the members and other needy Aboriginal people.

(c) acting and/or promoting programs to develop social cohesion and community development in accordance with Aboriginal law on the town camp.

(d) acting and/or promoting programs to improve the environment in accordance with Aboriginal law of the town camp.

(e) developing relationships with other groups or organisations with similar aims.

(f) assisting Aboriginal groups or organisations with similar aims and needs."

Each association, is by clause 6, precluded from engaging in trade or commerce, except to the extent of engaging in transactions which are ancillary to the objects of the association and not substantial in number or value in relation to the other activities of the association. Membership is dealt with by clause 7 which provides.

"7. Members

1. The members of the Association shall comprise adult Aboriginal person who:

(a) apply to the Association for membership; and

(b) who are residents of the town camp; and

(c) who the Association recognises as being members of a family group with traditional and/or longstanding attachments to the town camp."

or who:

(d) apply to the Association for membership; and

(e) who the Association decides to admit to membership; and

(f) who are:

* residents of the town camp; or;

* frequent visitors to the town camp; or

* used to be residents of the town camp.

Clauses 15 and 16 prevent the members of the associations from receiving any dividend or surplus of the association's funds. Surplus funds are to be held in reserve, and may be applied towards promoting the association's "development" (which means, its objects) or transferred to another Aboriginal association or controlled body which is approved for the purposes of s. 78(1)(a) of the *Income Tax Assessment Act*, which made gifts to, inter alia

public benevolent institutions, allowable deductions, under that Act. Each of the respondent associations have been accepted as being exempt under that section by the Australian Tax Office, as public benevolent institutions. Clause 23, which deals with winding up, provides that surplus assets may not be distributed amongst the members but must be given or transferred to an Aboriginal association or Aboriginal controlled body corporate or institution which has objects similar to the objects of the association and is approved for the purposes of s. 78(1)(a) of the *Income Tax Assessment Act*.

So far as the law relating to charities is concerned, the word "charities" in the 1985 Act is used in its technical legal sense: see *Aboriginal Hostels Ltd v Darwin City Council*, supra at p 209 and the authorities therein referred to.

There is no doubt that a corporation can be a charitable corporation. Halsbury's Laws of England, (4th Edn., reissue), Vol 5(2) para 211, states: "A charitable corporation is one whose corporate purpose is charitable." There is no restriction upon how a charitable corporation may be formed or created. It may be incorporated by any means, but in Australia the usual method involves the creation of a trust structure: Halsbury's Laws of Australia, Vol 4, para 75-810. The reason for this appears to be that the *Statutes of Charitable Uses*, 43 Elizabeth I, C4., refers to 'uses', or trusts. What is required to be identified is either an express trust to be found in the terms of the corporations' constitutions, or a constructive trust, the terms of which are sufficiently defined therefrom and or from the Acts under which they are created see:

College of Law (Properties) Pty Ltd v Willoughby Municipal Council (1978) 38 LGRA 81; *Aboriginal Hostels Ltd v Darwin City Council* (1985) 75 FLR 197 at 207-210.

Neither the provisions of the corporations' constitutions nor the Acts create any express trust, so the question is whether the assets of the corporations are subject to a constructive trust. Whilst the general rule is that an incorporated body is not usually a trustee of its assets for its objects, (*Liverpool and District Hospital for Diseases of the Heart v A-G* [1981] Ch. 193,) if the provisions of the constitutions prevent the members from ever obtaining any beneficial interest in the assets, the company will be treated as a constructive trustee of the assets: see *College of Law (Properties) Pty Ltd* supra, at p. 88; *Aboriginal Hostels Ltd,* supra at p. 208. That is the case in respect of each of the respondents, and I consider that, notwithstanding the provisions of s. 20 of the *Associations Incorporation Act*, a Judge would be bound under s. 22 to ensure that any surplus assets were disposed of cy-pres and in accordance with each association's rules.

As to the leases themselves, the improvements on the leases are included in the respondents' financial statements as assets. It is not clear whether or not the leases are "prescribed property" for the purposes of s. 22A of the *Associations Incorporation Act*. If the leases are prescribed property, they do not form part of the assets of the corporation for the purposes of winding up, and cannot be disposed of without the Minister's consent. I do not think this

would affect the result, that the leases and improvements upon them are held subject to a constructive trust.

The next question is whether the trusts are held for charitable purposes. The four classes of charitable trusts recognized by Lord Macnaughton in *Income Tax Special Purposes Commissioners v Pemsel* [1891] AC 531 at 583 include trusts for the relief of poverty, trusts for the advancement of education and trusts for any other purposes beneficial to the community. The respondents contended that the charitable uses in these cases fell under each of these heads.

The expressed objects of the associations include the relief of "poverty, sickness, distress, suffering, misfortune and helplessness" of Aboriginal people in Central Australia, in the manner described in clause 2 of the constitutions. The Tribunal did not consider the question of whether the purposes of the trusts were for the relief of poverty.

In *Aboriginal Hostels Ltd,* supra, at 212, Nader J reflected upon whether Aboriginal people who, by choice, lived a traditional lifestyle which precluded employment in the ordinary sense and had few worldly possessions, could be said to be living in poverty. His Honour observed at p 212:

> "Of those Aboriginals who do not desire the wealth required by most persons in our society, I doubt if it is proper to say that they are poor persons."

With respect, the question is not whether there are people "living in poverty" or whether they are not "poor persons" because they do not value money or possessions in the same way as do other cultures. The word "poverty" is the *condition* of having little wealth or material possessions (Shorter Oxford English Dictionary), and is not used in any metaphorical sense. One object of the associations is to provide relief from that condition to people who are in need of it. "Poverty" in this sense, is of course, relative, but it is well established that the law does not require that the persons to be benefited should be destitute or even on the border of destitution: *Re Gillespie*, per Little J [1965] VR 402 at 406. That it could be suggested that those living on the town camps were not generally in a condition of having little wealth and material possessions, and did not need the facilities on the camps, would be astounding. The notorious plight of Aboriginal people was recognised by Nader J in *Aboriginal Hostels Ltd*. It is a notorious fact that with few, if any, exceptions, the camp residents of Alice Springs are, if not destitute, in a condition of poverty. The evidence of Mr Durnan, before the Tribunal on this topic [AB675 and ff] confirms what is, in any event, common knowledge; and was not challenged in cross examination.

However, if extrinsic evidence is not admissible and, to be for the relief of poverty, there must be some indication of this purpose in the trust, in this

case, the objects of the constitutions include the advancement of its central objects by obtaining land, housing and other community facilities for their "members and other needy Aboriginal people." The membership provisions of the constitution do not expressly require members to be poor, but they do require the members to be adult Aboriginal persons who are residents; former residents; or frequent visitors to the town camps. Combined with the wording of clause 1 of the constitutions, and the use of the expression "other needy Aboriginal people" in clause 2(a), I consider that the trusts are for the relief of poverty.

In the case of charities falling within this class, it is not necessary for there to be any public benefit, and the class of those benefited need not be for the public, generally or an appreciable section of the community: see *Dingle v Turner* [1972] AC 601. However, the terms of the associations' constitutions refer also to other objects which may be for purposes other than for the relief of poverty, namely the relief of sickness and suffering, by promoting programs to improve health; and for the relief of helplessness by promoting programs to promote the education, training and well-being of the members and other needy Aboriginal people.

Another significant activity contemplated by the constitutions was to obtain land, housing and other community facilities for the members and other needy Aboriginal people.

In my opinion, each of these objectives are charitable. Trusts for the relief of sickness are generally accepted as falling within the fourth category of Pemsel's case; although trusts for the poor and sick probably fall within the first category. Trusts for the advancement of education fall within the second category. It is sufficient to note that 'education' is a word construed in a wide sense, and is not confined to formal education of the type supplied by schools or universities. Trusts for the provision of housing, particularly for those rural traditional Aboriginals who visit town centres, were held by Nader J to be charitable in *Aboriginal Hostels Ltd*, supra, as falling by analogy into the class of trusts for the relief of poverty.

The remaining objects and purposes as set out in the constitutions are ancillary to these purposes.

It is in respect of such of these other objectives which may not be for the relief of poverty that the benefits must be for the public or the community, as a whole, or for an appreciable, but unascertained and indefinite portion of it. I have already discussed this aspect of the case in part. There is no evidence to show that the beneficiaries were intended to be (or were in fact,) limited to the members of the associations. The constitutions do not limit the beneficiaries to the members. The potential beneficiaries included all needy Aboriginal people in central Australia, as well as the members. The evidence before the Tribunal indicated that each Association's property was used to accommodate persons other than members who were Aboriginals normally living in remote

communities, but who wished to visit Alice Springs. The numbers of persons using a particular property at any one time varied considerably. Each camp was used both as a place for permanent or semi-permanent residence and, in addition to members and potential members living on the camps, numerous visitors stayed on each camp throughout the year. These visitors depended upon the camps as a place to stay whenever it was necessary to visit Alice Springs, and were generally impoverished, unable to pay for accommodation in the town's motels, hotels or hostels, mostly in receipt only of social security benefits or payment for CDEP work schemes, and unlikely to fit into the expected behaviour styles of the town's motels and hostels. The purposes of the visitors vary, but usually include a "serious" purpose, such as may be related to health, education, Aboriginal politics, shopping, visiting relatives and the like, as well as for recreation. The only other practical alternative for most of these people is to camp in the Todd River bed, (which has no facilities such as water or shelter), and risk confrontation with police. The evidence showed that visitors tended to stay at a particular camp occupied by members of the visitors' extended family (in the Aboriginal sense), but, as the Tribunal found, "the relationship (of the members) were not close enough to be classified as family in the sense used in the decided cases on the subject" and there was nothing to suggest the visitors were mainly closely related, either to each other, or to the residents. There was no specific evidence about the numbers of visitors to each camp during a year, but the evidence suggested that the numbers overall were significant, and fluctuated considerably from day to day. Obviously, the total number of persons using the land either as a resident or visitor over many years would be even more significant. In those circumstances, there can be no doubt that the class of beneficiaries is a

sufficiently large enough group to fall within the requirement that there be an appreciable, unascertained and indefinite portion of the public, or a section of it. There is nothing in the associations' constitutions which limits the class to persons having a relationship to a particular individual or individuals (c.f. *Re Compton* [1945] Ch. 123; *Oppenheim v Tobacco Securities Trust Co. Ltd* [1951] A.C. 297; *Thompson v Federal Commissioner of Taxation*, supra).

Mr Riley Q.C. submitted that the associations were no more than private housing associations, or self-help organisations. He referred to *Metropolitan Fire Brigade Board v Federal Commissioner of Taxation* (1990) 97 ALR 335. That case dealt with a government body, the Metropolitan Fire Brigade Board, established under the *Fire Brigade Act*, (Qld). The question was whether the Board was a "public benevolent institution". The Federal Court held that it was not, as the Board was a government body simply exercising the functions of government. The Court held that the expression "public charity", whilst not synonymous with "public benevolent institutions" in their ordinary meanings is rather similar. As I read that judgement, the Court, when referring to the "ordinary" meaning of "public charity" intended to refer to its popular, rather than its technical meaning. The case is therefore distinguishable on this ground. However, it is also distinguishable on the further ground that, irrespective of the Associations' sources of funds, they could not be characterised as agencies or government. In this case no ministerial control could be exercised over any of the Associations', either by virtue of the Acts under which they are constituted, or by the provisions of the constitutions. The mere fact that the Associations are indirectly government funded does not

deprive them of the character of being charities. I do not consider that the argument that the Associations are merely carrying out the functions of government can be sustained. Nor are the Associations' mere 'self-help' organisations, or mutual benefit organisations. To the extent that the objects and purposes of the corporations extend beyond the relief of poverty, they are not limited to providing benefits for their members, as I have endeavoured to demonstrate.

In conclusion, I consider that, as a matter of law, each of the associations are charities within the meaning of the *1985 Act*. It is therefore not necessary to consider whether they are also public benevolent institutions.

The final question is whether each of the associations used the lands for charitable purposes. It is not in contention that the associations provided accommodation to their members, and to other Aboriginal people who wished to live on the lands, as well as provided a place to stay, or the use of facilities, for other Aboriginal people who wished to visit Alice Springs. The evidence of Dr Moody, which was not challenged, is that the provision of housing and other essential services, such as water, toilets etc, on the town camps has improved the health of Aboriginal people who were formerly living on the lands, or in areas on the fringe of Alice Springs. Dr Moody's opinion is that there is a well-accepted direct link between poverty and poor housing, and health. Despite this improvement, conditions on the lands are such that Aboriginal health remains poor. Infant mortality is still three times higher

than the non-Aboriginal population; average life expectancy is about 20 years less than the non-Aboriginal population; Aboriginal women have a lower life expectancy than Aboriginal men. These factors are not only indicia of poverty amongst the inhabitants, but the evidence was that the provision of facilities on the lands have improved Aboriginal health, particularly in reducing communicable diseases. This evidence was supported by the evidence of Dr Wheeler, who gave detailed evidence on the subject, and was not challenged in cross-examination.

There was evidence also about the distribution of CDEP funds to the people living on the camps by Tangentyere Council Incorporated. That association was held by Angel J in the *Tangentyere Council* case, supra, to be a public benevolent institution, and it is not an issue that Tangentyere is the "umbrella" organisation for the respondent associations. Funding through the CDEP scheme results in some improvement to the conditions on the camps, as well as job and social training for the residents. However, this does not appear to be an activity in which the respondent associations are directly involved in any significant way.

There is no evidence to suggest that the lands are not being used for charitable purposes; and the evidence to the contrary was not in dispute. In these circumstances, as a matter of law each of the respondents' associations are, using their respective lands for the purposes of charity, within the meaning of s 97(1)(d) of the *1985 Act*.

Accordingly, I would dismiss the appeal and allow the cross-appeal. I propose that the decision of the Local Government Tribunal to dismiss the appeals which was set aside by the Supreme Court should be substituted for orders that each of the respective respondents' lands was used by the respective respondents for the purposes of a public charity within the meaning of s 97(1)(d) of the *1985 Act* as from 14 March 1994, the date the Tribunal's hearing concluded (see Cross Appeal Book, p 85 and the finding of the Supreme Court on that topic); that the clerk of the appellant council be ordered to make appropriate alterations to the rate book to give effect thereto: that the appellant pay the respondents' costs of this appeal, and in the Tribunal, to be taxed; and that the costs order of the proceedings in the Supreme Court be not disturbed. The respondents sought, in their cross-appeal, costs on an indemnity basis. No argument was presented to us as to why such an order should be made, and in those circumstances I consider that no such order should be made. The respondents also sought orders relating to the refund of rates paid and interest pursuant to s 83 of the *Local Government Act 1993*. I do not consider such orders are necessary. Assuming that that provision applies, the obligation to make the refund and pay interest is provided for by the section itself, which is mandatory. Our attention has also been drawn, since the hearing of this appeal, to certain provisions of the *Limitation Act*. I would doubt whether those provisions can avail the appellant, but it is not necessary to decide this question, which has not in any event been fully argued. It is also questionable whether it is incidental to the appeal to dispose of this issue.

THOMAS J

This appeal concerns the application of s97(1)(d) of the *Local Government Act* 1985 ("the old Act") and whether the respondent's land which is used for Aboriginal town camps is land used or occupied for the purposes of a public hospital, benevolent institution or charity and should not be entered in the rate book of the Alice Springs Town Council.

The appeal is from a decision of Kearney J delivered 14 May 1996. His Honour quashed and set aside a decision of Mr Hook SM who delivered a decision on 14 March 1994. Mr Hook SM had been sitting as the Local Government Tribunal pursuant to s185 of the *Local Government Act* of 1985 repealed on 1 June 1994.

The appeal from the decision of the Tribunal is pursuant to s240 of the *Local Government Act* 1993. The appeal is limited to a question of law.

A summary of the chronology of events is as follows:

1991	Clerk of the Alice Springs Town Council entered Town Camps in the rate book.
	Local Government Act 1985 *104(1) The Clerk shall maintain the rate book so that information contained in it is correct and in accordance with this Act and the Regulations.*
March 1991	Town Camps appealed against entry in the rate book
	Local Government Act 1985

107(1) A person whose name is entered in the rate book as owner or occupier of the whole or part of rateable land may appeal against the entry on the ground that -
(a) ...
(b) ...
(c) the land is not rateable land or is urban farmland.

10 September 1991 The Alice Springs Town Council disallowed the appeal.

Local Government Act 1985
108(2) .... the council shall .... allow or disallow the appeal and, where it allows the appeal, the clerk shall, as soon as practicable, cause an appropriate alteration to be made in the rate book.

10 October 1991 Town Camp applied to the Local Government Tribunal.

Local Government Act 1985
109(2) A person ... may ... apply to the Tribunal against the decision of the Council and the Tribunal has jurisdiction to hear and determine the application.

February 1992 Some Town Camps altered their Constitutions.

28 July 1992 Registrar of Aboriginal Corporations approved alterations to the objects and rules of Ilpara Aboriginal Corporation pursuant to the *Aboriginal Councils & Associations Act* 1976.

14 August 92 Amendments to the Constitution of the named Aboriginal organisations were approved by the Registrar of the Office of Business Affairs pursuant to Northern Territory legislation.

17 August 1992 Hearing began before the Tribunal.

18 August 1992 Ruling by the Tribunal that the hearing was to operate as a rehearing and that removal or otherwise of the names of the appellants from the rate book was to be decided on the evidence then led before the Tribunal (including revised Constitutions).

12 March 1993 Hearing completed before the Tribunal.

14 March 1994 — Tribunal published its decision. "The several appeals are disallowed." The Tribunal had referred to the applications under s109 as an "appeal".

Tribunal makes order for costs in favour of the appellant.

Local Government Act 1985
109(3) The Tribunal may, upon hearing an application under this section, confirm, reverse or vary the decision of the council and make such order, as to costs or otherwise, as it thinks fit.

186(4) Where a matter has been referred or an application has been made, to the Tribunal and it has heard and determined the matter, it may order the clerk to make an alteration to the rate book as a consequence of the determination of the Tribunal.

11 April 1994 — Town Camps appealed to Local Government Appeal Tribunal.

Local Government Act 1985
198(1) ... a person aggrieved by the decision of the Tribunal may appeal to the Appeal Tribunal against an order or decision of the Tribunal on a question of law.

1 June 1994 — Local Government Act 1985 repealed. Local Government Act 1993 commenced.

Local Government Act 1993
267(1) Without limiting the generality of section 12 of the Interpretation Act, all titles, appointments, delegations, authorisations, permissions, permits, licences, rights, privileges, obligations and liabilities made, given, granted, acquired, accrued or incurred under the (Local Government Act 1985) and all matters in process under (that) Act immediately before the commencement of this Act shall continue as if made, given, granted, acquired, accrued, incurred, commenced or in process under the relevant corresponding provisions of this Act and those provisions, with the necessary changes, shall be construed accordingly.

Local Government Act 1993

240(1) A party to a proceeding before the Tribunal aggrieved by a decision of the Tribunal may appeal against that decision, on a question of law only, to the Supreme Court in accordance with the rules of that Court.

15,16 September 94 Appeal heard by Kearney J.

14 May 1996 Kearney J delivers Reasons for Decision.
The appeal is allowed.
The decision of Mr Hook SM of 14 March 1994 is quashed and set aside.

27 August 1996 Summons issued by the appellants before Kearney J seeking further and consequential orders.

30 August 1996 Hearing as to further orders.

5 September 1996 Kearney J orders:
(1) Respondent to pay the appellants' costs of the appeal to be agreed or taxed.
(2) Order of the Tribunal as to costs quashed.
(3) Appellants to pay the respondent's costs of the summons of 27 August 1996.

The grounds of appeal are as follows:

"2. The grounds of this Appeal are that his Honour erred in law by:-
2.1 applying the incorrect test as to what constituted an error of law;
2.2 finding that the decision of Mr. Hook S.M. sitting as the Local Government Tribunal constituted an error of law in that two of his Worship's conclusions were contrary to the evidence placed before his Honour;
2.3 accepting that the matters put by Mr. Bleby in is submissions as errors of law were errors of law;
2.4 finding that the respondents were public benevolent institutions; or
2.5 in the alternative, failing to give adequate reasons for his decision."

The appellant sought the following orders:

"3. The Appellant seeks the following orders:-
3.1 that the orders made by Justice Kearney on the 9th of April, 1996 be quashed and set aside;
3.2 that the orders made by Mr. Hook S.M. on the 14th of March, 1994 be reinstated;
3.3 that the respondents pay the appellant's costs of and incidental to this appeal and the appeal before Justice Kearney; and
3.4 for such further or other orders as this Court deems fit."

In his Reasons for Decision delivered 14 March 1994, Mr Hook SM set out the history of the town camps as set out in the Tangentyere Council Profile; 1992, p2 which was part of Exhibit 1 before the Tribunal. The following is an extract from this document as recited at AB001912 and is also recited in full at p8 in his Honour's Reasons for Decision:

> "Today there are more than 170 houses on the 18 Alice Springs town camps. Over 1200 people live on the camps, about a quarter of the town's Aboriginal population.
>
> Language groups represented amongst town campers include Eastern, Western and Southern Arrernte, Kayteye, Alyawarre, Anmatyerre, Walpiri, Luritja, Pintibi and Pitjantjatjara.
>
> Town camps are not a stepping stone for some Aboriginal people on their way to assimilation and mainstream society. People live on the town camps because they choose to. The camps provide residents with a culturally familiar living environment and allow people to retain as much as possible of their cultural and social values.
>
> Facilities and amenities have greatly improved on town camps, and it's expected education employment and training and the economic independence of town campers will also improve now that the physical needs of many town campers have been met.
>
> Some town campers may subsequently choose to move into public or private housing, however, for most them town camps will continue to be their chosen homes for themselves and their future generations."

The relevant provision of the *Local Government Act* 1985 which was the subject of this dispute was s97(1)(d) which provided that a Council

> "…. shall rate all land within its municipality but may not rate the following:
>
> land used or occupied for the purposes of a public hospital, benevolent institution or charity."

His Honour stated at p4 of his decision that:

> "It is clear that s97(1)(d) of the old Act is the controlling provision for the determination of this appeal, it determines whether at the time in question the subject lands should have been entered in the rate book."

His Honour then summarised the submissions of counsel for the appellant and for the respondent.

It does not appear to be in issue that appalling conditions continue to exist in the town camps, there is poor health and high unemployment amongst the Aboriginal campers. It was accepted that Aborigines in our society are a class which is in need of protection and assistance (*Aboriginal Hostels Ltd v Darwin City Council* (1985) 75 FLR 197).

His Honour accepted the submissions of Mr Bleby QC, counsel for the various town camps (referred to as the associations), that the objects of the association should be looked at and not necessarily what the associations did, in order to determine whether they were "charitable". His Honour found that to determine the issue under s97(1)(d) of the old Act required an examination of the purposes for which the associations used or occupied their land. In

other words it is a two step process. His Honour accepted the submission of Mr Reeves, counsel for the Alice Springs Town Council, that in s97(1)(d) the word "public" modifies all the words which follow it.

His Honour stated at the conclusion of his Reasons for Decision (AB001974):

> "Conclusions
>
> It can been seen that the appeal was argued in great detail. It is sufficient, however, to say that I accept Mr Bleby's submissions. I consider that his Worship's conclusion that "any benefits received exclusively for the benefit of the respective members of the association" was contrary to the evidence placed before me, and constitutes an error of law. His resulting conclusion that "there is no public benefit" is similarly vitiated."

The evidence before his Honour was the evidence before the Tribunal on which Mr Hook SM based his decision. Mr Hook SM made certain findings of fact. There was other evidence before the Tribunal and before his Honour which was not in dispute. The facts as found by Mr Hook SM combined with other evidence before the Tribunal and before his Honour, which is not in dispute, does not support the conclusion of law made by the Tribunal and is an error of law. In *Tangentyere Council Inc v Commissioner of Taxes* (1990) 99 FLR 363, Angel J found that the Tangentyere Council was engaged in public benevolent work for the purposes of s9(a) of the *Payroll Tax Act* 1978 (NT). His Honour stated at 366:

> "…. Members of housing associations are Aboriginal persons normally and permanently resident in the town camp area of the particular housing association and such further Aboriginal persons as are resolved to be members. The evidence discloses that permanent residents and visitors to

> the town camps fluctuate between 1,000 and 1,500 persons at any one time and that a large proportion of those persons are probably members of the associations, and in so far as it is relevant, the membership of the appellant is sufficiently large to render the appellant "public" for the purposes of being a public benevolent institution. But in the circumstances of this case I don't think it is necessary to so decide. I think it is public by reason of its membership, the people it services, the source of its finances and its public accountability. I do not decide that any one of these is alone determinative of the question. I take all the circumstances into account in reaching this conclusion."

and at p371:

> ".... The evidence discloses that the appellant's efforts do directly benefit the inhabitants of the town camps. The evidence discloses that the housing associations are both conduits for welfare dispersed by the appellant and recipients of capital improvements and matters of maintenance which directly and physically benefit the occupants of the town camps. ...."

Although in the matter of *Tangentyere Council Inc v Commissioner of Taxes* (supra) the Court was dealing with different legislation, namely an interpretation of the relevant provisions of the *Payroll Tax Act* 1978 (NT), the considerations are similar to those which fell to be considered by the Tribunal in applying the provisions of s97(1)(d) of the *Local Government Act* 1985.

The Tribunal made findings of fact in favour of the respondents which were not contested. This included a finding at p35 of Mr Hook's judgment and recited by Kearney J in his decision at p34:

> "At p35 of his judgment his Worship said:
>
> [Citing from *Aboriginal Hostels Ltd* at p209]
> 'The character that marks the potential beneficiary must not be a

> relationship to a particular person or persons such as one of blood or employment'.
>
> There has been much made of relationships of the various members of the several associations. Mr Justice Nader [in *Aboriginal Hostels Ltd* at p211] spoke of "an ordinary informed person living in Darwin ..."; the same may be said of Alice Springs. Any informed person in Alice Springs is aware that certain tribal groups or clans do not, in usual circumstances, live together. This means that persons from area A tend to reside as a group completely separate from persons from area B. Such a group may in the aboriginal sense be related, not by blood or marriage, but by traditional or cultural ties. *The evidence before me does not show that such relationships are close enough to be classified as 'family' in the sense used in the decided cases on the subject.* (emphasis mine)."

His Honour has accepted Mr Bleby's submission that the Tribunal was in error in finding that membership of the association is in effect closed and so only a closed membership benefits, and the association is insufficiently public in nature. This was an error in law on the part of the Tribunal because benefits flow to persons who are not members, and membership of an association is not compulsory for a camp resident. His Honour has accepted Mr Bleby's further submission that, even if the benefits were restricted, no account was taken of the significance of the purpose, that purpose being the relief of poverty (see *Dingle v Turner* (1972) AC 601). A further submission made by Mr Bleby QC and accepted by his Honour was that the Tribunal considered that the source of the funds determined whether or not the associations were charitable. This was only one element and the proper determinant of its character were the objects of the associations' expenditure.

There is uncontested evidence that the Tangentyere Council works in partnership with the associations to provide maintenance of housing,

electricity, water and sanitation for the benefit of the mental and physical health of Aboriginal persons either resident at or visitors to the town camps.

I would agree with his Honour Kearney J that on the facts found by the Tribunal and other evidence before the Tribunal which is not in dispute, the conclusion of law by the Tribunal that the appellants were not public benevolent institutions or public charities was an error in law.

A question of law will arise in any area where, the facts not being in dispute, the only question is whether the case fell within or outside the statute (*Cowell Electric Supply Company Ltd v Collector of Customs* (1995) 127 ALR 257). See also *Collector of Customs v Pozzolanic Enterprises* (1993) 43 FLR 280.

The primary thrust of the appellant's submission was that his Honour erred in law because he failed to give reasons for his decision. The appellants state it was not sufficient for the Judge to have summarised the submissions of counsel and then indicated he accepted the submissions of counsel for the associations.

Judges are by law required to state their findings of fact and give reasons for their decision. Failure to do so will not necessarily mean an appeal will be successful (*Mobasa Pty Ltd v Nikic* (1987) 47 NTR 48 at 50).

In *Pettitt v Dunkley* (1971) 1 NSWLR 376, the Court of Appeal in New South Wales held that the failure of a trial judge to give reasons for his

decision amounted to an error of law because the failure meant it was impossible for the appellate court to determine whether or not the verdict was based on an error of law, and so to give effect to the plaintiff's statutory right of appeal.

I do not consider this to be the position in this matter. His Honour made a detailed analysis of the submissions by counsel for the appellant and the respondent. His Honour referred through the course of this summary to the submissions that he accepts and those he rejects. His Honour stated that he did not consider the fact that the associations were incorporated under statutes was a matter of any significance per se. Mr Bleby Q.C. had argued that there was some weight to be attached to this fact. His Honour did not accept Mr Bleby's submission on this point and clearly stated his own conclusion on the matter.

> His Honour found (p10):
> "... that each of the appellants was formed for the purpose of operating in and about its particular camp site. It is clear that in general each camp formerly encompassed a separate or predominant language group."

His Honour referred to the evidence before the Tribunal as to the pattern of linguistic distribution between the camps, the fact that there was a core of permanent residents and a continual changing number of relations who visited. There was the movement between camps of unemployed persons as well as between the camps and bush communities. His Honour stated (p12):

> "It is clear - indeed a notorious fact in Alice Springs - that conditions of poverty and disease remain in the camps, despite efforts over the years at amelioration."

His Honour detailed submissions made by Mr Bleby QC including the following at p18:

> "Mr Bleby submitted that in providing housing accommodation for the large floating population of non-member visitors, the associations were fulfilling a charitable purpose. Further, they also fulfilled a charitable purpose in relation to the permanent dwellers in the camps, because those person were neither nomadic or urban but were culturally disadvantaged, and the associations represented their method of determining their own cultural development. In that respect, he submitted, the associations were unique."

His Honour referred to Mr Bleby's submission that the purposes of the associations was not limited to the problems of the members of the associations and that a person could be a resident of a town camp without being a member of the association. Mr Bleby QC had drawn the Court's attention to the similarities between the objectives of the association and the objectives of the Tangentyere Council Inc. His Honour also detailed the submissions made by counsel for the Alice Springs Town Council on all the issues addressed by Mr Bleby QC. I do not attempt to canvas every submission made by Mr Bleby QC and referred to by his Honour and have instead chosen some examples. Mr Bleby QC made a submission, which his Honour related, that appears at p27 of his Honour's Reasons for Judgment. His Honour made reference to Mr Bleby's submission on the decision of Nader J in *Aboriginal Hostels Ltd v Darwin City Council* (supra). It was Mr Bleby's submission that applying the approach of Nader J in *Aboriginal Hostels Ltd v*

Darwin City Council (supra) to the evidence in this case led to the conclusion that the associations were charitable organisations. There was nothing to suggest that the associations used the lands for any other than their charitable purposes, it followed in his submission that they were non rateable. His Honour also adopted Mr Bleby's submission that the Tribunal had erred in law, including the Tribunal's finding that the associations were insufficiently "public" in nature to come within the provisions of s97(1)(d).

His Honour accepted Mr Reeves' analysis of the distinction between questions of fact and questions of law. His Honour detailed Mr Reeves submissions which were in summary that:

1) There was ample evidence to support the conclusions of the Tribunal and that no question of law arose.

2) Any question of law had to relate to the question whether his Worship was right in concluding that the associations lacked the necessary public element required for a public charity or public benevolent institution.

His Honour concludes by accepting the submissions of Mr Bleby QC. His Honour had carefully analysed and considered the submissions by both counsel. I consider it implicit in his Honour's Reasons, that his Honour accepted all the submissions made by Mr Bleby, except those his Honour had stated he rejected at the time he summarised the submissions. His Honour had in the course of his judgment proceeded through his analysis of those submissions. His Honour recites the facts as found by the Tribunal and states

that on the evidence he would come to a different conclusion on the law and finds that to that extent the Tribunal is in error.

I do not consider that his Honour failed to give reasons for his decision. I can accept that there are cases where it could amount to a "failure to give reasons" to merely accept the arguments of one counsel or the other. That is not the case here.

I agree with his Honour's conclusions and consider he was correct in finding that on the facts the Tribunal had come to the wrong conclusion of law and that this amounted to an error of law on the part of the Tribunal.

I would dismiss the appeal.

There is a cross appeal by the respondent in respect of the subsequent orders made by his Honour following his Honour's decision on the substantive appeal from the Tribunal.

This cross appeal is on the following grounds:

"The Learned Judge erred in that he:-

3.1 Failed to make Orders which gave effect to his decision of 9th April, 1996 where he quashed and set aside the Local Government Tribunal's decision of 14th March, 1994 as constituting a finding that the appellants were public benevolent institutions or public charities;

3.2 Failed to regard his decision of 9th April, 1996 whereby he quashed and set aside the Local Government Tribunal's decision of 14th

March, 1994 as constituting a finding that the appellants were public benevolent institutions or public charities;

3.3 Held that the Court's powers under s.240 of the *Local Government Act* 1993 were not as extensive as its powers under s.116(2) of the *Work Health Act*;

3.4 Held that the orders sought by the appellants for repayment of rates already paid and interest were substantive new issues rather than consequential matter referable to his decision of 14th March, 1994;

3.5 Held that the Court was limited in the orders which it would make on an appeal on a question of law pursuant to s.240 of the *Local Government Act* 1993 to matters which are properly classified as necessary consequences of the answer to the "question of law" when it was not by reasons of sections 14 and 19 of the *Supreme Court Act*;

3.6 Held that the Court had no power to award the costs of the hearing before the Local Government Tribunal to the appellants and therefore failed to make an order for costs in favour of the appellants in respect of the hearing before the Tribunal."

The *Local Government Act* s240 provides as follows:

> "(1) A party to a proceeding before the Tribunal aggrieved by a decision of the Tribunal may appeal against that decision, on a question of law only, to the Supreme Court in accordance with the rules of that Court.
>
> (2) An appeal under subsection (1) shall be instituted within 28 days after the day the decision complained of was made."

The Act is silent on the powers of the Supreme Court on appeal from the Tribunal. I do not agree with his Honour that he was restricted in his power to make consequential orders. The 4th edition of Pearce and Geddes Statutory Interpretation in Australia states at paragraph 2.21:

> "[2.21] If a power is conferred upon a body by an Act of parliament there is implied as a concomitant of that power, the power to perform it:

Re Sterling; Ex parte Esanda Ltd (1980) 30 ALR 77 at 83, per Lockhart J. So in that case it was held that the power to extend the time for compliance with the requirements of a bankruptcy notice where an application had been filed to set it aside carried with it the power to set aside the notice itself. Also see *Dunkel v DCT* (NSW) (1990) 99 ALR 776 at 780; *Australian Securities Commn v Bell* (1991) 104 ALR 125 at 137 per Sheppard J; *Johns v Connor* (1992) 107 ALR 465 at 473."

This principle was applied by the High Court in *Zuijs v Wirth Brothers Pty Ltd* (1955) 93 CLR 561 at 574. The majority of the High Court held, relating to the powers of the Supreme Court of NSW on hearing a stated case under the NSW *Workers Compensation Act,* that although s37(4) and (7) of the *Workers Compensation Act* were expressed compendiously "there seems no reason to suppose the powers of the Supreme Court do not extend to what is incidental to giving effect to the decision." See also *McMorrow v Airsearch Mapping Pty Ltd* (unreported) a decision of the NT Court of Appeal delivered 7 March 1997.

In applying the principle expressed by the majority of the High Court in *Zuijs v Wirth Brothers Pty Ltd* (supra) I imply from the relevant provision of the *Local Government Act,* namely s240, that the Supreme Court has power to give effect to its decision which in this case was to quash and set aside the decision by the Tribunal. Expressed in another way "there seems no reason to suppose the powers of the Supreme Court do not extend to what is incidental to giving effect to the decision."

Accordingly, I would uphold the cross appeal and make orders which give effect to his Honour's decision of 9 April 1996 that the Tribunal 's conclusion

that “any benefits received exclusively for the benefit of the respective members of the association” was contrary to the evidence placed before his Honour and constitutes an error of law. His Honour found that the Tribunal’s resulting conclusion that “there is no public benefit” is similarly vitiated.

There was undisputed evidence before the Tribunal and before his Honour that the town camps, as they have been referred to, used or occupied land for the purposes of a benevolent institutions or charities.

In setting aside the Tribunals finding to the contrary I consider his Honour had implied powers to give effect to his conclusions.

In summary, I dismiss the appeal, I allow the cross appeal and agree with the orders proposed by Martin CJ and Mildren J.