

From Gove to Governance: Reshaping Indigenous Governance in the Northern Territory

D.E. Smith

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December 2004

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ABBREVIATIONS AND ACRONYMS

ABS	Australian Bureau of Statistics
ACA	Aboriginal Councils and Associations Act 1976 (Cwlth)
AGPS	Australian Government Publishing Service
ALRA	Aboriginal Land Rights Act (Northern Territory) 1976 (Cwlth)
ATSIC	Aboriginal and Torres Strait Islander Commission
BSRSF	Building Stronger Regions, Stronger Futures (policy)
CDEP	Community Development Employment Projects (scheme)
CGC	Commonwealth Grant Commission
CINCRM	Centre for Indigenous Natural Resource Management
COAG	Council of Australian Governments
DAA	Department of Aboriginal Affairs
DCDSCA	Department of Community Development, Sport and Cultural Affairs (Northern Territory)
FATSIS	Faculty of Aboriginal and Torres Strait Islander Studies
ICCP	Indigenous Community Coordination Pilots
IOG	Institute of Governance
LGA	Local Government Act 1978
LGANT	Local Government Association of the Northern Territory
RADA	Reform and Development Agenda
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
UNDP	United Nations Development Program

ABSTRACT

This paper attempts to identify the key challenges facing Indigenous people and governments in reshaping the architecture of Indigenous governance in the Territory, and considers some strategic options for a way forward. First, a brief historical background is provided to Indigenous governance and local government in the Northern Territory. It examines why the issue of Indigenous governance has become a focus for greater policy and public attention recently, and highlights the implications of historical and current policy changes for future governance arrangements.

In the second part of the paper, more detailed attention is given to identifying and analysing the current challenges and issues that are influencing efforts to reshape Indigenous governance in the Northern Territory. The extent to which current initiatives address the broader attributes of strong governance is canvassed, and the solutions and processes involved are also examined. The key issues analysed include:

- the state of community government;
- the regionalisation of governance and service delivery;
- the quest to establish a cultural match or process for governance;
- the implications of Indigenous political aspirations and land rights for governance;
- the suitability of the *Local Government Act* for future governance options;
- the extent and role of governance education and capacity; and
- the vexed issues of government funding and coordination.

It is timely for the Northern Territory Government to comprehensively re-examine the suitability of current legislative, funding, development and training frameworks for Indigenous governance, and how these might be reformed to better support Indigenous initiatives to reshape governance. A number of options in these areas are canvassed.

ACKNOWLEDGMENTS

This paper draws on an earlier Background Issues paper written for participants of the *Building Effective Indigenous Governance* (BEIG) Conference held at Jabiru, Northern Territory, 4–7 November 2003. The issues considered here, as well as the paper's overall structure, have benefited greatly from the critical comments made by a number of people on that earlier paper, as well as on various revisions. I would particularly like to thank members of the steering committee of the BEIG Conference and other colleagues for their comments on the paper, including Jon Altman, Michael Banks, Deb Campbell, Carol Cavanagh, David Coles, Michael Dillon, Catherine Elderton, Will Sanders, Tony Tapsell, Jane Weepers, Neil Westbury and Rowena Withers. The paper has also benefited greatly from discussions with management and staff of the Department of Community Development, Sport, Culture and Arts to whom the author currently provides policy research advice under a CAEPR-ANU research contract. Needless to say, the arguments made in this paper are entirely those of the author. Thanks go to Hilary Bek, Frances Morphy and Melissa Johns for editorial input and proofreading, and to John Hughes for layout of the final version.

INTRODUCTION

Issues of Indigenous self-determination, local government and self-governance have been hotly debated in the Northern Territory (Northern Territory) for several decades. This paper attempts to identify the key challenges facing Indigenous people and governments in reshaping the architecture of Indigenous governance in the Territory, and considers some strategic options for a way forward. The need for progress on these matters appears all the more urgent at a time when significant changes are being made to Indigenous affairs at national and regional levels. These changes have the potential to lead to dramatic realignments in inter-governmental relations and the funding of service delivery, and have far-reaching consequences for Indigenous governance in the Territory.

At the *Indigenous Economic Development Forum* convened in March 2003 by the Northern Territory Government in Alice Springs, Galarrwuy Yunupingu discussed some of the challenges facing East Arnhem Land communities, and posed the provocative question: 'How long are we going to be poor, jobless, and reliant on CDEP? Indigenous Territorians, he said, 'want proper development on communities, want to be part of the development; and to do that we need a change in the way we do business' (Yunupingu 2003). At a policy level, the Northern Territory Government states it is seeking a similar goal, and has made a direct connection between the establishment of strong regional governance, more effective delivery of services, and the development of more robust regional economies.

In a presentation to the first national Indigenous Governance Conference, convened by Reconciliation Australia in Canberra, Neil Sterritt (2002), a Gitksan leader from Canada, characterised strong governance as having four main attributes:

- *legitimacy*—the way structures of governance are created and leaders chosen, and the extent of constituents' confidence in and support of them;
- *power*—the acknowledged legal, jurisdictional and cultural authority and capacity to make and exercise laws, resolve disputes and carry on public administration;
- *resources*—the economic, cultural, human, technological and natural resources needed for the establishment and implementation of governance structures; and
- *accountability*—the extent to which those in power must justify, substantiate and make known their actions and decisions (both internally and externally).

There is some international evidence to suggest a causal link between the exercise of strong Indigenous governance, and the successful generation of economic development outcomes (see Cornell 2002; Cornell & Gil-Swedberg 1995; Cornell & Kalt 1992, 1995; Hylton 1999; IOG 1999; Jorgensen 2000; Plumptre & Graham 1999; World Bank 1994). The Harvard Research Project on Native American Indian Economic Development specifically concluded that sustained development on Indian lands has only been possible when their governance has been characterised by genuine decision-making powers (de facto sovereignty), a 'cultural

match', and stable resources, backed up by the effective exercise of authority (Cornell 1993). In other words, jurisdiction and resources are not sufficient, and do not guarantee improved socioeconomic outcomes. More is needed. Organisations also have to govern well, and be perceived as legitimate by their constituents.

If this general hypothesis applies in Australia (and this needs to be investigated in different community and cultural contexts), there may important lessons to heed in the Territory. If Indigenous Territorians are to manage their natural, land and cultural resources, and generate viable local economies, then it may be critical that they are able to exercise effective governance. By implication, initiatives to reshape and build Indigenous governance in the Northern Territory will, minimally, need to address the key attributes identified by Sterritt and the Harvard project; namely, genuine decision-making authority, power, the cultural legitimacy of governance arrangements, resources, representation and accountability.

So what is the state of Indigenous governance in respect to these attributes? Indigenous Territorians already face a number of governance challenges. Some arise from the very issues of jurisdictional overlap and contestation, resource allocation, legitimacy and capacity. Others are linked to the adverse socioeconomic conditions of their communities and lands. The extent of these obstacles has led some commentators to refer to a 'crisis' in Indigenous governance in the Territory. But other challenges are actually the products of Indigenous success. Increasing numbers of Indigenous groups are negotiating resource development agreements, securing native title and land rights determinations, and developing successful enterprises and joint ventures.

This unprecedented combination of obstacles and opportunities has confronted Indigenous Territorians and their leaders with a fundamental task: that of designing and exercising self-governing arrangements for their communities and regions. Governments, in turn, face an equally fundamental challenge: that of designing policy and statutory frameworks that facilitate Indigenous 'governance building'. Do the range of initiatives for reshaping governance that are currently being proposed and implemented address the key attributes that have been identified elsewhere as leading to strong Indigenous governance? And if they are addressing such issues, what local forms and meanings are being given to these on the ground? What other factors and priorities also need to be taken into account in reshaping Indigenous governance in the Northern Territory?

This paper attempts to shed some light on these questions. It begins by providing a brief historical background to Indigenous governance and local government in the Northern Territory. I consider why the issue of Indigenous governance has become a focus for greater policy and public attention recently, and highlight the implications of historical and current policy changes for future governance arrangements.

In the second part of the paper, more detailed attention is given to identifying and analysing the current challenges and issues that will influence efforts to reshape Indigenous governance in the Northern Territory.

The extent to which current initiatives address the broader attributes of strong governance is canvassed, and the solutions and processes proposed in doing so are also examined. The key challenges and issues discussed include:

- the state of community government;
- the regionalisation of governance and service delivery;
- the quest to establish a cultural match or process for governance;
- the implications of Indigenous political aspirations and land rights for governance;
- the suitability of the *Local Government Act* for future governance options;
- the extent and role of governance education and capacity; and
- the vexed issues of government funding and coordination, for Indigenous governance outcomes.

The paper poses questions which are familiar, complex, and have been hotly debated. The answers are not always immediately available or easy to achieve. Some options presented here involve considering ideas that may be difficult or involve radical changes in thinking on the part of stakeholders involved. This seems difficult in the climate of mistrust lingering from the past. Realistically, many outcomes will require inter-generational change. But if governance-building and local-government reform are to be facilitated, then we need to understand the entrenched barriers as well as the possibilities, and commence taking informed action now, even if those actions are 'small incremental steps along a very long road' (Ah Kit 2002).

FROM GOVE TO GOVERNANCE: MILESTONES ON THE ROAD TO REFORM

With the Northern Territory Government now making calls for a reconsideration of statehood (Martin 2003), and given the proposed dismantling of the Aboriginal and Torres Strait Islander Commission (ATSIC) and its representative regional councils, it is timely to reflect on the key milestones of Indigenous political aspirations in the Northern Territory over the last 40 years, and the role and impact of governments with respect to those.

THE BARK PETITION

In 1963, the Yolngu people of Arnhem Land presented the Commonwealth Government with a petition protesting plans to allow mining on their lands. The painting designs on the Petition proclaim the Yolngu traditional ownership of lands on the Gove Peninsula in East Arnhem Land. The typed text, in Gumatj and English languages, sought Parliament's recognition of their ongoing ownership of those traditional lands. The Bark Petition was the first Indigenous document to be officially recognised and accepted by the Australian Parliament.

Although the Petition was unsuccessful (as was the Yolngu leaders' subsequent conduct of the *Gove land rights* case before the Northern Territory Supreme Court in 1968), it was instrumental in paving the way for the effective recognition of Indigenous rights in Commonwealth law. It played a significant part in the persistent claims for constitutional change that were achieved in the 1967 Referendum; in the inquiry into Aboriginal land rights in the Northern Territory and the eventual passage of the *Aboriginal Land Rights Act (Northern Territory) 1976* (ALRA) by the Commonwealth; and in the eventual overturning of the legal fiction of *terra nullius* by the Australian High Court in the *Mabo* case in 1992.

LAND RIGHTS AND SELF-GOVERNMENT

In the 1970s, significant developments occurred nationally in Indigenous affairs policy which had major impacts in the Territory. A new Commonwealth Department of Aboriginal Affairs (DAA) was established, which encouraged Indigenous organisations to incorporate as associations under the Commonwealth *Aboriginal Councils and Associations Act 1976* (ACA) (Westbury & Sanders 2000: 1). Over time, this has had profound effects on the organisational expression of Indigenous Territorians' political voice (see below). In parallel, and in response to growing national and international pressure, Indigenous land rights became a major issue of concern across Australia. In 1976, the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) transferred existing reserved lands in the Northern Territory to Land Trusts representing Indigenous traditional owners. A key product of the ALRA was the establishment of Aboriginal land councils (now four) to support traditional owners in making further claims to lands, and in its subsequent management and development. Today, Indigenous Territorians own approximately 50 per cent of the Northern territory and 80 per cent of its coastline.

In 1978, the Commonwealth Parliament granted the Northern Territory a form of self-government under the *Northern Territory (Self-Government) Act 1978* (Legislative Assembly of the Northern Territory 2002a: 3, 2002b). In many functional areas, however, the Northern Territory Government was constrained in its governing powers. For example, the Commonwealth retained direct responsibility for matters arising under the ALRA, and DAA continued to fund many Northern Territory Indigenous communities and organisations, including for various local-government type services. At the same time, the Northern Territory Government emphasised its 'right to govern' for all its citizens and, in the 1980s and 1990s, took an increasingly oppositional position to Indigenous land rights and claims. This filtered into policy and service delivery issues. Partly as a consequence of this, Indigenous Territorians have tended to look to the Commonwealth to promote and protect their interests, especially with respect to issues which might now fall under the rubric of 'governance'.

COMMUNITY GOVERNMENT COUNCILS AND THE *LOCAL GOVERNMENT ACT*

Shortly after self-government, the Northern Territory Government enacted the *Local Government Act 1978* (LGA) which replaced the previous *Local Government Ordinance 1954*. As well as providing for municipal governments in urban areas, the LGA enabled the incorporation of community government councils in remote areas. At June 2000, when the Territory's population represented 1 per cent of the total Australian population, the Northern Territory had 65 local governing bodies which accounted for nearly 10 per cent of all such bodies in Australia. These included six municipal councils, 31 community government councils and 28 association councils constituted under the Commonwealth ACA.

The LGA made provision for Indigenous people to determine certain representative arrangements and electoral processes that were often different to those set down for the municipal councils. Some community councils have explored the extent of flexibility within the LGA, in order to establish governing structures and arrangements that are more responsive to local Indigenous political systems and social organisation (see for example Edmunds 2002).

A potential advantage of the LGA is that it enables community government councils to assume a wide range of functional responsibilities ranging from the usual infrastructure and essential services, through to community welfare, education and economic development. However, authority must be backed by capacity, infrastructure and resources in order to be effectively exercised. To date, very few (if any) community government councils have been able to undertake the full range of statutory functions possible under the LGA. Nevertheless, they have often undertaken a much wider of community, social and cultural services than is usually the case for local government councils in other parts of the country, which has served to further strain their capacities and funds.

Unlike the rest of Australia, the LGA requires communities to provide majority support for a local government before it can be constituted. Also, unlike local governments in all other States, Northern Territory community government councils (as forms of local government) and municipal councils do not have functions of development planning or building regulation. The Northern Territory Government retains those functions, except on Aboriginal land (Local Government Association of the Northern Territory (LGANT) 2003: 3–4). Approximately 80 per cent of current community governing bodies in the Northern Territory are situated on Aboriginal inalienable freehold land. In such contexts, community governing bodies must operate within the statutory context of the ALRA, which provides protection and recognition of the rights and interests of traditional owners over land access, use, planning and management.

During the 1980s and 1990s, the establishment of community government councils occurred within a highly charged political environment characterised by distrust and adversarial relations between government and Indigenous people. The LGA was received with considerable scepticism on the part of land councils who feared local government councils would undermine their power base, but more importantly, erode the rights of traditional owners (Coles 1999: 5; also Crough 2001; Mowbray 1986, 1999; Westbury & Sanders

2000). While the former has not come to pass, there continue to be unresolved problems over land use and development planning within communities on Aboriginal freehold, and between community residents and traditional owners.

Some residents historically came to live in particular communities by choice or as a result of their forced re-location by government. Today many of those same residents have developed strong attachments to the communities in which they primarily reside. Other community residents are traditional owners of the land on which communities have been built, and they have additional statutory rights and interests in that land. In many communities customary law and decision-making is associated with traditional land ownership. Some Indigenous residents are closely related to traditional owners—by kinship, marriage, and ceremonial alliances—while other Indigenous residents are not so related. Still other residents are non-Indigenous people, usually staying for shorter periods of time, but often employed in full-time jobs within key service delivery and governing bodies.

The relationship between community councils—which have wider responsibilities to represent all community residents—and traditional owners of those same lands, has remained uncertain and sometimes extremely tense. The uncertainty has potentially increased under the *Native Title Act 1993* which contains significant powers of extinguishment (although that legislation also includes useful agreement-making mechanisms) that could impact on the actions of both community councils and traditional owners. The uneasy relationship between community councils, land councils and government agencies partly reflects these and related matters of housing ownership, the rateability of land, rental revenue raising, and relative powers of land development in remote communities. But it also arises out of the long-standing dispute in the Territory about the historical adequacy and allocation of government funding to Indigenous communities. A number of these difficulties have been recently described by David Ross, Director of the Central Land Council who also canvassed options for the equitable negotiation of different Indigenous rights and interests in communities (Ross 2003).

A recurrent difficulty for many remote community councils is the issue of scale. Some 78 per cent of the Northern Territory population is serviced by the six municipal councils. The average population serviced by Indigenous community and association councils is 670 persons (LGANT 2003: 4). In other words, many small and remote community councils have not had the population size, economies of scale, the resources, administrative systems, personnel or management capacity to meet either their existing or potential service obligations. In Central Australia alone, a recent government paper reports that there are councils that have experienced turnover rates of key staff of over 300 per cent in some years, and that the average length of stay of non-Indigenous CEOs is less than a year (Coles 2004: 5). As a result of these and other factors, many community councils struggle to meet their infrastructure and service delivery commitments to residents (Commonwealth of Australia 2003: 22).

The ongoing financial, representative and administrative failings of community councils are seen by many commentators as confirming a failure of Indigenous governance in general, and past government policy

in particular. However, the causal factors are more complex and should also take into account the low education outcomes in remote communities, the impact that has on community management capacity and financial literacy, as well the less well-documented shortfalls in governance education and training at the community level in the Northern Territory.

THE GOVERNANCE ENVIRONMENT IN COMMUNITIES

A contributing factor in the poor governance performance of many community councils is the explosion of incorporated organisations over the past 25 years. Today, community government councils are simply one amongst many Indigenous organisations operating in communities. There are organisations providing legal, health, child-care, recreational, aged care, cultural, employment, and training services, alongside incorporated women's centres, art centres, and community stores. There are also incorporated organisations which cover wider regions and have offices in major communities; for example, regional land councils and land-management organisations, royalty associations, outstation resource agencies, and health services. These have been overlaid by ATSIC regional councils.

Today there are hundreds of separately incorporated organisations operating across the Territory. Many are of such small scale that continuity of knowledge, financial management, administrative systems, and sustained capacity within them are hard to achieve. They are often dependent on non-Indigenous staff working in key management positions, and hence are vulnerable to the extent of their goodwill and financial professionalism. While government programs increasingly require greater financial accountability from community organisations 'upwards' to governments, there has been little coordinated attention paid to building up the community financial management and literacy skills that are needed for basic organisational competence. The result is that community organisations suffer a cycle of financial boom and bust, sometimes ending in very public financial disasters from which residents invariably suffer the most.

Importantly, what these organisations have provided is a mechanism through which Indigenous leadership and representation has been carved out and exercised at local and regional levels. Many of the Indigenous board members of community organisations are also executive members of powerful regional organisations. Thus, the overall 'governance environment' of communities is characterised by complex organisational relationships and political networks. Sometimes the activities of organisations (together with those of their various government agency sponsors) are overlapping, sometimes they are fiercely territorial, and this can frequently frustrate collaboration and coordination.

Within many Northern Territory communities, organisations have become silos of factionalised power. Community residents have often been unable, or unwilling, to prevent people in positions of power from using their local government or other powers to boost their own personal fortunes (political and financial), or from changing the rules to suit their own or their family's interests. Self-determination has sometimes been exercised as 'selfish determination'.

There were well-recognised advantages to organisational incorporation in the 1970s and 1980s (see Coombs 1994:171–86). However, today the legacy of this multiplicity of organisations has undoubtedly been to exacerbate the already fragmented polity of Indigenous decision-making, authority and planning within communities. This segmentation has arguably been exacerbated by the multiplicity of government programs which enforce a strong separation of funding lines, implementation and reporting. In some situations, particular Indigenous organisations or families have become so powerful, that both community councils and local traditional owners are effectively marginalised. As a consequence, on the occasions when Indigenous leaders, traditional owners or community councils have sought to develop 'whole of community' or regional development strategies, they have been severely impeded.

Some commentators (both Indigenous and non-Indigenous) are now questioning the continued viability of the extent of small-scale incorporation for various purposes (Galligan 1999; Smith 2002b; Yu 2002). Pearson's comments on this point, in respect to the operation of native title representative bodies in native title matters, are equally pertinent to the arena of community governance:

We cannot have 32,000 incorporated organisations. There has got to be a point at which people surrender their jealous control to more rational regional service delivery ... at the end of the day if we are going to fuel the fantasy that we need to give absolute local control to people, and you are just giving everybody five bucks each, that is not going to result in good administration ... There has got to be a point at which people of a region have to understand that, if their interests are going to be protected ... then they need to put aside their local differences, to get behind and have membership of a regional organisation (N. Pearson cited in Commonwealth of Australia 1994: 324–5).

It can similarly be argued that the building of effective Indigenous governance at the community and regional levels will be considerably hampered by the current plethora of small, competing organisations. This difficulty has already been noted by some recently established Regional Authorities (Kurrupuwu and Cleary 2003). In reshaping Indigenous governance at the community and regional levels in the Northern Territory, the issue of organisational complexity at the community level will need to be addressed. Can the localism that is a deeply embedded feature of Indigenous society, and which expresses itself in organisational disputation and factionalism at the community level, be 'quarantined' from adversely undermining regional governing structures? And equally, can the obvious value to Indigenous people of the cultural and social capital associated with local autonomy be adequately 'protected' when political representation is aggregated up to a regional scale? Some options to address these questions will be further explored in this paper; some are already being explored by Indigenous groups and governments.

NORTHERN TERRITORY GOVERNMENT POLICY INITIATIVES

In response to these issues of governance funding, scale and effectiveness, Northern Territory governments have launched a number of policy and program initiatives aimed at actively giving particular shape to Indigenous governance and self-determination, especially at the community level. Over the previous two

decades, a parallel trend amongst government departments has been to centralise offices and staff. In combination, the overall (if unintended) consequence has been that government has 'vacated the field' of hands-on community development. An annual report by the Northern Territory Office of Aboriginal Development in 1995 forthrightly conceded that: 'In some situations, relating to community management, it must be asked whether self-determination, in its implementation, is equivalent to abandonment' (cited in Mowbray 1999: 174).

The exception to abandonment has been where the Northern Territory government has found it necessary, under the auspices of the LGA, to unilaterally intervene to pick up the pieces when community councils and organisations have financially imploded. However, even here departments and Indigenous organisations have found it difficult to sustain a collaborative approach to provide the ongoing developmental support needed on the ground after community organisations fail. More recently, Northern Territory government policy initiatives mean that the Department of Community Development, Sports, Arts and Cultural Affairs (DCDSCA) is now refocusing the work of its field staff onto a more engaged approach to community and regional development; which holds the promise at least of more active support for Indigenous governance building.

In the late 1990s, the previous Northern Territory government launched a policy initiative known as the *Reform and Development Agenda* (RADA). Implemented by the then Department of Local Government, RADA sought to amalgamate the existing 65 local governing bodies in the Territory into around 20 'larger and more sustainable' councils—ideally representing and delivering services to at least 2,000 people. Local government funding arrangements from the Northern Territory Grants Commission were changed to encourage smaller councils to amalgamate. A key goal of RADA was the creation of 'Indigenous governments with legitimate authority'. It was anticipated that this might require the design of structures to provide roles for traditional owners.

RADA was the antecedent to many similar objectives now enshrined in the current Northern Territory Labor government's *Building Stronger Regions, Stronger Futures* (BSRSF) policy, which similarly seeks to encourage, albeit voluntarily, the amalgamation of community councils into larger Regional Authorities. Based on an attempt to 'rethink regions ... and [their] economies', the policy aims to enact 'a radical transformation' in the method of service delivery and governance. A particular focus of the policy is the voluntary creation of new forms of regional Indigenous governance, referred to as Regional Authorities, which are linked to a generation of more sustainable regional development (Ah Kit 2003: 2–3).

New Regional Authorities will have the jurisdictional power to govern as forms of 'local government', make by-laws for the areas they cover, and progressively undertake a wide range of service delivery and functional roles (Ah Kit 2003: 13). They are also currently proposed to be structures that reflect Indigenous cultural relationships and communities of traditional interest. It is envisaged that they will be assisted by the operation of a Capacity Building Fund and a Regional Development Fund.

This latest policy initiative has the potential to significantly reshape Indigenous governance in the Northern Territory, especially in light of the imminent full dismantling by the Federal Government of ATSIC and its regional councils. Major issues are still to be resolved in regard to the establishment of these Authorities, including their coverage, constituency, organisational structures, funding, transitional arrangements, and their relationship with constituent communities and with traditional land owners. A number of these matters are discussed in the second part of this paper.

A major initiative which intersected with Indigenous political aspirations during the second half of the 1990s was the Northern Territory government's campaign for Statehood. The 'Statehood Convention' convened in 1998 created such controversy over the process of its establishment, procedural matters and a 'lack of recognition of Indigenous Territorians', that land councils and ATSIC boycotted the Convention and campaigned for a 'No' vote (Northern Territory Government 1999). In 1998 the majority of Territorians voted against Statehood in a Territory-wide referendum. Investigations subsequently carried out by the Northern Territory Standing Committee on Legal and Constitutional Affairs to determine why the referendum failed, noted that 'for an inclusive constitutional process to be effective, Aboriginal interests and the protection of their rights had to be seriously addressed, if Statehood was to be achieved' (Legislative Assembly of the Northern Territory 2002a: 1).

In May 2003 the current Chief Minister, Clare Martin, referred to the Statehood agenda. She suggested that an integral component of any future campaign process would be the recognition of, and consultation with, Indigenous Territorians (Martin 2003). And reference was made to the historical significance of the Kalkaringi and Batchelor conventions, and the need to protect rights won under the ALRA, within any statehood process.

There is another important reason for why Indigenous rights and interests are integral to future statehood for the Northern Territory. The Territory's economy is increasingly and strongly linked to Indigenous economic development and ownership of land. There is not a separate 'Indigenous economy' standing outside the mainstream Territory economy. If the causal link between strong governance and economic development outcomes noted at the beginning of this paper holds true, then there may well be grounds for arguing, in turn, that the future of Northern Territory statehood and Northern Territory-wide economic progress is directly related to the creation of strong Indigenous governance.

INDIGENOUS POLITICAL ASPIRATIONS AND ACTION

The political aspirations of Indigenous Territorians have often been at odds with the policy objectives of governments—whether those be Northern Territory or Federal. In August 1998 the Kalkaringi Indigenous Constitutional Convention was held and became a powerful forum for Indigenous concerns about governance and rights. The Kalkaringi Statement detailed 'concerns Aboriginal people have with governance in the Northern Territory', and asserted the right to self-determination, land rights, the protection of sacred sites, and the recognition of customary law. It also emphasised the need for human rights for Indigenous peoples

in areas of essential services, infrastructure, and community justice mechanisms. Political participation for Indigenous peoples, and the need for transparent and open government, were also included in the Statement.

The Kalkaringi Statement resolved to withhold support for Statehood. In late 1998, after the Statehood referendum, the Batchelor Indigenous Constitutional Convention was held and produced a document entitled *Standards for Constitutional Development*. During that Convention, the Kalkaringi Statement was endorsed and further resolutions were passed focusing squarely on governance, sovereignty, self-determination, jurisdictional rights and constitutional issues. The Northern Territory *Indigenous Constitutional Strategy* amalgamates the policy positions set out at the two conventions.

A number of Indigenous groups and leaders continue to support and promote these political objectives, including via the establishment of large Indigenous governments in the Northern Territory. For example, the Combined Aboriginal Nations of Central Australia actively pursues the principles set out in the Kalkaringi Statement and argues that 'The Northern Territory Constitution must contain a commitment to negotiate with Aboriginal peoples a framework agreement, setting out processes for the mutual recognition of our respective governance structures, the sharing of power and the development of fiscal economies'. They continue to explore mechanisms for the creation of one single Indigenous government across the same large region as that covered by the Central Land Council. In other words, much larger than even those regions currently being promoted by the Northern Territory Government's BSRSF policy, but with more jurisdictional and funding clout.

A major player in shaping the direction of Indigenous politics in the Northern Territory have been the land councils established under the ALRA. The Northern and Central Land Councils represent an extremely large-scale form of regionalism that has arisen out of a statutory base. There have been several attempts to 'disaggregate' the land councils into smaller sub-regions. 'Breakaway' Indigenous groups have attempted to establish their own smaller councils—suggesting again the pull towards localism (Martin 1995; Morton 1994). As a result, governments have intervened, the most notable example being the Reeves review and report which recommended that the land councils be replaced by 20 smaller regional councils (1998). That intervention was largely adversarial, for the classic reason of weakening a political voice that is at odds with government agenda, and also because of questions about the effectiveness of the land councils' own internal governance (ANAO 2002).

In the early days of their operation, the land councils were characterised as *de facto* forms of Indigenous government in the Northern Territory—though by and large they have not engaged in the service delivery or community development roles that community government councils have (Altman & Dillon 1988). However land councils have increasingly had to share the political arena with other powerful Indigenous regional organisations in the Northern Territory. Progressively, they established a system of representation by senior traditional owners on their governing councils, and developed a set of internal sub-regional 'wards' and offices that reserve the autonomy of Indigenous systems of ownership at the local level.

The political lesson of the Northern Territory land councils is that regardless of the history of adversarial relations between land councils, governments and some sectors of the resource industry, and despite worrying fluctuations in the land councils' own governance capacity, they have become extremely influential representatives of Indigenous land interests and rights. Today they are major power brokers within Indigenous politics, and important advocates of Indigenous engagement in the development of regional economies (see Altman & Dillon 1988; Altman, Morphy & Rowse 1999).

Indigenous political aspirations over the past three decades have had to address the governance issue of representation and scale. There has been an inclination—amongst some Indigenous commentators and researchers—to emphasise the *a priori* cultural 'rightness' and therefore political pre-eminence of Indigenous localism, over that of larger scale coalitions and congeries of groups (see Martin 1995; Sanders 2004; Sutton 1995). However, as others have pointed out, there is also a long history of Indigenous regionalism within the Northern Territory that operates alongside the pull of atomism and small-scale localism. 'Regions' are emerging as a result of Indigenous, historical and government actions (Morphy 1999).

The Northern Territory Government recently called upon Indigenous people and non-Indigenous stakeholders to 'abandon the myth that the discrete community can be regarded as a viable unit in terms of service delivery' (Ah Kit 2003: 6). Such communities are themselves colonial constructs, and do not exist in splendid isolation from each other (Smith 2002b; Westbury & Sanders 2000). On the contrary, many of their residents are traditionally connected into regional kin networks and alliances, and their social, economic and ceremonial systems have to be seen in a regional context (Morphy 1999). Perhaps just as importantly, today Indigenous communities in the Territory are also connected to major service centres, networks of regional mobility, linked into a federal structure, a national economy and a globalising world.

Today, the Indigenous political inclination towards larger coalitions is witnessed in the ongoing establishment of centralised and regional service-delivery and representative agencies. This is especially evident in the areas of health, housing, royalty distribution, resource development, and arts and crafts industries. Interestingly, while there has been a residential movement of Indigenous people in the Northern Territory away from the large communities to smaller homelands or outstations (i.e. from the large to the small residential scale), there has been a parallel (and not unconnected) political movement towards regionalised forms of service delivery and organisational self-determination.

With the proposed dismantling of ATSIC Regional Councils, there will be a power vacuum at the regional level. Indigenous leaders might seek to populate this vacuum with other forms of regional governance. In which case, political and service-oriented regionalism, via Indigenous as well as government initiative, may well increase.

WHERE DO THE MILESTONES LEAD?

This tangled political history produced a highly adversarial culture in the Northern Territory in the 1980s and 1990s, and led to ongoing tensions between the Northern Territory and Commonwealth Governments regarding Indigenous self-determination and governance. The legacy of those oppositional relationships will have to be overcome, and replaced by a more inclusive negotiated approach, if there is to be any progress in reforming the architecture of Indigenous governance in the Territory.

The road from Gove and the Bark Petition has witnessed many detours and roadblocks, but Indigenous political aspirations and Northern Territory Government policy initiatives over the last three decades consistently seem to lead back to the fundamental importance of governance and representation for Indigenous Territorians.

Considerable support and flexibility will need to be given to Indigenous experimentation with structures and processes that will lead to this outcome. The 'two-way' trajectory of Indigenous institutional organisation (namely, residential decentralisation and localism on the one hand, with political centralisation and regionalism on the other) has important implications for future initiatives to reshape Indigenous governance.

WHY IS INDIGENOUS GOVERNANCE IN THE SPOTLIGHT?

Some 40 years after the Bark Petition, many Northern Territory Indigenous people are legally recognised as traditional owners of land, with significant rights and interests protected under both Commonwealth and Northern Territory legislation. At the same time, some Indigenous and non-Indigenous commentators argue there is a 'stark crisis' of governance facing Indigenous Territorians and their communities (see Ah Kit 2002, 2003).

While there are instances of innovative governance arrangements at the community level, there is little doubt that residents and their councils are facing multiple governance challenges on several fronts. Not all of these are necessarily of their own making, nor are all factors directly under their control to alter.

DEMOGRAPHIC TRENDS

In 2004, the general economic prognosis for Indigenous Territorians is that, in many respects, 'things are getting worse' and at an accelerated rate (Ah Kit 2003: 5; see also Altman 2003; Taylor 2003a). The demographic trends indicate that Indigenous Territorians are a large and growing share of the Northern Territory population: 30 per cent of the population and about 50 per cent of the land base is Indigenous. The recent work of John Taylor (2004) provides a sobering picture of the future for some Indigenous communities where demographic projections indicate that within 10–20 years, what we now call 'remote settlements' will

in fact be 'remote towns'. But if significant improvement is not made in people's socioeconomic well-being, then the costs of the current 'crisis' in Indigenous disadvantage and governance—to both governments and Indigenous Territorians—in the future will escalate dramatically.

WELFARE DEPENDENCY

Income data show that Indigenous Territorians receive only 4 per cent of the total employment income and represent 30 per cent of the unemployed (which would rise to 64 per cent of the unemployed if the Community Development Employment Projects scheme (CDEP) was included). Over 60 per cent of the total Northern Territory Indigenous income is from welfare payments; compared to 9 per cent of non-Indigenous income (Taylor 2003a). Furthermore, over 70 per cent live on Aboriginal-owned land where there is a massive job deficit that is likely to grow in light of Indigenous population projections (Taylor 2003a: 4).

While welfare payments enable many Indigenous people to continue residing on and productively managing their lands (Altman 2002, 2003), the high level of community reliance on public sector transfers and grant income is also indicative of a fragile dependence. Families are vulnerable to unexpected economic change and financial mismanagement, and become locked into a 'feast and famine' income cycle (Pearson 2000; Smith 2002a; Westbury and Sanders 2000). There is little chance of generating sustainable local, let alone regional economies in the Northern Territory, when the majority of Indigenous community residents are reliant on welfare income.

EDUCATION AND HEALTH OUTCOMES

One area of crisis for Indigenous governance is the current state of educational outcomes in the Northern Territory—poor outcomes in education directly contribute to low governance capacity. The review of Indigenous education in the Northern Territory (Northern Territory Department of Education 1999), judged that Year 7 level English literacy and numeracy are necessary for any person to function effectively in the wider Australia community. It also concluded that Year 10 level literacy and numeracy are required for any management role in communities. The review committee reported that Indigenous students in the 11–16 year old age group in remote communities were averaging only around Year 2–3 levels of literacy and numeracy (i.e. the level of 6–7-year-old non-Indigenous students). The entrenched health and lifestyle problems that continue to be experienced by many Indigenous Territorians compound poor learning and educational outcomes across generations of Indigenous families.

Education and health are critical foundation-stones for effective governance. Grossly inadequate literacy and numeracy levels, and poor health, mean that Indigenous people will continue to remain reliant upon others for important aspects of their community management and decision-making. Poor outcomes in these areas will continue to substantially impede Indigenous aspirations for self-determination, meaningful participation and effective representation (Northern Territory Department of Education 1999: 18).

SCALE AND SPATIAL DISTRIBUTION

The geographic distribution of the Indigenous population is another critical factor for reforming the architecture of Indigenous governance. The Northern Territory covers almost 16 per cent of the Australian continent and there is enormous decentralisation of the Indigenous population. For example, there are only nine discrete Indigenous communities with populations of between 1,000 and 2,000 in the Northern Territory, all of them located in the Top End. There are another 50 localities with 200–999 inhabitants. The overwhelming majority of discrete Indigenous residential locations—some 570—are widely dispersed across the Territory and have populations of less than 50 people (Taylor 2003a).

This spatial distribution immediately precludes the majority of Indigenous people from direct access to the key regional centres of economic activity and service delivery. It also confronts them with high cost disabilities and capital depreciation, diseconomies of scale, and limits to local infrastructure, resources and staffing (see Smith 2002c; Westbury and Sanders 2000). There are important elements of cultural preference about residential decentralisation and smaller communities. However, the trend towards organisational centralisation for specific political, economic and service functions suggests that Indigenous leaders have identified advantages for communities and outstations in having effective regional agencies to deliver such key functions.

THE IMPLICATIONS FOR COMMUNITY GOVERNANCE TODAY

The situation at the moment in the Northern Territory appears to be a far cry from the goal of 'strong effective governance'—regardless of the cultural perspective or the benchmark of 'good governance' that one adopts. Community governance has been characterised by one Indigenous Territorian as suffering from 'organisational bankruptcy', 'institutional incapacity', ineffective service delivery, fraud and corruption by staff and leaders, a high turnover of key non-Indigenous staff (the stay of town clerks is an average of 11 months), and an 'historical legacy of poor governance' that has been widespread for many years (Ah Kit 2003: 1).

It has also been suggested that the extent of the entrenched socioeconomic barriers and poor governance experienced by Indigenous people has been exacerbated by governments in Australia 'governing for dependence, not for development' (Altman 2002: 4; Northern Territory Government 2002: 6). Many Northern Territory community government councils and organisations are locked into an essentially mendicant position. The majority of services and programs they administer are publicly funded, and organisations are tied to 'stop-start' program funding controlled by a multitude of government departments, which are themselves locked into a silo mentality and their control over separate program outcomes and reporting requirements.

In some ways this relationship is no different to many other Australian communities who are similarly dependent on public funding and grant cycles. But the extent of problems and entrenched disadvantage

being encountered in many Indigenous communities today suggests there is both a qualitative and quantitative difference between the extent and impact of financial dependence and mismanagement that is being experienced by Indigenous community residents.

In response to these impacts, in 2003, the DCDSCA developed a new community council 'risk assessment' compliance audit, examining the executive management, financial and service-delivery responsibilities required of councils under the LGA, and the likelihood that councils would experience monetary loss and fail to deliver services to their residents. The procedure requires all councils to be rated and reviewed against predetermined criteria, with remedial action being required of councils. Councils are rated as being at 'low risk', 'moderate risk', 'high risk' or 'dysfunctional' in response to the audit and the assessment of risk.

There are a number of areas where this risk assessment process needs to be refined, for instance, by reference to relevant national standards and benchmarks, and by a more strategic connection being made by DCDSCA between the assessment of risk and the need for constructive community development follow-up. Nevertheless, all Northern Territory community councils and other local government bodies have been assessed over 2003, and a stark picture has emerged. Of the 58 councils, over 50 per cent have been assessed as being either dysfunctional or at high risk (10 and 21 councils respectively); with a further 36 per cent assessed as being at moderate risk (21 councils). Only six councils in the Northern Territory have been assessed as being at low risk in terms of their performance under the LGA.

Dysfunctional and high risk councils were said to be characterised by a combination (and different degree) of the following: inadequate staffing and management structures, lack of suitably qualified clerks, administrative mismanagement across a range of areas, ineffective and inefficient use of resources typified by a marked deterioration in financial position, poor or no service delivery, and non-compliance with statutory reporting and regulatory requirements. While departmental staff feel there have been improvements in council administration since these first audits were carried out, there is still concern about the generally low levels of governance experience and participation amongst Indigenous council members in communities.

When the poor financial and management performance of many community councils are combined with organisational reliance on public funding, high rates of unemployment and welfare dependence, low levels of adult literacy and numeracy, poor health, remoteness and diseconomies of scale, then there arguably is a 'crisis' in governance in many communities. Given these multiple obstacles, the overall outlook for developing robust local economies and strong governance arrangements becomes extremely challenging in the Northern Territory. Some of these obstacles are under the direct control of Indigenous residents and their organisations. Others are not, and will require a commitment to unified action by governments.

RESHAPING INDIGENOUS GOVERNANCE: KEY INITIATIVES AND OPTIONS

In 2003, the Northern Territory Minister for Community Development challenged Indigenous organisations to 'develop new, innovative strategies to overcome the cancerous ideology of despair' (Ah Kit 2003: 1) that has engulfed many communities. He also challenged government to operate in partnership with Indigenous people in order to develop forms of governance that enabled Indigenous control over lives and communities. The focus on 'governance' and calls for reforms at the local and regional levels are not coming just from government. There is a hard-headed conversation going on within many community organisations and amongst Indigenous leaders in the Territory about the need for action at a number of different levels. Some possible options and issues for consideration in reshaping Indigenous governance in the Northern Territory are canvassed in this section.

REGIONAL AUTHORITIES: A NEW ERA IN GOVERNANCE?

The push towards the regionalisation of governance appears justified from certain perspectives—both Indigenous and government—but it raises fundamental challenges of power, jurisdiction, scale, autonomy, representation, process and structure. The establishment of Regional Authorities under the BSRSF policy is at an early stage, but a number of issues and lessons are already apparent.

A particular issue in the Northern Territory has been the societal and geographic level at which regionalised forms of governance and self-determination can be constructed, that will be both capable and culturally endorsed by Indigenous people. The history, cultural diversity, and geographic distribution of Indigenous Territorians means that there will not be a single ideal model for regional governance. Governance will require innovation, and different structures and processes will suit different groups.

But while there is growing policy recognition that 'one size' will not suit all governance situations, this does *not* mean that 'all sizes are equally good'. In fact, not all structures are going to be as equally effective in facilitating effective Indigenous governance. And some processes of governance have been demonstrated to be less effective than others.

CULTURAL PRINCIPLES FOR GOVERNANCE: INDIGENOUS SUBSIDIARITY

In order to examine which structures and processes might better support regionalised rather than small-scale governance, it is important to look at the deeper principles underlying Indigenous traditional social and political systems. Indigenous people are skilled at operating across multiple social and political domains within their own societies. Individuals and groups interact across a complex set of overlapping rights, interests, relationships and alliances. These links are dynamic and subject to strategic negotiation, enabling different groupings of people to congregate at different scales, and for different purposes—from the local to the regional.

In Indigenous societies, certain scales of social aggregation are associated with 'proper' authority and decision-making about particular kinds of matters. But these aggregations are fluid in their composition and stability. For example, religious, economic and political interests in land are not held exclusively by primary owners. Rather, rights and responsibilities overlap and are dispersed across a range of people and interests groups. Extended families deal with particular domestic matters and localities; larger groups of extended kin may come together for particular economic activities; 'clans' may meet across larger regions for ceremonial and dispute-resolution purposes; and responsibility for the conduct of particular ceremonies is distributed across kin categories of ownership and management resident in different locations.

There are also environmental bases for large-scale regionalism. For example, particular riverine and drainage basin systems have been reported to provide a basis for regional cultural identities and 'company' relationships over long distances for the purposes of economic exchange. The consequences of something 'big' or important happening with respect to land, sites and important resources draws together larger groups of people who, in other circumstances, might not commonly form a decision-making or residential grouping. Furthermore, there are important political and ceremonial circumstances where the autonomy of individuals and small groups is limited under traditional law (see more detailed discussion in Smith 2001). All these are prime examples of 'governance subsidiarity' in a traditional form (Smith 2002b).

Subsidiarity is a principle suggesting that issues should be handled by the most competent and appropriate authority available. This means that no higher centralised level or scale of political aggregation should undertake functions or tasks which can be performed more effectively at an immediate or local level. Conversely, centralised forms of government should undertake initiatives which exceed the capacity of individuals or communities acting independently. Subsidiarity is ideally, or in principle, one of the features of Australian federalism. Arguably, subsidiarity also adheres to forms of traditional Indigenous political, social and economic agency, such as those described above. In other words, there is a cultural geography and sociology to identifying the politically responsible group for Indigenous decision making, participation and representation. These Indigenous principles and preferences will have significant impact on governance structures and processes—for the better if a 'resonance' can be found between them and contemporary governance arrangements; and for the negative if they are ignored and then act to undermine processes and functions.

Today, the traditional propensity for subsidiarity is evident in Indigenous people's active engagement in forming regional organisations for service delivery and political presentation, while at the same time asserting their apparent preference for small-scale residential localism.

If there is any preferred strategy or emerging new 'tradition' of Indigenous governance in the Northern Territory, it could well be one based on the Indigenous propensity for a dynamic form of subsidiarity. Coombs (1994: 131–43, 174–82, 220–30) has labelled this phenomenon 'bottom-up federalism'. It occurs when autonomous local groups (and perhaps even organisations) form regional federations or coalitions for the shared purpose of political representation and service delivery, and attempt to do so without significantly

sacrificing identified areas of their local autonomy. Other writers have subsequently proposed similar strategies (see Ah Kit 2002; Sanders 2004; Smith 2002b; Westbury & Sanders 2000; Yu 2002)

THE ESTABLISHED REGIONAL AUTHORITIES

The question remains, however, as to what will comprise the most effective 'cultural geographies' for Indigenous regions, and the workable forms of subsidiarity. How will Indigenous regional governance mesh with systems of traditional land ownership? The principle of Indigenous 'traditional subsidiarity' suggests that this will be the subject of negotiation in the early stages of every Regional Authority process. Some newly constructed regional geographies of governance comprise an essentially Indigenous constituency, living on Aboriginal-owned land. But other regional geographies for governance in the Northern Territory (especially if enacted under the LGA) might consist of a mix of land tenures and have significant non-Indigenous populations in residence. Finding innovative solutions to the question of representation and legitimacy will be needed in these circumstances.

To date, there have been three Regional Authorities established in the Northern Territory. All are on Aboriginal freehold land, but have marked differences in their structures, geographic and population coverage. The Tiwi Island Local Government (TILG) was created in July 2001. It was effectively the first 'new' regional government under the LGA to be established as part of the previous government's RADA policy. Its genesis can be traced back to the willingness of Tiwi people to engage with local government—they formed some of the earliest community government councils in the early 1980s. Early momentum for TILG can be traced directly to the operation of the Tiwi Land Council (from 1978) and that council's strategic submissions and reports undertaken during late 1990s to negotiate a much wider form of regional Tiwi government, based on a direct relationship with the Commonwealth (Campbell 2001).

TILG's island region and boundary are easily defined, covering approximately 8,000 square kilometres. TILG is unique in the Northern Territory in that it covers the total land area of one language group. Its structure consists of four elected community management boards who are selected from four 'skin' groups in those communities. These management boards replaced the existing community government councils. The Tiwi Land Council also conducts elections in the four Tiwi clan groups which provides representation of eight traditional owners via the Land Trust set up under ALRA (i.e. 8 from Land Trust and 9 members nominated by Community Management Boards). It is a structure that was clearly designed to bring together the Tiwi Land Council and the local governing body; though this has not been particularly successful. TILG had significant early problems, most notably owing to lack of adequate financial and administrative systems and staffing.

Thamarrurr Regional Council was established in March 2003, replacing the previous Kardu Numida Government Council, and covering 5,000 square kilometres, including the main community of Wadeye and surrounding outstations. Thamarrurr means 'coming together to work together' and in the context of new governance arrangements has been translated locally to also mean 'making decisions with one voice'.

Thamarrurr Regional Council's representation system is based on 20 land-owning groups which are specified under its constitution; each of those groups may be represented on Council by two persons. Membership of each land owning group is listed on a Thamarrurr electoral roll maintained by the clerk of the Council. The method of election by each group is by agreement between the persons who belong to that land owning group and who are eligible to participate in the election' (Thamarrurr Regional Council Constitution 2003). The recent election was carried out through land owning group election meetings—numerous meetings conducted over a couple of weeks.

The Thamarrurr Regional Council's constitution specifically attempts to harmonise its functions with those of the ALRA. Its Constitution provides that it may enter into land use agreements under the ALRA with the Daly River/Port Keats Land Trust. In an attempt to harmonise Thamarrurr activities and the traditional land responsibilities of 20 land owning groups, section 11 of the Council's Constitution established a Land Management Committee for each land owning group that can make decisions, 'to the extent possible under ALRA, relating to development and infrastructure on the land of the traditional owners who belong to that group' (Thamarrurr Regional Council Constitution 2003).

Over the past two years the Thamarrurr Community Government has participated as one of the pilot sites under the COAG-endorsed ICCP which has been supported via a written Partnership Agreement with the Northern Territory Govt. This pilot has made major demands upon the emerging Government, but has also provided critical areas of support for new governance processes.

Nyirranggulung-Mardrulk-Ngadberre Regional Council was established in April 2003 and covers the community areas of Barunga, Manyallaluk, Mardrulk and Wugularr, as well as Werenbun—28,700 square kilometres. Its structure comprises a maximum of 47 members with 12 councillors based on component language groups from Barunga and two others; 14 drawn from constant outstations and communities from Mardrulk community area; 12 from Wugularr according to language groups and two others; and four from Werenbun. The Council's structure covers at least six language groups. These groups form community management boards for the five community areas, which in turn comprises a Regional Executive of 20—four from each of the five communities. The Council's constitution specifies that the Executive should reasonably try to comprise an equal number of persons from Dhuwa and Yirritja moieties, and a balance of gender and age groups. Its constitution also specifies that ten senior cultural persons—'junggayi' may attend Executive and participate in the selection of members. The meeting cannot proceed without at least five of those junggayi present.

The Council's history can be traced to the established operation of powerful Indigenous organisations in Katherine, in particular the Jawoyn Association. Further, its history can be traced to joint political action in respect to land claims, to regain lands at what is now Nitmiluk Park, the impact of the Coronation Hill dispute and Inquiry, and to the more recent valuable experience of regionalised Indigenous service delivery organisations in the area.

Importantly, all these Authorities operate as forms of local government under the LGA; that is, they have a specific type of jurisdictional power as a third tier of federal government in Australia. The Northern Territory Government's BSRSF policy suggests that their responsibilities could be enhanced in the future, by way of 'partnership agreements' with government. However, before that potential can be realised, issues of capacity, effectiveness and legitimacy loom large.

It is likely that emerging Regional Authorities will co-exist with community councils for the foreseeable future. Furthermore, all existing Authorities have residential communities within their area; some with management boards replacing their Councils. These communities will continue to demand different forms of local autonomy within any regional arrangements. The legitimacy of Authorities will depend on how well they are seen to address these issues of autonomy. It will be vital for Authorities to develop subsidiarity mechanisms which clearly spell out the relative allocation of roles and responsibilities between the local and centralised parts of their governing structures. The effectiveness of regionalised governance will also remain inextricably linked to the competence of community governance arrangements for some time to come. In fact, strong community governance should ideally act as the building brick for strong regional governance.

Mechanisms for addressing different geographic and cultural interests will also need to be explored in regional governance institutions. To date, options explored by the existing Authorities include: recognising discrete clan groups within electoral arrangements; creating a system of 'wards' for representing different communities and large cultural blocs; establishing community management boards with the delegation to manage specific local matters; creating confederacies or federations of mutual interest groups; establishing different portfolios to address different sets of rights and interests; and recognising particularly valued law-givers and relationships of authority within electoral and decision-making processes. Many of these options need greater statutory flexibility than is currently available under the LGA.

THE COST-BENEFITS OF REGIONALISED GOVERNANCE

Northern Territory Government policy asserts that numerous benefits will attach to the regionalisation of both governance and service delivery through the establishment of Authorities. A number of advantages relate directly to dealing with problems currently being experienced by many community councils. According to government policy, larger regional organisations will facilitate the following benefits: the employment of professional staff and management who can be drawn from a larger pool; taking advantage of economies of scale in capital, infrastructure and service delivery; the facilitation of cost sharing; more streamlined financial management systems; easier transfer of best practice; and avoidance of duplication of services and structures.

Advantages such as these have been documented in local government reforms elsewhere around the country; for example in improved regional development outcomes, regional planning, natural resource management, and bio-diversity conservation (see Tapsell 2003; Taylor 2003b). The history of organisations such as the Northern Territory land councils also indicates that greater political influence and leverage attaches to larger

regionalised coverage combined with statutory backing (Altman, Morphy & Rowse 1999). The short history of other regionalised Indigenous service organisations in the Territory also suggests that improvements in coordinated service delivery can occur.

Nevertheless, as with any policy reform process it is important not to overload the concept of regionalism with undeliverable promises. The benefits that are causally connected to regionalisation, and which ones are not, should be clearly identified. The barriers and local impediments to securing these benefits will also need to be assessed region by region. Informed consent should then be able to provide the basis upon which a majority of constituents can consent to the formation of regional governance.

LESSONS FROM REGIONALISING GOVERNANCE TO DATE

Firstly, it is clear that Indigenous Territorians do not have to reinvent the wheel each time they want to consider establishing a Regional Authority. Important lessons are already apparent. While the challenges are significant, there are common issues that all Regional Authorities will have to address¹.

For example, the experience to date indicates that:

- 'regions' will be of different geographic sizes as a result of the social, economic and cultural characteristics of their potential constituencies, and the natural environment and property characteristics of their geography;
- the suggested minimal population size of Authority regions appears to be around 2,000 people;
- regional governance is about identity—how people see themselves, their past histories, present and future identities. So the constituency of an Authority will be determined by a process of negotiation and consensus about who constitutes the 'right' coalition of interests and cultural identities;
- governance structures and processes will need to explore mechanisms of subsidiarity and 'bottom-up federalism'. While aspects of political and service representation can be centralised, residential preference seems to remain decentralised, and the desire for local autonomy in certain areas of decision-making remains strong;
- the process of establishing regional governance is as important as creating the structure. The process of considering, negotiating and developing options for a Regional Authority is itself a governance process. Governance doesn't happen on the day an Authority is established. The lead-up process of negotiating an Authority is all about people deciding how to make decisions, who should be included, who should represent their interests, how they will deal with conflicts during the process, and so on;
- systems of representation and electoral procedures will be strongly based on cultural institutions, relationships and land owning groupings. Recognition of these within the regional governance arrangements is fundamental to ongoing perceptions of legitimacy;

- Indigenous ideas of representation are not based on western democratic notions. This does not mean that their systems of representation are not legitimate or effective. But it has led to ongoing tensions and contradictions between competing external and internal institutional priorities;
- whatever the basis for Indigenous representation and participation in contemporary governing arrangements, it will need to be defensible, transparent and accountable—both internally and externally;
- establishment of an Authority is a political process. There is a governance environment already operating in every community, where powerful organisations, alliances and individuals influence the process and outcomes. Key government agencies and interests are also actively involved, so that issues of power and jurisdiction are immediately raised. These processes of political identity formation take time;
- once established, some Authorities have experienced functional problems as a result of ongoing competition from the plethora of other community organisations;
- development of a Regional Authority is a process of transformation and transitions. There are catalysts that lead people to rethink their governance arrangements; community councils are transformed, and the roles of some leaders and staff change. Management of transitions is critical for the growth of effective governance arrangements and capacity;
- new Authorities need substantial levels of support (in planning, funding, administration, governance capacity etc.) in the lead-up and early establishment phase;
- the capacity of community residents, councils, organisations and government departments to understand and engage in the process is highly variable, and requires considerable input;
- regionalisation raises major resource and funding issues. These have to be addressed at the stage of early discussions. Benefits are not always immediately apparent in the early establishment phase when Authorities are learning the ropes;
- Authorities and regional residents would benefit from a more planned transition whereby administrative systems and governing skills are progressively developed in the lead-up to establishment, and for an agreed period thereafter.

A real concern with regionalisation of governance is that, without a substantial investment in capacity and transitional support for new Regional Authorities, the entrenched problems identified in community governance will simply gravitate up to the regional level. If that occurs, Authorities will fall over and the mooted benefits of regionalisation will not be realised. This has the potential to create greater adverse impacts for residents of a region, than the collapse of a community council.

Regional Authorities are likely to continue to experience challenges in building their governing capacity and internal accountability, finding experienced trustworthy professional staff, overcoming disruptive

factionalism, promoting competent leadership, and achieving more collaborative relationships with traditional owners, community residents and governments. It is unrealistic to expect that they will be able to immediately address all these matters on their own. Indigenous governance is not going to be built or sustained upon empty political rhetoric. Transitional, operational and funding options for Regional Authorities need to be carefully explored and developed. 'Governance building' requires tangible, coordinated support from governments and other representative Indigenous bodies.

At this stage, it is unclear whether there are compelling reasons for assigning priority to the establishment of 20 Regional Authorities in the Northern Territory, as opposed to ten, five, two or one. A larger number of Authorities promises greater attention to the cultural geography of governance; fewer afford the possibility of greater political influence and administrative effectiveness. The establishment of larger and therefore fewer Authorities does not necessarily undermine cultural match or representativeness, if local autonomy is recognised through a system of component wards and portfolios. The advantages and disadvantages of different cultural and sociological geographies for regional governance need to be more flexibly explored.

CULTURE MATCH AND LEGITIMATE GOVERNANCE

According to Sterritt (2002), 'legitimacy' consists of the way structures of governance are created and leaders chosen, and the extent of constituents' confidence in and support of them. In the Northern Territory context, Coles (2004:1) has characterised a 'legitimate' Regional Authority as one that 'can make decisions and enforce them; is recognised by their constituents as being established and operating under a 'proper' process; and is recognised by those 'outside' as the appropriate structure to deal with'. Legitimacy also requires accountability; that is, the extent to which those in power must justify, substantiate and make known their actions and decisions. Accountability and legitimacy has both internal and external dimensions and implications (Martin & Finlayson 1996).

Governance arrangements are the product of cultural values, institutions, behaviours and motivations. Governance is not culture-neutral. What constitutes 'good' governance or 'legitimate' governance has culturally-based parameters. Indigenous governance-building, therefore, is a process of cultural interpretation and construction.

The concept of 'cultural match' has recently been introduced into Australian debates by the Harvard Project research team (see Begay, Cornell & Kalt 1998; Cornell 1993, 2002; Kalt 1996). Their research was undertaken primarily with Native American Indian populations who are culturally homogenous, and included some heterogeneous Indian nations forced to live and work together on the same reservation lands. In both contexts, they argue, cultural match means institutions that:

Embody values that Indigenous peoples feel are important; reflect their *contemporary* conceptions of how authority should be organised and exercised; are generated through Indigenous efforts; and therefore have the support of those they govern ...

It is not an appeal *to tradition*; it is an appeal *for legitimacy* ... In some cases, this may mean Indigenous communities have to rethink their ideas of how to govern and invent new ways that better meet their needs ... What matters is not that things be done in the old ways. It is that things be done in ways—old or new—that win the support, participation and trust of the people, and can get things done. Some will be old. Some will be new (Cornell & Begay 2003: 11, 13; authors' emphasis).

The current reality in the Northern Territory is not matched by this vision of cultural legitimacy. A long-standing critique of local governing councils is that they lack legitimacy in the eyes of their Indigenous constituency. There is a perception that the 'right' people are not the ones making decisions (Coles 1999: 6), and community organisations have been described as 'dysfunctional hybrids composed of mismatched parts which deliver little to anybody... [being] neither true to their Aboriginal origin nor to the demands of non-Indigenous Australia. They are in some cases, not legitimate in either sphere' (Yunupingu 2002: 3).

A related 'problem for current councils [is] the focus on 'communities' that are themselves considered by many Aboriginal people to be 'illegitimate' (Coles 1999: 11). Intra-Indigenous issues of legitimacy and constituency—of who has the 'right' to exercise authority and represent an entire community or group of communities, and to whom should leaders be internally accountable—often revolves around the mix of Indigenous residents now living in the same communities, and their relative rights and interests.

There are now increasing calls amongst Indigenous Territorians 'to develop new governance models which are based on the best of the Aboriginal domain' (Yunupingu 2002: 3) and tools from the non-Aboriginal domain. This would involve 'marrying Aboriginal law and tradition with non-Aboriginal ways' (ibid.). Such models of governance could be considered new 'inter-cultural' institutions. The important question, however, is *how* can this 'marriage' be arranged so that it creates a match, rather than a mismatch? So that it creates legitimacy rather than dysfunction? So it is perceived to be both culturally legitimate and effective?

Cultural match in the Australian context will have to address significantly different cultural, legislative and historical contexts to those in the USA, Canada or New Zealand. Indigenous Australian communities are more culturally heterogeneous in their residential populations than many Native American Indian reservation groups and New Zealand Maori. In fact there is perhaps a greater parallel to be found with some Canadian and Alaskan communities where there are similar 'multi-layered sets of institutions in which decision-making power, governing functions and economic activities are dispersed among diverse entities' (Cornell et al. 2000: 6). Nevertheless, the broad *strategic principles* of culture match outlined above by the Harvard Project appear to have strong relevance in Australia, although the practical solutions will be different.

A number of Indigenous groups in the Northern Territory are trying to create forms of cultural match for their governance models—that is, a 'fit' between the formal structures and institutions of governance on the one hand, and Indigenous conceptions of how authority and power should be organised and exercised on the other. The more a governing body finds a workable 'fit' or 'resonance' between these matters, the more likely it is to secure ongoing support from Indigenous people. The concept of 'culture match goes directly to legitimacy' (Coles 2004: 3).

During the 1970s and 1980s, Indigenous Australians contended that government services and programs should respond to the diversity of Indigenous cultures. Government policies attempted to do so through the formation of Indigenous-specific services and program funding, by enacting incorporation legislation, and by the statutory establishment of representative political structures based very loosely on major Indigenous cultural blocs (e.g. ATSIC and Native Title Representative Bodies) (see Smith 1995, 1996). The establishment by Indigenous people of their own service-delivery organisations in such areas as health and legal aid represented a major political and funding advance. An important bureaucratic and Indigenous policy strategy was to ensure that these service initiatives were delivered in an 'appropriate' manner.

By and large, that earlier policy focus translated into efforts to ameliorate the adverse impacts of previous mainstreaming, by packaging particular services into ill-fitting forms of 'culturally-appropriate' delivery. A common strategy was to cherry-pick isolated Indigenous mechanisms and concepts (such as the dyadic relationship between ceremonial 'owners' and 'managers', the Indigenous institution of reciprocity or demand-sharing, or the role of 'elders') and implant them into predominantly western organisational structures. Another strategy was to pick key Indigenous concepts and language terms, and try to find an English legal or political equivalent. This was not culture match. It did not create legitimacy in the eyes of Indigenous groups. It often did not work—Indigenous priorities were often different on the ground, and invariably ended up 'undermining' expected departmental program objectives.

Indeed, in some cases the end result was to exempt the residents of remote communities from any expectation of mainstream economic success or development of governance capacity. In such cases 'culture' became essentialised as a 'problem', and was used by some government departments as a justification for their own program inaction in remote communities, when in fact the reasons lay elsewhere; for example, in inflexible program conditions, unrealistic program objectives and timeframes, stop-start segmented government funding, and so on.

The concept of cultural match potentially involves a more dynamic, 'two-way' process of both adaptation, innovation and, importantly, *choice*. As Cornell and Begay (2003) have noted, Indigenous groups might choose to create entirely new governance structures and relationships that work in the world of contemporary finances and business. They might choose to adapt governing structures and processes to incorporate principles of operation based on deeply held views about how authority should be exercised and by whom. Or they might decide that certain Indigenous relationships and traditional structures which might be eroded or undermined if incorporated into contemporary governing structures, should be kept quite separate from daily administrative and business arrangements.

In other words, cultural match does not mean having to integrate or immerse one thing (culture) in the other (structure). There may well be aspects of Indigenous cultures that are not amenable to, or easily integrated into the 'culture' of corporate management and business. And western democratic principles of representation, with its preference for the individual over the collective, and notions of 'one-person, one-vote', do not resonate well with Indigenous concepts of social organisation, power and representation. Different rules apply in these different institutional domains.

Many Indigenous groups in the Northern Territory continue to place a high value on their own forms of traditional relationships, authority and forms of decision-making. They want governing arrangements based on their values and worldviews. However, many Indigenous groups have experienced multiple generations of intervention in family life, forced removals, and the breakdown of social relationships and systems of customary law. In this context, well-considered choices are necessary, which takes time, and will require support.

Legitimate governance will not be created by importing romanticised or essentialised views of either traditional Indigenous or western democratic systems—especially if those views are no longer effective in everyday life. The issue of culture match is not a 'cut-and-paste' approach. It is not about finding the magic cultural formula. Culture match is first and foremost *a process of Indigenous choice*. In order to facilitate capable and legitimate governing arrangements, cultural match will need to be based on Indigenous people themselves:

- identifying who 'they' are—who will be the collective 'self' in their self-governance;
- identifying and endorsing the core values, principles and institutional 'rules of the game' that currently apply to how decisions should be made and authority exercised; and
- clearly working out how these principles might, (or should not) inform their contemporary governance arrangements.

The objective in these decisions should be to create governing arrangements that are authorised by Indigenous people *and* work well in representing their rights and interests, and carry out community functions.

The first Regional Authorities in the Northern Territory have involved early experimentation and innovative thinking. But all cultures change over time, and alliances and group identity change. Government policies and programs also change. The establishment and operation of legitimate Regional Authorities will therefore require an enabling statutory framework that facilitates flexibility for Indigenous members of an Authority to continue to review and refine their governance structures and systems of representation, once they are established. This process will also require time, resources and a capacity to engage in the process of building culture match for governance. The critical importance of Indigenous choice, as a foundation-stone for creating legitimate governance, also means they will require genuine power to be able to make and enforce their decisions about what constitutes effective forms of culture match.

THE LOCAL GOVERNMENT ACT: A FRAMEWORK FOR REGIONALISED GOVERNANCE?

A key attribute of strong governance is power; that is, the acknowledged legal, jurisdictional and cultural authority to make and exercise laws, resolve disputes and carry on public administration (Sterritt 2002). A dilemma for creating legitimate Indigenous governance is the issue of power. What are the sources of power for Indigenous governance in the Northern Territory? Are they sufficient to needs and political expectations? And how is it being exercised?

The current source of legislated powers for various aspects of Indigenous governance in the Northern Territory are the LGA, the ALRA, the ATSIC legislation (until it is revoked) and, to a lesser extent, the *Native Title Act 1993* (NTA). There are also a range of culturally-based forms of power, jurisdiction and authority on which traditional systems of Indigenous governance are based (see Smith 2001, 2002b). With the exception of the ALRA, most statutory frameworks give only passing recognition to Indigenous institutions and traditional law. The LGA is the only legislation to devolve jurisdictional power to Indigenous community and regional governance, but it is tied firmly to local government powers and functions.

There are strongly opposing viewpoints about local government in the Northern Territory, and whether it provides a basis for Indigenous governance. From one perspective, there has been a widespread view that 'local government arrangements in the Northern Territory have failed Aboriginal people' (Northern Territory Government 2002: 6). Many Indigenous leaders and organisations are suspicious of the Northern Territory Government's local government agenda, regarding it as a restriction on their political aspirations for more powerful forms of self-governance and self-determination. There is also an Indigenous perception that some Northern Territory government agencies have abrogated their funding and service responsibilities to Indigenous communities (Crough 2001). At the same time, there is evidence to suggest that some Indigenous community leaders and council members have failed in their statutory duties and responsibilities to their own constituents, and that currently, many community councils cannot carry out the local government functions they already have statutory responsibility for, let alone enhanced powers.

Whatever the political position on local government as a pathway for Indigenous governance, it is apparent that many community councils do not have the financial, management or administrative capacity or resources to operate effectively. While the LGA was reviewed and amended in 1985 and 1993, there have been few substantive improvements made to it of the kind made in other States. There has been no comprehensive assessment of its continued relevance for addressing contemporary Indigenous governance needs, and changing policy environments (LGANT 2003). Proponents of the LGA argue that with independent review and amendment, the legislation has the potential to be relevant, responsive and enable the recognition and creation of culturally legitimate Indigenous governance structures and processes.

In the emerging Northern Territory and Commonwealth policy contexts, the LGA needs to be able to facilitate and support more innovative strategies for regional governance—in terms of the potential

range of functions, agreement-making, funding arrangements, and governance capacity. Relevant training needs to be available to staff and Authority members from the earliest stages. This will especially be the case in matters such as corporate capacity, representative effectiveness, financial management, improved mechanisms to support governance review and constitution building, guidelines to actively support cultural match, options for conflict resolution, and mechanisms for internal accountability to members.

A significant obstacle at the moment is the lack of harmony between the operation of the ALRA and the LGA—especially in respect to the functions of local community councils, land councils, and the rights and interests of traditional owners of land. The development of strong, legitimate Indigenous governing structures in the Northern Territory will require that these areas of tension and contradiction are addressed in a considered way, especially in respect to land use and development planning. The most workable approach to harmonisation is likely to be, firstly, the negotiation of formal framework agreements setting out guiding principles for leasehold and service delivery arrangements at the community level, and secondly, statutory coordination and amendment (see Ross 2003).

There is also potential for reform to the LGA to enable a more workable 'whole of Northern Territory Government' approach on these key issues. The LGA could be amended to more directly facilitate agreement-making powers for Regional Authorities, to provide a statutory basis for the negotiation of tri-partite partnerships with the Territory and Federal Governments, and to facilitate more streamlined pooled funding arrangements.

With major new policy initiatives being implemented by governments, and with some Indigenous leaders questioning the future of self-determination and calling for greater self-governance, it is timely to ask whether the LGA remains relevant to the changing environment, and whether it can provide the level of statutory support that will be required for building effective and legitimate forms of regional Indigenous governance. Taking these factors into account, there is clearly a need for a comprehensive and independent review of the LGA, with a view to identifying necessary reforms of the current legislation and alternative models for regionalised governance other than through the LGA.

RESOURCING INDIGENOUS GOVERNANCE

Effective governance is not just about processes, structures and institutions; it is also about resources and their management. These include the cultural, economic, financial, human, technological and natural resources needed for the establishment and implementation of governance. Indigenous access to these resources is highly variable across the Northern Territory. Some groups have high levels of natural resource endowments and statutory property rights; others do not. What *is* consistent across the Indigenous population are the low levels of human capital (especially education and literacy), poor health, poor access to financial institutions and to staff with financial and business expertise, and a slowly developing access to technology. The financial performance of many community councils suffers badly from this combination

of factors, so that the resources communities do have access to, or own, are not always well-managed (see Smith 2002c).

There has been a volatile debate in the Northern Territory, escalating over the last decade, about the lack of government transparency in its funding for Indigenous governance, economic development and service delivery. Historically, the Northern Territory Government has received a higher per capita funding from the Federal Government compared to the States, as a result of the Commonwealth Grant Commission's (CGC) procedures and recommendations. The whole Territory economy is reliant on fiscal federalism which enables it to receive \$5.50 per capita from the Commonwealth, to every \$1.00 per capita for the average State. In part this is because of factors associated with the relatively large Northern Territory Indigenous population, the higher costs of service delivery for remote councils, the Indigenous population's high level of socioeconomic disadvantage, and therefore its over-representation in service provision disabilities (Smith 1992).

A particular concern to Indigenous leaders has been the apparent lack of government financial capacity to address the historical legacy of substantial infrastructure deficiencies in Indigenous communities; and the sometimes obscure financial pathways linking the Government's budget to its actual program expenditure across the Territory (especially when that funding is derived from the Commonwealth; see Smith 1992).

A related issue is that the true costs of servicing Northern Territory Indigenous communities have always been underestimated and are subject to cost-shifting (Altman 2002: 4; Commonwealth of Australia 2003; Northern Territory Government 2002: 6). In the Territory, this is further compounded by the fact that Indigenous-specific funds 'are not currently being allocated in ways which correlated with the areas of greatest need, especially in remote Australia' (Westbury 2004 (forthcoming); see also CGC 2001). This situation exacerbates the impact of the substantial historical infrastructure and capital backlog in remote Territory communities. Indigenous leaders have not been particularly successful in their efforts to lobby government regarding budget allocations to address under-development and poor resourcing in what they refer to as the Territory's 'backyard'.

The fiscal equalisation mechanism of the Commonwealth Grants Commission is not designed to address that backlog, only to equalise current expenditure capacity of all States and Territories to provide an equitable level of services (Morris 2003). Westbury (2004) argues that the key issue in the Northern Territory is that it will require significant 'catch-up' funding if outcomes for remote Indigenous communities are to improve. The Northern Territory Government budget is insufficient to address the major service, infrastructure, governance capacity and training backlog and shortfalls now being experienced by Indigenous Territorians. Federal Government mainstream program funds need to be redirected to these areas of greatest need. In the case of both Northern Territory and Federal Government budgets (mainstream and Indigenous-specific), the COAG 'National Framework Principles for Indigenous Service Delivery' endorsed in June 2004 should provide a potential basis for greater transparency in all government program expenditure and agreed outcomes for Indigenous services and initiatives in the Northern Territory (and the nation for that matter).

There are major opportunity costs to government if it foregoes making a current investment in order to address this historical backlog. This issue is only now being included in government's assessment of funding needs for remote communities and regionalised governance (Taylor 2004: 99; Westbury 2004). The actual form and level of resources required for building and sustaining effective Indigenous governance have been canvassed for the Thamarrurr Regional Council by Taylor (2004). That assessment needs to be systematically carried out for each Regional Authority in the Northern Territory.

The lack of pooled-funding arrangements in the Northern Territory is arguably a disincentive to the development of Regional Authorities. There have been early reports from some Authorities of an initial drop in their funding, rather than the expected budgetary increases, as a result of combining several communities' resources into one pot (Lee and Birrell 2003; see also Coles 2004). The experience to date indicates that Regional Authorities need early establishment resources, and ongoing operational grants commensurate with their increased service delivery costs and functional responsibilities.

Future Regional Authorities will require stability of funding arrangements, more transparent access to financial data about government expenditure on services and programs, and an acceptable allocation of funds. This needs to be supported by a streamlined mechanism for grant application, financial allocation and acquittal by Regional Authorities.

In the changing national policy environment, it is timely to consider what might constitute a more effective financial basis for regional governance. Over a decade ago the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recommended that Federal, State and Territory Governments introduce triennial block grant funding for Indigenous organisations, giving communities 'the greatest freedom possible to decide for themselves the areas on which the funds would be spent', and that 'wherever possible this funding be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to communities and organisations to determine the priorities for the allocation of such funds' (RCIADIC 1991, Vol. 4: 21).

The CGC Indigenous Funding Inquiry echoed these recommendations and argues for the pooling of resources from as many sources as possible to address needs in a multi-jurisdictional and cross-functional context (CGC 2001: xiii, xv–vi). That goal has recently been reiterated yet again as a priority for government in the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs review of capacity building and service delivery entitled *Many Ways Forward* (HORSCATSIA 1994).

As part of a series of recommendations and options to build and sustain stronger regional and community Indigenous governance in the Northern Territory, the *Building Effective Indigenous Governance* Conference held at Jabiru in November 2004 recommended that:

Common pool funding for Indigenous governance (consisting of single line, 'one bucket' funding, agreed objectives, outcomes and evaluation process) should be urgently negotiated and developed with Indigenous Territorians at a cross-governmental level (see Glanville 2003: 1).

In August 2004, the Cabinet of the Northern Territory Government approved a set of recommendations arising from the BEIG Conference. The Northern Territory Government has responded that the arrangement:

Is 'worthy of further consideration' and 'could be welcomed by many local governments and many Indigenous organisations' ... [and m]ay be useful in achieving the aims and objectives of the 'whole of government/whole of community' approaches are at the heart of the Government's *Building Stronger Regions—Stronger Futures Strategy*.²

Workable mechanisms for providing pool-funding to Regional Authorities need to be explored. Review of the LGA could include investigation of pooled-funding mechanisms. Possible options include: the use of regulation to set out a procedure, amendment to the LGA or other relevant Northern Territory legislation, the formulation of a policy framework for the negotiation of tripartite funding agreements fro Authorities, and the provision of funds via a single block grant, with a single set of reporting and performance requirements. Such mechanisms would facilitate not only more effective, but more accountable regional governance. In other words, the goal of Indigenous governance will require a commitment from the Northern Territory Government to reform its own financial arrangements and resourcing procedures.

Indigenous capacity for financial management and planning is tied to the issue of access to adequate resources. The provision of pool funding and other resources to Regional Authorities could be linked to the preparation by Authorities of strategic plans for 3–5 year financial management and administration. This planning exercise would preferably commence well before an Authority has been established, and should be supported by a program to build financial literacy and capacity within the leadership and staff of Authorities.

CAPACITY DEVELOPMENT FOR EFFECTIVE INDIGENOUS GOVERNANCE

When the reality of low levels of adult numeracy and literacy are combined with the significant statutory, political, health and representative challenges involved in regionalising governance, then the assumption that Regional Authorities will 'hit the ground running' to deliver services and strong governance is wishful thinking. Plainly put, the policy vision of regionalisation of governance is currently not matched by practical capacity at a community, let alone a regional level. Hence the need to consider lessons arising from the experience to date, and to consider alternative structures and processes.

Building 'governance' is essentially a development issue—it is not just about getting the structure and representation right. New approaches to Indigenous governance will require re-thinking the way community development and capacity building for governance are carried out.

A solid foundation of governance skills and knowledge for Indigenous people is a critical factor in determining whether regional governing structures will be more effective than current community councils. If this does not exist at the community and council levels, it will not miraculously appear overnight merely

through the act of regionalisation. One of the major weaknesses in the local government process to date in the Northern Territory has been the failure to develop a sustained plan of action for governance training and education within communities and their governing organisations. Many of the same community people are likely to be involved in establishing, leading and participating in the operation of Regional Authorities. While there are numerous forms of financial accountability required of Indigenous organisations, and there is now a more systematic approach by DCDSCA to evaluating the financial risk and capacity of community government councils, there is no comprehensive or coordinated government approach to building the overall capacity of governing bodies.

A related obstacle to the development of sustained governance skills is the lack of effective training programs and experienced trainers delivering governance capacity development. A recent discussion paper prepared by the Local Government and Regional Development Division of the Department of Community Development, Sport and Cultural Affairs (DCDSCA) into governance training for Indigenous Territorians has identified several major problems. These include:

- the lack of government coordination of programs and funding;
- duplication across multiple government programs;
- stop-start program funding;
- lack of local relevance in training content;
- poor and erratic delivery on the ground;
- the lack of professionalism and accreditation amongst trainers;
- lack of sustained follow up and mentoring; and
- negligible evaluation of the training process or outcomes.

A more holistic approach to 'community development for governance', and to governance education and training is needed. In Indigenous communities, governance involves multiple actors, social levels and cultural linkages; not simply isolated individuals or organisations. The Northern Land Council (2002: 2) noted in its submission to the Commonwealth Inquiry into Capacity Building and Community Governance that the goal of capacity development is not simply to encourage 'well managed communities' and 'better service delivery', but to enhance Indigenous Territorians' capacity for governance and sustainable development.

In this context, 'capacity' relates to the lands, resources and self-determined governance of Indigenous people, their organisations, communities and regions. It therefore needs to be based upon the diverse Indigenous cultural contexts in which people already possess many well-developed capacities. Moreover, if governance practice is to be sustained, then the succeeding generations of young leaders need to be mentored, trained and given practical experience in governing. Community development for governance will need to include dimensions such as family, gender, and leadership and youth, as well as strategies for capacity development.

Just as Indigenous capacity is a critical issue, so too is the capacity of governments to deliver coordinated policy and program support to Regional Authorities. Unfortunately, history suggests that the capacity of governments and their departments to develop a collaborative approach is hard to generate and even harder to maintain. As the Inquiry into Local Government and Cost Shifting recently noted, the uncoordinated actions of governments can undermine developments in regional cooperation at the local government level (Commonwealth of Australia 2003). The same applies to Indigenous governance initiatives.

The current Indigenous Community Coordination Pilots (ICCP) trials being carried out across Australia (with one Northern Territory trial site at Wadeye) could play a valuable role in creating transferable solutions to the difficulty in getting real government coordination to happen. These trials need to be evaluated so that potential options can be explored elsewhere. However, a challenge to realising the potential that has been anecdotally reported for some of the ICCP trials, lies in the capacity of government departments to move beyond the comfort zone of 'talking about coordination', to the harder but more productive work of 'doing coordination'. That is, to deliver integrated, workable and sustained support on the ground for Indigenous governance initiatives.

In order for practically capable and legitimate Indigenous governance to be developed, systematic steps need to be taken to invest in capacities now—especially in the key areas of literacy, numeracy and general education, financial management, corporate capacity, strategic leadership and planning, regional governance roles and responsibilities, negotiation and conflict resolution, policy making, policy evaluation, administration and information management.

THE ROAD AHEAD

Calls have been commonplace for many years in the Northern Territory for more effective and legitimate forms of Indigenous governance—where stable and broadly representative governing bodies are developed by Indigenous people. But the call is easier said than done. There is a long-standing debate in the Northern Territory about the societal and cultural level at which self-governance should be constructed and which will be endorsed as legitimate by Indigenous people (Smith 1995: 64). The cultural 'right' to represent, and the conditions upon which 'representativeness' are constituted are also matters that have been hotly contested; especially within the land rights arena. There has been a highly-charged historical debate about the form and extent of jurisdictional authority that would best support Indigenous political aspirations and self-governance, and government funding and resource allocation have been the subject of often adversarial public argument (Crough 2001; Smith 2002c).

In the Northern Territory, issues of self-governance, self-determination, local government, government funding, and service delivery are all inextricably linked. But in the past there has been little effective harmonisation of these matters in statutory, policy or jurisdictional frameworks. On the contrary, an entrenched adversarial relationship—especially about property rights, self-determination and self-governance—has historically developed between governments, Indigenous leaders and organisations in

the Territory. This oppositional relationship has almost become an automatic 'default' position amongst certain parties, and currently undermines innovative thinking and collaborative approaches on a range of key issues.

At the same time, major changes are being proposed and implemented in Indigenous affairs at a national level which will have far-reaching consequences for Indigenous self-determination and governance. In this broad context, a more constructive engagement by all parties will be critical for building the statutory, political and resource arrangements, and capacity required to underwrite more effective Indigenous governance on the ground.

The way forward for reshaping the architecture of Indigenous governance in the Northern Territory will only be sustained by a truly collaborative and unified effort on the part of Indigenous Territorians and the Northern Territory Government. The biggest test therefore will be whether those parties can step aside from the history of entrenched opposition and distrust. There are some indications that this is beginning to happen in the Territory. But there is also evidence of reluctance in many quarters to move beyond the false safety of opposition, into real negotiation.

Both governments and Indigenous organisations need to identify and promote awareness of a range of options for governance, and to build community engagement in 'governance building' that promotes Indigenous choice, legitimacy and effectiveness. Importantly, the critical area of Indigenous governance capacity building and training have received little sustained attention or funding in the Northern Territory, and current approaches are, at best, ad hoc and lacking a 'whole of government' delivery approach.

With the future absence of a nationally elected Indigenous representative structure such as ATSIC, the Federal Government's new policy rhetoric about 'mainstreaming' and 'connected government' may act to 'dis-connect' Indigenous people as an equal partner in government policy making at all levels. Indigenous governance has been marginalised by being placed outside government jurisdictions. The exception to that may be at the regional level in those areas of Australia such as the Torres Strait Islands and the Northern Territory where some Indigenous groups are establishing regionalised forms of 'local government'—that is, where they are becoming a recognised level of 'government'. The issue for Indigenous Territorians is whether the existing forms of local government will meet their political aspirations. The extent to which the LGA and related funding frameworks enhance Indigenous jurisdiction and governance, rather than restricts them, will be a critical factor in the extent to which Indigenous people actively engage in regionalisation options.

It is timely, therefore, for the Northern Territory Government to comprehensively re-examine the suitability of current legislative, constitutional, funding, community development and training frameworks for Indigenous governance, and how these might be reformed to better support the goals of Indigenous governance building.

If strong, legitimate Indigenous governance is to be developed, then a number of reforms need to be considered across several fronts—strategic, policy and operational.

At the level of enabling frameworks for legitimate and effective governance, options for reform include:

- the independent and comprehensive review of the LGA to provide more effective support and operation of regionalised governance;
- the conduct of a comprehensive review of alternative options and key issues for regionalising governance in the Northern Territory, including:
 - issues of Indigenous representation and participation;
 - the impact of differential property rights amongst constituents;
 - the cultural and sociological geographies of regionalisation;
 - alternative structures and processes for governance;
 - workable forms of subsidiarity and culture match in governance arrangements;
 - the resources required for regionalisation and their delivery;
 - the links between community education and governance capacity; and
 - assessment of which policy, budgetary and statutory frameworks best facilitate strong and legitimate governance.

At the level of resources, options include:

- assessment of the real costs and benefits of delivering regional service delivery and governance to remote communities;
- assessment of the form and level of resources needed by regional organisations to address the historical backlogs and shortfalls in services and infrastructure in Indigenous communities;
- the design of workable mechanisms for pooled funding for Regional Authorities that have negotiated single application, allocation, and reporting mechanisms.

At the level of governance powers and functions, options include:

- the progressive devolution of genuine decision-making powers, and the parallel development of ongoing mechanisms to build sustained Indigenous capacity to exercise those governance powers and accountability;
- the establishment of transitional strategies that provide agreed forms of support during the lead-up and post-establishment phases of regionalising governance;
- the development of a more holistic and sustained approach by government to the delivery of community governance education, and identified governance training for Indigenous leaders and staff involved in the development of regional governance;

- a review of the range of alternative options through which regionalised governance would be most effectively implemented in the Northern Territory, and governance powers and functions most effectively exercised.

At the level of government coordination, options for reform include:

- the identification of practical mechanisms to give workable content to government frameworks for coordination, and that will better facilitate Indigenous governance building at the community and regional levels;
- the negotiation of tripartite agreements between Regional Authorities and Territory and Federal Governments to establish more streamlined coordination of service delivery, funding, and provision of resources and support to Regional Authorities.

Given the implications of current changes in Indigenous affairs both nationally and in the Northern Territory, the lack of any bipartisanship across political parties on Indigenous issues, and the complex nature of Indigenous organisational representation on the ground, a period of extreme uncertainty and fluidity can be expected over the next few years. In such an environment, Indigenous families and communities, and their organisations, could experience detrimental impacts unless enhanced policy, statutory, education, training, resource and service frameworks for regionalised governance in the Northern Territory are implemented.

NOTES

1. A number of these have been discussed by members of the established Regional Authorities at the Jabiru Building Effective Indigenous Governance Conference in 2003. Their presentations are available at the website <<http://www.governanceconference.nt.gov.au>>.
2. Unpublished internal response by the Cabinet to DCDSCA with regard to the conference's recommendations.

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