

## Indigenous governance at the crossroads: The way forward

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EXECUTIVE SUMMARY

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A strong governance structure that has the respect of residents is essential for any healthy, functional and viable society. When governance structures fail or are corrupt, the whole community suffers. Second-rate governance has contributed to the dysfunction of 1,200 remote communities in which 120,000 Australians are living miserable lives. Now is the time to give Indigenous Australians in remote communities the same democratic governance systems that have allowed the rest of the country to prosper.

- The present systems of governance of remote Indigenous communities have failed.
- On 11 October 2006, Northern Territory Minister for Local Government, the Hon Elliot McAdam MLA, announced a new framework for local government in the Northern Territory to be implemented by July 2008.<sup>1</sup> The announcement left the details of the new 'Regional Shires' to a new 'Local Government Advisory Board'.
- A simplified, amalgamated system of Regional Shires is the way forward. But we need to be very clear about why the current framework is not working and how the Regional Shires will work.
- Under the current local government framework, there are too many layers of government in remote Aboriginal communities resulting in conflict between, and duplication of, administrative structures. This multi-layered governance structure in remote Aboriginal communities is at the heart of their dysfunction and must change.
- The new Regional Shires must be given the same authority as Local Councils have in the rest of Australia. To remove conflict and duplication, the Land Councils must be limited to land management only and not be allowed to intervene in local government matters.
- The new Regional Shires (and all other governance organisations in remote communities) must be fully accountable and transparent. Conflict of interest rules must apply. The present entry permit system must not be used to prevent business competition and scrutiny of malpractice.
- Options that guarantee proceeds from royalties, rentals and monopoly businesses are directed to programmes and projects for the whole community must be implemented.
- Capacity building, training and employment in local government must be centred on individual needs and supported by workplace mentors.
- Community Development Employments Projects (CDEP) and other Indigenous work for the dole schemes should be abolished. Funding should be reallocated to new Regional Shires for the creation of permanent positions for Indigenous employees.
- Successful local government under new Regional Shires will require: a clear timetable for the establishment of the new authorities; the appointment of an administrator for a transition period; elections supervised by the Electoral Commission for both the Land Trustees and Community representatives on the council; the establishment of a clean set of accounts for the new authorities; and, the abolition of 'sitting fees' and the introduction of annual allowances and compulsory training for elected members.

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**The size of local governing bodies in remote Australia is ridiculously small and makes it difficult for residents to manage self-government**

## Introduction

On 11 October 2006, the Northern Territory Minister for Local Government, the Hon Elliot McAdam MLA, announced a 'new framework for local government in the Northern Territory based on a system of municipals and regional shires operating across the whole of the Territory under an amended *Local Government Act*', to be implemented by July 2008.<sup>2</sup> His announcement at the Local Government Association of the Northern Territory (LGANT) Conference was, of course, short on detail. The Government will establish a 'Local Government Advisory Board' to work out the details.

McAdam is entirely correct that the current local governance framework is not working and new Regional Shires are the way forward. But we need to be very clear about why the current framework is not working and how the Regional Shires will work. This paper looks at the governance issues facing remote communities and suggests a model for the new Regional Shires.

A strong governance structure that has the respect of residents is essential for any healthy, functional and viable society. When governance structures fail or are corrupt, the whole community suffers. Second rate governance has contributed to the dysfunction of the 1,200 remote communities in which 120,000 Australians are living miserable lives. Now is the time to give Indigenous Australians in remote communities the same democratic governance systems that have allowed the rest of the country to prosper.

## Over-governance in remote communities

Most of Australia has only three levels of government—Commonwealth, state or territory, and local. However Aboriginal communities have had to cope with another three levels of government—the Land Councils plus, until recently, the now disbanded regional and national ATSIC bodies. The failure of governance arrangements in remote Indigenous communities becomes clearer still when the numerous other governing bodies are considered—resource centres, housing associations, health boards, social clubs, stores and art centres to name a few. In some remote communities ATSIC established resource centres to service outstations, duplicating the function of local councils. The cost of administration and sitting fees consumes money that could be better spent providing much needed services to local communities.

The size of local governing bodies in remote Australia is ridiculously small and makes it difficult for the largely uneducated residents to manage self-government. It is difficult to say what an ideal or viable local government population or size should be but there is little doubt that the size of most remote local Indigenous governance organisations is far too small. The total population of the Northern Territory is 197,500 yet it has 63 local government bodies made up of six municipal councils, 30 Community Government Councils, 23 Associations, and one Town Council. Of these, the ten largest councils service 160,000 people while the other 55 service 31,000. The remaining 6,000 residents are without a council in various mining and tourist towns, and pastoral properties. The average population per local government council, excluding the Municipal Councils, is 670 residents.<sup>3</sup> If 50,000 people were regarded a minimum for viable local government, the Northern Territory ought to have just four local government councils.

The Tiwi Islands is a good example of the inefficiency of current governance arrangements. In 2002 there was a local government council that had been formed from the rationalisation of three Community Government Councils and one Aboriginal Corporation. But there was also the Tiwi Land Council, the Tiwi Island Training and Employment Board and the Tiwi Health Board in addition to three art centres, three community stores and two housing associations. Each of these organisations and other bodies contributed a level of governance and administration in providing services and strategic plans for a total population of 2,500 people. The cost of administering all these organisations was so high that little money was getting through to deliver services and fund infrastructure in communities.

Reporting is inadequate and the Northern Territory Government is unwilling to enforce existing regulations making it difficult to demonstrate how many millions of dollars are lost annually to government bureaucrats and administrators. Again to use the example of the Tiwi Islands, only the local government had its administration offices on the islands where it employed at least 30 Tiwi people in full-time positions and many more trainees. The Tiwi Health Board, Tiwi Land Council and Tiwi Islands Training and Employment Board were all administered by non-Indigenous executives on large salary packages in Darwin offices with no Tiwi staff or trainees. Although this may have been the most efficient and comfortable arrangement for their white administrators, it was not effective in assisting Aborigines take responsibility for, and control of, their future. The cost of air travel to and from the islands on a daily or weekly basis was horrendous, especially when the chosen mode of travel was charter aircraft, which often saw planes and pilots waiting around for most of the day.

It is obvious that rationalisation is needed. These local governing bodies frequently face financial failure and find it difficult to attract and keep good staff. The former Northern Territory Local Government Minister Jack Ah Kit admitted in 2002 that a large percentage of the 63 local government bodies in the Northern Territory were dysfunctional.<sup>4</sup> In announcing the latest local government reforms on 11 October 2006, the Northern Territory Local Government Minister Elliott McAdam stated:

In March 2006 my Department conducted a risk assessment of 56 councils. This risk assessment classified 50 per cent of the councils as either 'high risk' or 'dysfunctional'.

In the last six months, 22 councils (38% of all community government and association councils) have advertised or re-advertised for a Chief Executive. Eight Chief Executive positions have been re-advertised within the last 12 months—in other words, we are still seeing high numbers of newly recruited CEOs resigning within a year.

In the last six months, the Department has been required to make 17 major interventions into the affairs of councils due to financial, administrative and/or governance irregularities.<sup>5</sup>

During the last decade, state and territory governments around Australia have, to varying degrees, pursued policies of rationalisation and amalgamation of local government councils. In 2002, for example, the Northern Territory Government announced its 'Building Stronger Regions, Stronger Futures' policy.<sup>6</sup> The plan was to develop several regional authorities under the *Northern Territory Local Government Act* to bring together a number of small communities. The policy outlined the need for cost effective delivery, and the coordination and development of viable governance structures. The Commonwealth of Australia and the Northern Territory of Australia took this policy one step further when an Indigenous affairs agreement was signed by the Prime Minister and the Chief Minister in April 2005 committing to 'strengthening governance and developing community capacity to ensure that communities are functional and effective.'<sup>7</sup> The policy was promising but it has progressed at a glacial pace because the content is based on an ongoing public debate. Such a cautious approach is further underscored by statements and media reports that no one will be forced into accepting specific policy positions.<sup>8</sup>

Amalgamations were the main topic for discussion at LGANT meetings in the Northern Territory throughout 2002 and, although there were some questions about how it would happen, there was a high level of acceptance of the desirability of change. At the most recent LGANT Conference held in October 2006, the Northern Territory Minister Elliott McAdam announced yet another blueprint for the future based on:

- a new framework for Local Government in the Northern Territory based on a system of Municipal Councils and Regional Shires across the whole of the Territory under

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- an amended *Local Government Act 1994*;
- the establishment of an advisory board; and
- an implementation date of July 2008.

Although these reforms should be welcomed as a step in the right direction, the need for further consultation and the establishment of an advisory board with an implementation date two years away is only going to see further delays in the long overdue reform of Local Government in the Northern Territory. Reform will not happen unless there is strong leadership and direct action.

Those earning salaries and other benefits from existing governance structures in remote Australia will continue to protect their positions, jobs and empires but vested interests must be overcome and existing empires must be dismantled.

The dysfunction of small remote community governance structures in other states and territories is of similar concern to the Commonwealth Government. In June 2006, the Commonwealth Government asked for a review of the smaller communities.<sup>9</sup> The review's findings are eagerly awaited.

### **The Tiwi Islands experience**

In an earlier paper, 'Lessons from the Tiwi Islands: The need for radical improvement in remote Aboriginal communities',<sup>10</sup> I outlined the confusion and lack of understanding about governance that is currently evident in remote Indigenous communities. It is worth expanding on these issues here.

#### **1. Who's responsible for the governance of remote communities: Land Councils or Local Government ?**

The unclear delineation of responsibility between Local Government and Land Councils has been raised in a number of reports, including:

- a 1999 discussion paper on land holding and governance structures under Australian Land Rights Legislation;<sup>11</sup> and
- a 2005 report on the Anangu Pitjantjatjara Lands for the South Australian Government.<sup>12</sup>

This question appeared to be answered for the Northern Territory in the 2005 Overarching Agreement between the Commonwealth and Northern Territory Governments. The agreement promised that future representational agreements would be 'building on local government including the possible development of regional authorities under the *Local Government Act 1994*' and made further references to 'addressing jurisdictional overlap' and 'achieving clarity for responsibility for services within regions and communities'.<sup>13</sup> My experience from discussions with other local government CEOs in the Northern Territory indicates that these have been common problems across all remote communities for a very long time.

However how governance should be developed continues to be a major area of conflict on the Tiwi Islands as evidenced in the Tiwi Land Council Annual Report 2004/05 and a letter from the Tiwi Land Council Secretary to the Northern Territory Local Government Minister in May this year.

Until the formation of the Tiwi Islands Local Government, the Tiwi Land Council was the only organisation that represented the Tiwi Islands. Although the Tiwi Land Council was the organisation that initiated the formation of a single local government body, the Land Council Secretary—with the tacit support of his management committee—moved from an initial position of support to doing all he could to frustrate and undermine the Local Government Council. This was regardless of the fact that almost half the members of Tiwi Islands Local Government are Land Trustees of the traditional land areas and no

decisions of the Local Government Council could be implemented without their support. The latest strategy of the Land Council administration is to form yet another body called the Tiwi Union to add even further confusion. The 2004/05 Annual Report of the Tiwi Land Council suggests that the 'Tiwi Union' could appoint managers to manage budgets in a variety of governance areas.

Another example of this issue centres on the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Act gives administrative responsibility for land ownership and management of Aboriginal Lands to four local Land Councils. Conflict arises when an elected local government council differs from the view of the Land Council. Land Councils claim superior authority because they are created under Commonwealth Government legislation while Local Government Councils are under Territory or State legislation. During such difficulties between the Tiwi Islands Local Government and the Tiwi Land Council, Land Council letters started to bear the crest of the Commonwealth Government.

Land Councils should have a role in land management, which includes consulting and informing local communities about land issues. Many, however, have now expanded their role to cover a range of governance issues such as housing and other activities funded through local government. Such a conflict between Local Government and Land Councils arose in the context of attempts to develop a housing strategy for the Tiwi Islands.<sup>14</sup> In 2002 three separate organisations managed and provided housing for the Tiwi Islands. With the Northern Territory Government's agreement, a review was conducted by consultants who sensibly recommended the establishment of one housing body under the umbrella of Local Government. The Land Trustees (traditional land owners) as members of Tiwi Islands Local Government were all involved in discussions, briefings and presentations by the consultants on the review and its recommendations. The Tiwi Land Council as a separate body chose not to make any submission or representation to the review. When the review was complete and its recommendations adopted, the non-Indigenous managers of the independent housing associations mounted opposition to the decisions made. The Tiwi Land Council then opposed the strategy and attempted to vest the land on which community housing stood to the housing associations. The Milikapiti Housing Association and Bathurst Island Housing Association were both paying their managers large salary packages and when these were added to the other administrative costs, the associations were spending more money on administration than the rent that was being collected. Little, if any, money remained for repairs and maintenance to local houses.

A Strategic Plan developed for the Tiwi Islands in 2003 that included a tourism strategy to develop infrastructure and employment was similarly sabotaged.<sup>15</sup> Other town planning decisions were overridden by the Land Council on the grounds that the local government council had no right to make decisions about the use of residential land, commercial development or transport facilities in community areas.

Such problems are well known to both Territory and Commonwealth public servants. Letters to both levels of government highlighting problems and asking for direction on the ownership of assets on Aboriginal land were not even acknowledged, let alone answered. Under the *Local Government Act 1994* and Commonwealth Government requirements, local government councils are required to keep asset registers with insurance cover for the listed assets. As all land in communities is Aboriginal Land under the control of the *Aboriginal Land Rights (Northern Territory) Act 1976*, there are very few assets that are legally owned by the local council. Those that are owned include the Council buildings, housing, sport and recreation facilities and so on, funded through local government councils by the State, Territory or Commonwealth Governments. To claim on the loss of any asset, ownership has to be established and this cannot be proven on Aboriginal land. Local government councils are expected to insure all Aboriginal housing that they manage but they do not have ownership! Local Government Councils must have the control to manage and control community assets.

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The Tiwi Land Council and the Commonwealth Government entered into a Shared Responsibility Agreement in May 2006 to provide \$10 million for a new secondary school in the Tiwi Islands and allow for a head lease and subleases of the Nguiu township with a view to offering these for private housing and business development.<sup>16</sup> This seemed a reasonable arrangement, except that the local government council in Nguiu knew nothing about the agreement until the day it was announced.<sup>17</sup> The agreement created another new community which will inevitably require support from local government services and funds yet all the negotiations on this Shared Responsibility Agreement were conducted with the Tiwi Land Council, not with the Local Council which one would have thought had an important part to play. Shared Responsibility Agreements cannot be expected to succeed when conflict and confusion continues about which organisation is responsible for governance.

## **2. Conflict of interest in governance matters**

The *Aboriginal Land Rights (Northern Territory) Act 1976* prevents Land Councils from becoming directly involved in commercial operations yet Land Councils may, and do, establish separate companies with their Land Councillors and Trustees as directors. In the Tiwi Islands a number of such monopoly companies are involved in shipping, tourism, port management and forestry. It is commendable that Land Council members are active in encouraging economic development but the benefits of any activity should flow to the community, not just a small group of traditional owners. Rules on conflict of interest for Land Councillors should be the same as for local government councillors. The directors of various Aboriginal enterprises rarely declare their interests when they are actively involved in decision making over issues affecting the operation of their enterprises at either Land Council or local government level. This is one very good reason why the minutes of all Land Council general and management meetings should be open for public scrutiny as required for all local government meetings. This would also achieve another of the stated objectives of the 2005 Inter-Government Agreement 'to establish transparency and accountability'.

In the Tiwi Islands, the Land Council Secretary and four of the Land Trustees are also the secretary and directors of Pirntubula Pty Ltd, the repository of a share of profits from several commercial enterprises including forestry and aquaculture. As a private company, an annual return has to be submitted to ASIC but it is not publicly available. The state of Pirntubula's finances is not known by Tiwi residents despite frequent requests for assistance with community projects such as housing and youth services between 2002 and 2005. Nevertheless six Land Councillors and three staff were able to enjoy a fully funded three week round the world trip in 2003, ostensibly to visit forestry and aquaculture 'business partners' in Korea, England and the Netherlands but also including attendance at the secretary's wedding in Germany. The Secretary of the Land Council in his capacity as secretary of this private company would also appear to have a conflict of interest in any advice he provides separately to the Land Council.

The notion that traditional owners of Aboriginal lands should have rights to the income from their land leases without any associated responsibility for the maintenance of themselves, their families or communities has had disastrous consequences. Aboriginal landowners have expected that State, Territory and Commonwealth Governments continue to provide for individual and community needs through welfare payments, housing, transport, health and education without accepting any responsibility themselves. In mainstream Australia, private land-owners have rights to lease their lands or use them as they desire (within local planning rules) but in the expectation that such income is part of their annual taxable income. Welfare benefits are supposed to take private incomes into account. This is clearly not the case for many Aboriginal land owners and Land Trust beneficiaries.

### **3. Restrictions on local government in developing local economies**

Local government councils in remote areas are severely limited in their efforts to support business and develop strong local economies. Under current governance arrangements, local government councils are unable to strike rates on land because of communal ownership of land. As a consequence, remote Aboriginal communities are reliant on Commonwealth, State and Territory government funding to maintain basic services. In amending the *Aboriginal Land Rights (Northern Territory) Act 1976* and governance arrangements, it is essential that remote communities are able to generate their own rates-based income and that a local economy based on business competition is introduced. Although the ability to raise rate income may be limited by low values and lack of commercial business, it is important that those monopoly businesses that do exist contribute to the local economy. Those businesses which have the potential to make substantial profits currently contribute very little to the provision of services in their local communities.

Examples of how Land Councils currently stifle progress: Tiwi Barge Pty Ltd, part-owned by the Tiwi Land Council (or Trustees), has a monopoly on shipping to the Tiwi Islands. Its monopoly rates are egregiously over-priced but pleas by housing and store managers to use other operators were refused by the Land Council. On one occasion both generators in a community failed on a Friday night leaving the community without power. After discovering that Tiwi Barge was unable to provide a barge, an approach was made to another company which immediately dispatched a barge to transport the generators to Darwin for repairs over the weekend and at the same time bring in another generator. At the Local Government Council meeting the following week, this decision was attacked by a Land Trustee who was a Director of Tiwi Barge. Despite their monopoly, there is no evidence that Tiwi Barge profits are being returned to the community. Even an approach by the local government council to contribute to the landing facilities used only by Tiwi Barge was ignored.

Tiwi Tours, another monopoly business owned by Land Council members and Trustees, is leased to a commercial tour company. The new passenger ferry, Arafura Pearl, operating between Darwin and Bathurst Island with a capacity of 100 passengers is limited to carrying less than 20 tourists for Tiwi Tours because it is not allowed to use any other tour operator. At one stage a young Tiwi Islander working in the Northern Territory tourism industry expressed interest in conducting tours in conjunction with the Arafura Pearl but after being directed to the Land Council, there was no follow-up.

Regular media reports talk about the successful development of the Tiwi economy through its forestry, aquaculture and mineral mining enterprises and yet the living standards of the Aboriginal people in the Tiwi communities are still appalling.<sup>18</sup> The same disparity is in evidence in other communities on Aboriginal lands where Land Councils have engaged in major land leases for mining and pastoral industries. For this to change, governance arrangements must change.

### **4. Using the permit system as protection**

Land Councils use the permit system for entry to their lands to protect their monopoly businesses. They make it impossible for enterprising residents, let alone any outsiders, to operate commercial businesses and thereby prevent competition and stifle business enterprise throughout Aboriginal Australia. Although permits to enter and reside on aboriginal lands are now under review by the Commonwealth Government, there seems a strong case for their abolition in relation to larger communities under any new governance arrangements. The real value of permits is for the protection of sacred sites, ceremonies and cultural events, not to prevent the scrutiny of malpractice and the much needed development of community enterprise. Where Land Trustees want to retain control of any land area including outstations, this must be without an expectation of government support and services. Private land owners in mainstream Australia do not expect the government to build houses and roads on their land holding and they are also expected to contribute to community services through the payment of rates.

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## **5. The role of community controlled businesses**

Land Councils are not the only monopolists in remote Australia. Community controlled stores and social clubs operate autonomously under the Commonwealth *Aboriginal Councils and Associations Act 1976* and can use their land leases or relationships with Land Councils to maintain their monopoly. When the local government council was planning for the development of a rural transaction centre in the Tiwi Islands, it planned to advertise for operators interested in setting up new retail businesses such as hairdressing and healthy food outlets in addition to Centrelink, banking and postal services. The manager of the local store threatened to go to the Land Council to prevent any competition to his business. Similar disputes arose when decisions were made to open the local pool kiosk to provide food and drink on weekends during the football season.

The legislation affecting the governance of all organisations operating in remote communities needs to be examined. In the name of self-determination, the policy has been to establish all operations as separate businesses, independent of each other, either operating as corporations or incorporated not-for-profit associations under State and Territory, or Commonwealth Government legislation. While the initial intentions may well have been for communal good, in practice the executives or management committees, often from one family or clan, are the only beneficiaries. All, if not most, of these organisations are managed by non-Indigenous managers who are paid large salaries under contracts often written by themselves or their legal representatives because the local executives do not have the education or literacy to take charge. By providing substantial benefits to the Indigenous executive or management committee members, a culture of obligation has developed that is hard to break. Most, if not all, of these businesses are controlled or financially managed by accountants or accounting firms outside the community absorbing substantial management and accounting fees. Profits always seem to disappear for one reason or another.

The reality is that the present systems of governance are ineffective and expensive with most or all of the potential profits being spent on administration and in some cases misappropriated. At a time when it is claimed that there are no or very few jobs for Indigenous people in communities, much of the employment is being contracted away from communities to non-Indigenous staff.

## **6. Capacity building**

One of the reasons for the failure of current small local government councils is the high staff turnover in remote communities where professionals often stay less than a year because of the continual conflict and lack of support in what is a very difficult and complex job. Many good professional staff leave communities prematurely, sometimes hastened by threats to remove them by withdrawing their permit to reside on Aboriginal land when they fall foul of a Land Council or particular Land Trustees. An added problem of this constant turnover of staff is that each new executive brings different ideas and advice to their respective organisations. It is not uncommon, as has happened in the Tiwi Islands over the last five years, that governments have funded consultants to develop new strategic and business plans for each of the separate organisations, and each time a new CEO is appointed. Many thousands of dollars are spent on consultants to resolve issues and a great deal of time and energy is expended in the process, often with little understanding and ownership by the elected Indigenous leaders of the various organisations.

There is therefore a great urgency to encourage more local leadership and capacity building in Indigenous communities. There are already many programmes established for capacity building in remote communities but one of the reasons for their failure has been the lack of targeting and selection of suitable people and the reliance on external training. Strategies need to be put in place to identify future leaders and employees and provide these young men and women with individual education, training and mentoring programmes to meet their specific needs in their workplaces and communities. One



option may be to establish an Indigenous Mentor programme where volunteers spend some time in a community providing a personal coaching or training programme and then continuing in a consultative role providing independent and impartial advice. The most important priority is to raise literacy and numeracy levels to prepare local people for full-time meaningful employment.

## **7. Employment and training**

Current practices and welfare dependency are responsible for the lack of Indigenous jobs and enterprise in remote communities. It has become a habit to employ principally non-Indigenous contractors to undertake all kinds of construction and maintenance. There is no obligation or financial incentive to train Indigenous apprentices or use local labour. The failure to do so has resulted in the demise of trained Indigenous people in building and other construction and maintenance tasks over the last 30 years. In reality there are a lot of jobs in those community services funded by government that could be undertaken by Indigenous residents but local authorities would need greater continuity of funds to establish long term training and employment programmes for these to succeed.

Because of the failure of primary education in remote communities, current adult employment and training schemes are farcical and produce few or no results. Young people participate because they are bored, enjoying the opportunities to travel or be equipped with new clothes or tools but rarely advance into any kind of ongoing employment. The present system that conducts so called accredited courses and counts its success by the number of people enrolled and the number of courses conducted has not succeeded. Presently many adult education and training programmes are conducted by fly-in trainers from registered training organisations on an intermittent basis at huge cost with most benefits flowing to the providers themselves.

Training programmes need to be structured around live-in mentors who work every day with their students, preferably in small workplace based groups. Mentors can be recruited from within communities or brought into communities for periods of 12 months or more.

Something dramatic must be done about Community Development Employment Projects (CDEP) and other Work for the Dole programmes. The planning, administration and reporting procedures have become increasingly complex, time consuming and absorb large quantities of money that could be better spent on mentors and wages. There are grave doubts about the wisdom of contracting the delivery of the CDEP programmes with private sector providers when this requires yet another group of administrators to set up offices in each community, many of whom will fly in and out of communities on a temporary basis. Job Network already operates in remote Australia and the continuation of CDEP is simply a duplication of that service. It would make more sense if a large part of current CDEP/Work for the Dole money went in the form of a grant directly to local authorities to create full-time, permanent positions for residents with an associated mentor. This would remove the stigma of CDEP jobs that residents believe are not real jobs and would ensure that all employees doing similar work are employed under the same work conditions. This would also remove the potential conflict and confusion between CDEP and Local Government operations in some communities. The large administrative costs of the operation of CDEP would be better spent in increasing direct employment opportunities. Centrelink is already implementing government policy to end the humiliation of 'sit-down' money through the abolition of the Remote Area Exemptions. The next step must surely be removing the ignominy of CDEP.

### **Proposals for reform: A new model to simplify local governance**

The present multi-layered governance structure in remote Aboriginal communities contributes to their dysfunction and must change. The *Aboriginal Land Rights (Northern Territory) Act 1976* must be amended to define more clearly the role of Land Councils

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as land managers. A single local governance structure should be established under the *Local Government Act 1994* as a matter of urgency. This structure should establish a substantially reduced number of local governing bodies as Regional Shires.

### **The new Regional Shires**

The new Regional Shires should operate under the Northern Territory's Local Government legislation. As in other states, rationalisation and amalgamations have created larger and more viable local government bodies under various names. The Regional Shires in the Northern Territory should be local councils created under the umbrella of the *Local Government Act 1994*. Such a move would create more economically viable local government councils, comparable with those in other states, and would include those 'community government councils' that currently operate in remote communities under a separate set of rules also under the *Northern Territory Local Government Act*. They should also be constituted on the same lines as those of other municipal councils in mainstream Australia. Because most Indigenous communities are remote and lacking competitive services, their local government role may for the short term, at least, be somewhat different from that of local authorities in mainstream Australia. This could include, for example, the delivery or management of services as listed below.

Local Government Councils in remote areas currently provide a wide range of services grouped into three categories:

- A. Local government services like other local governments including community planning, road and rubbish management, transport, childcare and youth services, libraries, environmental health programmes, animal control, recreational services and the care and maintenance of community facilities
- B. Community Services due to remoteness. These include Centrelink agencies, community housing, transport, CDEP/Work for the Dole Programmes, power, water and sewerage, banking and mail services, internet access, radio and television broadcasts, airports, freight services, night patrols and other protection services such as women's shelters and family centres.
- C. Commercial Enterprises such as tourist facilities, stores, art centres and licenced clubs

In the new model for better community governance, Regional Shires would retain responsibility for services in Category A. Provision of Category B services, such as power, transport and telecommunications, as well as Category C commercial enterprises would become *transitional* responsibilities. Over time, these services would become open, privatised and competitive. In transition, the division of services provided by the Regional Shires would thus become:

- A. **Ordinary local government functions.** These include planning and zoning, housing, public parks, recreational facilities and buildings, local roads, rubbish collection, and water and sewerage.
- B. **Transitional services due to remoteness.** These include services supplied by central or local government that need local supply because of remoteness such as power generation, transport and telecommunications.
- C. **Transitional commercial enterprises.** These include enterprises such as shops and petrol stations for which the economies of scale are currently too small to be privately competitive and profitable.

Key services, notably health, education, law and order and Centrelink must be provided by Territory, State and Commonwealth Governments at the standards that mainstream Australia expects. It is unreasonable and usually impossible for small communities to manage such complex services such as the management and delivery of Health Services with few residents having the literacy or the professional skills that are required.

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The establishment or continuation of the local Indigenous advisory boards that ensure cultural appropriateness should be voluntary and an opportunity for community service.

### **Financial support**

It needs to be recognised that there is limited opportunity for Regional Shires in remote communities to raise sufficient revenue to maintain existing services and that there are limited opportunities to develop new services. Many of these issues were raised in submissions to the Commonwealth's *Hawker Inquiry on Cost Shifting* (Rates and taxes: A fair share for responsible local government, October 2003).

This report found that the states were guilty of significant cost shifting to local government making it difficult for local councils to maintain existing services.

For any Indigenous governance system to succeed the Commonwealth, State and Territory Governments will need to develop a new Financial Assistance Package that recognises and provides sufficient levels of funding to address the disadvantage suffered by remote Indigenous communities. Significant savings could be made by reducing the overlap and by streamlining current administrative and governance structures.

### **Administration**

Even with the exclusion of key services and commercial enterprises, the range of responsibilities (the new Group A above) is still far too great for small local government councils to administer. Sometimes communities, or governments on their behalf, have tendered out services, particularly in relation to the management of finances, to private providers with fly-in staff overseeing local employees. This mode is very expensive, difficult to coordinate, lacks training and employment opportunities and removes responsibility from the community. Another solution used in the past has been to create separate administrative structures or organisations to take responsibility of specific areas such as CDEP and housing with the resultant mismanagement and abuse of community resources described above. The establishment of larger Regional Shires should overcome these problems by bringing about significant economies of scale and preventing many of the current confusions and conflicts. Aboriginal people have a better chance of achieving prosperity and control of their communities under modern governance structures than they do in the present climate of corruption, incompetence and dependence on numerous organisations controlled by non-Indigenous administrators.

These amendments would in no way alter the inalienable right of Aboriginal people to the ownership of their lands. They would, however, change and more clearly define the administration and governance structures. As already initiated in the formation of Tiwi Islands Local Government, local government shires and/or Regional Shires should bring together democratically elected community representatives with the Land Trustees (representing the traditional owners) to manage the local government of remote communities.

### **The special responsibilities of Land Councils**

The Commonwealth Government needs to confine the Land Councils to a land management role. Currently, there is nothing in the *Aboriginal Land Rights (Northern Territory) Act 1976* that gives Land Councils any local government function. However, some have assumed such control through their control of land leases. The reform would see Land Councils retain their responsibilities as land managers. They should continue to be responsible for the oversight of Aboriginal land use in a similar way that Crown Lands are managed in mainstream Australia.

The successful establishment of Regional Shires on Aboriginal land will require head leases for the municipal/shire areas from the Land Council giving them the same clear authority and jurisdiction over public roads, community facilities and infrastructure as

**Aboriginal people have a better chance of achieving prosperity and control of their communities under modern governance structures**

## Land Councils should be subject to tight controls on their involvement in any commercial enterprises

other local government authorities have in mainstream Australia. In conjunction with this new model of governance for remote communities, there must be an opening up of community land for private home and business investment by individual Aborigines; this would reduce the burden on government to provide all services to the community.

Land Councils should be subject to tight controls on their involvement in any commercial enterprises. Currently big mining, forestry and other enterprises that operate on Aboriginal lands pay for their leases as well as other commercial agreements to the land owners. Separate from this, royalties from mining operations on Aboriginal land in the Northern Territory are deposited in the Aboriginal Benefit Account, but thousands of dollars are still appropriated annually by 'big men' and their families while their communities lack housing, health services, schools and other community facilities.

The destination of royalty, rental and monopoly business income must be analysed. Options that guarantee money generated is directed to programmes and projects for the benefit of the whole community must be implemented. By taking direct Commonwealth control of the allocation of funds from the Aboriginal Benefit Account in 2003, the Commonwealth Government Minister for Indigenous Affairs hopefully ended at least part of the misuse and abuse of mining royalty monies, although there are still opportunities to better target the money for the benefit of communities. At the very least, the records of financial and other benefits accrued to traditional landowners must be reported and openly available to the families and communities they supposedly serve.

A greater level of accountability for monies paid to traditional owners will be even more important when the current agreement between Land Councils and the Northern Territory Government to enter into long-term head and subleases for residential projects comes into force. Otherwise access to more lease funds will benefit the 'big men' and disadvantage the communities by increasing the cost of housing and other land uses.

### Transition and implementation

The announcement by Northern Territory Local Government Minister Elliot McAdam in October 2006 of local government change is welcome; to embark on another two years of consultation is disappointing as it will further delay much needed reform. There has already been more than five years of consultation across the Territory and in the case of the Tiwis, almost ten years. As always, the consultation process will mostly comprise written submissions and input from non-Indigenous staff and advisors, often acting to protect their own interests. Indigenous leaders of local government must be actively involved and trained during this period.

Before any Regional Shire is established, a number of steps should be taken:

- The administrative structure should be clear.
- Clear authority needs to be given.
- A strategic plan needs to be formulated.
- Potential Indigenous employees and leaders need to be identified and an intensive capacity building programme developed.
- All financial issues need to be resolved and a clean set of accounts prepared.
- Key staff should be appointed, including an administrator to supervise the transition phase and to develop administrative procedures for the new Regional Shires.

A transition and implementation phase will be necessary. The same approach should be used as in the states when councils become dysfunctional or major restructuring is required. An administrator is appointed for a period of time to establish the management and procedural structures needed to operate an efficient and functional governance structure. The administrator should report to the Local Government Minister and be employed to implement any agreed organisational structure, to establish procedures and policies, and to implement the agreed business plan. A timetable should be agreed and when completed to the Minister's satisfaction, elections should be held for local council members.

Staffing will be a key issue in the transition and implementation phase. The new

Regional Shires will need good quality staff on the ground in communities, not in head offices. The Northern Territory Government's employment of numerous field officers based in the Department in Alice Springs and Darwin has failed. While larger Regional Shires will need to centralise administrative functions such as finances and human resources, each remote community must be adequately staffed with skilled staff able to train and mentor local residents in providing frontline services. The advent of online services such as the financial and administration system developed by LGANT must be fully utilised to support local offices and staff in communities.

On an ongoing basis, once the administrative structures and plans are established, it will be important to make all future staff responsible for the implementation of these plans and adherence to established procedures. In monitoring compliance it is important that the measurement of outcomes is against the agreed five to ten year plan and that rolling funding supports this. That is not to say that there is no need to continually review and update all plans developed by councils, but having a common template for remote communities might be a good start.

After the transition and implementation period, the next step would be to ensure that there is fair representation from the communities. All should be elected by an open and transparent method of election conducted by officers of the Electoral Commission. A model similar to that adopted in the formation of Tiwi Islands Local Government, which includes a mix of community representatives and Land Trustees, should go a long way to alleviating any potential conflict as members would need to reach agreement to implement any decisions.

Separate or additional management boards outside the current local government bodies to appease every community or sectional interest has been a critical source of the current disaster of community governance and must be avoided. Community interests can be protected by the creation of wards or districts ensuring the election of local members. Aboriginal people can learn to govern themselves through community rather than individual concern, just as the rest of Australia has.

The practice of paying appearance money for attendance at meetings and functions in Aboriginal communities must be abolished and replaced by annual allowances as are paid to elected members of Local Government bodies across Australia. Failure to attend a percentage of meetings each year should lead to automatic disqualification. The present system of 'sitting fees' does nothing to encourage local members to accept their responsibilities in representing their communities. A culture has been created whereby many will not attend any function or meeting without the payment of a sitting fee resulting in meetings having to be cancelled due to a lack of attendance.

## **Conclusion**

Today we are at the crossroads of a continuation of the disgraceful circumstances imposed on remote communities by the patronising policy of isolation imposed on them 30 years ago and the opportunities offered by good governance.

We can only hope that the road ahead will create a sustainable future for Indigenous people.

**Aboriginal people can learn to govern themselves through community rather than individual concern, just as the rest of Australia has**



## Endnotes

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