



Northern Land Council

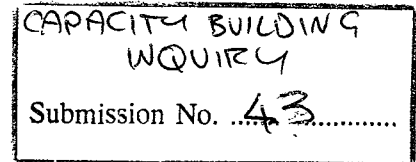
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02 October 2002

Our Ref: DS02:2002/1126

Mr Barry Wakelin, MP
Chair
House of Representatives Standing Committee
Aboriginal and Torres Strait Islander Affairs
Parliament House
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Dear Mr Wakelin

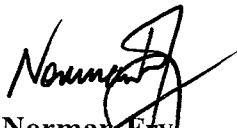
NLC Submission to Capacity Building Inquiry

Please find attached the NLC's submission to your Inquiry into capacity building in Indigenous communities.

I understand the Committee is coming to Darwin at the end of November and I hope to have the opportunity to address you further at that stage on this important issue.

Please contact Katy Haire, Senior Policy Officer, on 08 8920 5113 or katy.haire@nlc.org.au.

Yours sincerely



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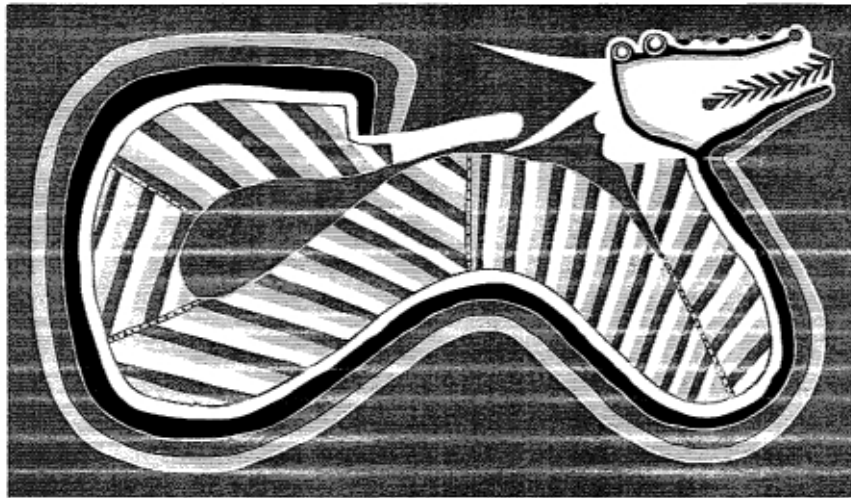
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NORTHERN LAND COUNCIL



submission to

HORSCATSIA

Inquiry into Capacity Building in Indigenous Communities

SEPTEMBER 2002

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Acronyms

ALFA	Arnhem Land Fire Abatement (Project)
CDEP	Community Development Employment Program
CFCU	Caring for Country Unit (NLC)
DEET	Northern Territory Department of Education, Employment & Training
DEWR	Department of Education and Work Relations
KCTWM	NTU Key Centre for Tropical Wildlife Management
EA	Environment Australia
ILC	Indigenous Land Corporation
JNP	Job Network Providers
NTBFC	Northern Territory Bushfires Council
NTRB	Native Title Representative Body
NLC	Northern Land Council
NTA	Native Title Act
PBC	Prescribed Body Corporate (under the Native Title Act 1993)
TSCRC	Tropical Savannas CRC
WWF	World Wildlife Fund

Executive Summary

This submission is provided by the Northern Land Council to the House of Representatives Select Committee on Aboriginal and Torres Strait Islander Affairs' Inquiry into Capacity Building in Indigenous Communities.

The submission considers the Australian and international context of the term "capacity building", in particular its relationship to development theory and its importance in the findings and recommendations of the recent Commonwealth Grants Commission Indigenous Funding Inquiry.

The NLC submits that a more appropriate term for the Australian Indigenous context is "capacity development."

The NLC argues that capacity development with Aboriginal people must be based on an acknowledgment and recognition of the existing capacity of Aboriginal societies, in particular the role of traditional law and land tenure systems. In relation to land management, effective governance and economic development, it is argued that successful outcomes are contingent on programs and resourcing which builds on the existing framework of land and law, including its group or collective nature.

The *Aboriginal Land Rights (NT) Act (ALRA)* is an effective model for decision-making which is based on Aboriginal law, but which can be translated into economic, social and cultural outcomes in mainstream society.

The NLC's Caring for Country program is posited as a working example of capacity development which builds on traditional Aboriginal land ownership to create opportunities for employment, empowerment and economic benefits. In a different but related way, the NLC's railway employment project demonstrates how greater benefits can be derived from the operation of beneficial legislation such as ALRA and the *Native Title Act 1993 (NTA)*.

A range of impediments to effective capacity development are described, relating to:

- Program and resource delivery
- Service delivery
- Governance issues
- Training and development

The NLC recommends that HORSCATSIA consider practical and effective mechanisms to address these impediments. In particular, the provision of flexible, long term block funding is recommended.

1. Introduction

- 1.1 The Northern Land Council (NLC) has been operating for 27 years and is one of the most experienced Indigenous representative organisations in Australia. This submission is presented in order to place before the Committee the experience and lessons that can be drawn from its long involvement in matters of Aboriginal capacity development, specialised service delivery and governance under the *Aboriginal Land Rights (NT) Act* (ALRA) in the Northern Territory since 1976, and under the *Native Title Act* (NTA) since 1993.
- 1.2 At the outset, we suggest that the term '**capacity development**' more relevantly captures the experience of the Land Council in its performance of statutory functions. The term is also more appropriate to the cross-cultural context within which Aboriginal landowners are planning and developing the range of capacities they need to meet the major challenges they face at the beginning of the 21st century.
- 1.3 The NLC's approach to capacity development is additionally informed by recent thinking of the United Nations Development Program (UNDP); the conclusions of the Commonwealth Grants Commission's (CGC) Inquiry into Indigenous Funding (2001); and the still relevant recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1991).
- 1.4 This submission:
- I. summarises the findings of key inquiries that the NLC regards as relevant to the specific conditions for capacity development by Aboriginal land owners;
 - II. provides workable definitions of 'capacity development', 'capacity' and 'participation' within a relevant culturally-based framework;
 - III. presents an overview of the lessons and outcomes arising out of the NLC's practical experience, under three main headings—Land and Resources; Governance; and Sustainable Economic Development; and
 - IV. identifies the obstacles that currently impede and undermine the self-determined development of capacity by Aboriginal people.

2. Key terms— 'capacity', 'capacity development', 'participation', 'enabling environment'

- 2.1 For the purposes of this submission, '**capacity development**' is broadly taken to mean:
- 'The process by which individuals, groups, organisations, institutions and societies increase their abilities: to perform functions, solve problems and achieve objectives; and to understand and deal with their development needs in a broader context and in a sustainable manner' (UNDP 1997).
- 2.2 In the context of this broad definition, the NLC experience is that the content of capacity development needs to be customised to suit a diversity of circumstances. The type and interests of participants, the context, the type of individual and organisational challenges, the resources available, the strategies, incentives and constraints will all vary widely. Importantly, within the Aboriginal domain, the process involves multiple actors, social levels and cultural linkages; not simply isolated individuals or organisations.
- 2.3 The definition must also be situated within the framework of beneficial statutory objectives and functions enacted in the ALRA and NTA. Here the goal of capacity development is not simply to encourage 'well managed communities' and 'better service

delivery', but to enhance Aboriginal people's capacity for self-determination and sustainable development.

- 2.4 The NLC regards '**capacity**' as: being related to the lands, resources and self-determined governance of Aboriginal people, their organisations and communities; and built upon, and drawn from, the diverse Aboriginal cultural and community contexts in which Aboriginal people already possess many well-developed capacities.
- 2.5 The development of capability will require the full participation of Aboriginal people and their governing organisations. We therefore suggest that the term '**participation**' is applicable, but must be based on the fact that Aboriginal people already participate in their own cultural systems, institutions and structures.
- 2.6 The NLC defines 'participation' to mean: the mobilisation of Aboriginal people, communities, organisations and institutions to assume active ownership of, and responsibility for, the development and management of their lands, natural endowments, financial resources, services and programs, with the specific objective of strengthening their cultures, governance and socioeconomic well-being.
- 2.7 This approach to capacity development emphasises strengthening Aboriginal peoples' options for articulating their own needs and priorities, and for initiating what is sometimes referred to as 'ethnodevelopment'; that is, 'socioeconomic change that is determined by them [Indigenous people] and is compatible with their specific cultural values' (Partridge et al 1996). This form of 'participatory development' is now being explored and implemented by international aid agencies and Third World NGOs. Similar operating principles have been developed by the United Nations Development Program (1997, 1998); the British Columbian First Nations Capacity Initiative Panel (1999); and the World Bank's Indigenous Capacity Building Program in Latin America (2000).
- 2.8 The development of sustainable capacities by Aboriginal people and their organisations cannot occur without the concurrent facilitation of a wider '**enabling environment**' primarily composed of government and private sector parties. This means tangible and coordinated commitments and support mechanisms are required from government and the private sector in matters such as: their preparedness to assume responsibility, to reform and collaborate, to devolve relevant authority, develop policy and program frameworks, provide legal and regulatory support, implement 'downward' accountability, and provide stable block funding and other resources etc. Building the capacity of the government sector to provide this enabling environment may well constitute the most critical and difficult area of capacity development of all.

3. Some guiding principles for effective and relevant capacity development

- 3.1 Even under the most favourable circumstances, capacity development is a 'murky, messy business, with unpredictable and unquantifiable outcomes, uncertain methodologies, contested objectives, [and] many unintended consequences' (Morgan 1998: 6). The NLC's approach to capacity development since 1976 has had the advantage of a relatively clear focus, set of objectives and quantifiable outcomes, required by statutory frameworks that stipulate strong measures for the recognition and protection of Aboriginal traditional land ownership rights and interests, and guidelines for the Land Council's own role and responsibilities.
- 3.2 The NLC's experience over the last 25 years in working with Aboriginal land owners and communities is that capacity development is a long-term, dynamic process. To avoid 'messy murkiness' the process must be informed by key guiding principles. In particular, capacity development must:

- i. reinforce the broad purposes of beneficial legislation to grant land to traditional Aboriginal owners, recognise their traditional interests in and relationships to land, and provide Aboriginal people with effective control over activities on land granted;
- ii. promote the capacity for self-determination of traditional owners and the Aboriginal organisations which govern the communities in which they reside—enhancing independence rather than dependence;
- iii. be drawn from, and strengthen, the already existing capacities and strengths of Aboriginal people, their cultures, organisations and institutions;
- iv. include systematic steps to invest in capacities now, in order to invest in the future capacity of Northern Territory Aboriginal people;
- v. recognise that culturally-based factors relating to age and gender play an important part in the acquisition and exercise of particular kinds of capacities in many Aboriginal societies;
- vi. be ‘participatory’ and driven by Aboriginal peoples’ priorities for sustainable cultural, social, economic and political development—providing them with a high degree of control over the process of capacity development itself;
- vii. encompass multiple levels of Aboriginal groups and cultural linkages, rather than focusing on isolated individuals or organisations;
- viii. be tied to achievable goals that are measurable in terms relevant to Aboriginal people;
- ix. be adequately resourced—sustained capacity needs reliable access to finance, expertise, information, technology, infrastructure etc; and
- x. be supported by a wider enabling environment in which the capacity of all levels of government to effectively coordinate its own activities, provide ‘downward’ accountability, and develop meaningful partnerships with Aboriginal people, is developed as a matter of urgency.
- xi. be supported over a very long timeframe as capacity development is reliant on commitment over time to achieve negotiated and agreed outcomes.

4. Key inquiries—creating a relevant context

- 4.1 The need for capacity development to support Aboriginal self-determination and effective governance at the community level has been noted by successive inquiries. But little systematic attention has been paid by government to creating the enabling environment needed, let alone enabling the development of sustainable capacity at the local level.
- 4.2 Well over a decade ago, the **House of Representatives Standing Committee on Aboriginal Affairs** (HRSCAA 1990) concluded in its report *Our Future, Our Selves: Aboriginal and Torres Strait Islander Community Control, Management and Resources*, that the essence of self-determination is ‘the devolution of political and economic power to Aboriginal and Torres Strait Islander communities’. Self-determination was defined as Aboriginal people having ‘control over the ultimate decision about a wide range of matters including political status, and economic, social and cultural development’ and ‘*having the resources and capacity to control the future of their own communities within the legal structure common to all Australians*’ (HRSCAA 1990: 12; *italics added*).
- 4.3 A year later, the national report of the **Royal Commission into Aboriginal Deaths in Custody** (RCIADIC) concluded that: principles of self determination should be applied to the design and implementation of all policies and programs affecting Aboriginal people; that there should be maximum devolution of power to Aboriginal communities and organisations to determine their own priorities for funding allocations; and that such organisations should, as a matter of preference, be the vehicles through which programs are delivered (RCIADIC 1991, Vol. 4: 19). The RCIADIC also highlighted the fact that with the implementation of the self-determination policy from the early 1970s, non-Aboriginal structures of control and management were physically withdrawn and not replaced with

training or their local equivalents, leading to 'a severe deficit of the management and technical skills required to administer community facilities' (page 539-540 *italics added*).

- 4.4 In an important evaluation of the Reeves (1998) review of the ALRA, a **House of Representatives Standing Committee of Aboriginal and Torres Strait Islander Affairs** Inquiry argued in *Unlocking the Future* (1999) that 'Aboriginal people should have the right to manage their land in accordance with Aboriginal tradition and should be able to participate in all levels of decision-making. In an economic context, any legislation should facilitate rather than hinder the economic development of Aboriginal land according to the wishes of Aboriginal people' (1999: 6). In order to secure self reliance, the Report recommended that Aboriginal people 'should be free to associate and organise in ways they see fit' (1999: 7). The Inquiry was particularly scathing of the impact on Aboriginal self-reliance and economic outcomes of '*the mishmash of programs and agencies providing varying degrees of support and services to Aboriginal people with the waste and inefficiencies that accompany them*' (1999: 18 *italics added*). It recommended 'whole of government' strategies and regional agreements as more effective and efficient ways to improve social and economic outcomes for Aboriginal people.
- 4.5 The more recent **Commonwealth Grants Commission** Inquiry into Indigenous Funding similarly suggests that, 'as far as possible, Indigenous people should have authority to make decisions about the services they receive both at the State and local level, and that ideally, this would be accompanied by control over the funds necessary to provide the services'(CGC 2001). The CGC (2001: 90) accordingly recommended a set of principles by which changes to funding arrangements should be made. These include:
- *the 'full and effective participation of Indigenous people in decisions affecting funding distribution and service delivery';*
 - *'ensuring a long term perspective to the design and implementation of programs and services'*
 - *'ensuring genuine collaborative processes';*
 - *maximising 'opportunities for pooling of funds as well as multi-jurisdictional and cross-functional approaches to service delivery';*
 - *improving the collection and availability of data to support informed decision-making; and*
 - *recognising the importance of capacity building within Indigenous communities'*
- 4.6 The CGC emphasised that '*building community capacity, especially developing the capacity of Indigenous organisations to manage service delivery, is a crucial step in ensuring Indigenous people play a central role in decision making and the more effective use of funds*' (CGC 2001: 94 *italics added*) and that 'for those communities where this capacity is lacking a higher initial investment of resources will need to be made' (page 95).
- 4.7 The NLC supports the relevant conclusions of these various inquiries as being critical to capacity development for Aboriginal land owners and their communities in the Northern Territory. Many Aboriginal people in the Northern Territory continue to suffer major capacity deficits (in areas of organisational and resource management, financial literacy, technology, governance, staffing, administration etc). Processes of capacity development are long term and so: must be supported over the long term by multi-year, block funding from governments. This will require a greater degree of collaboration with, and between, levels of government. It also requires the full participation and effective decision making of Aboriginal people, and the negotiation of relevant evaluation indicators. As so many government inquiries and research reports have documented, increasing the capacity for self-determined governance and effective community management will need to focus not on individuals as isolates, but on the culturally valued social groupings, local and regional

networks and organisational contexts within which each Aboriginal person is now embedded.

5. Implementing capacity development under the ALRA and NTA

5.1 Framework

Under the umbrella of its statutory functions, the NLC has attempted to develop a systematic, long-term approach to working with traditional owners and Aboriginal communities to develop the range of capacities required by them for: the protection of Aboriginal cultural rights and interests; the management and use of Aboriginal land and resources; effective governance; and sustainable economic development. In the following sections, we outline some of the lessons and practical outcomes to date.

5.2 Capacity for managing land and resources

5.2.1 Forty four percent of land in the NLC region is now inalienable Aboriginal freehold with a further ten percent under land claim. Approximately eighty three per cent of the Top End coastline is Aboriginal land. Increasing numbers of Aboriginal landowners and their communities are negotiating resource development and native title agreements, arrangements for site clearance and heritage protection, good neighbour agreements, and developing successful enterprises. For these purposes, they have also established incorporated bodies to deliver a wide range of land-related services.

5.2.2 As a consequence of these significant initiatives and opportunities, Aboriginal people face the ongoing challenge of managing major land and natural resource endowments in a sustainable way. Over the period of its operation, the NLC has developed several major initiatives to assist Aboriginal people in carrying out strategic planning, and in developing the range of capacities needed to meet these challenges. Informed by instructions from Aboriginal landowners, the NLC has based its approach on the primary importance of the existing body of traditional knowledge and skills already possessed by Aboriginal people about their land and natural resources. However, a key capacity issue has been how to ensure that these traditional skills and practices are strengthened and not undermined by the transfer to Aboriginal owners and organisations of capacities in technology, infrastructure, information systems, and contemporary western scientific practice.

5.2.3 The Land Council's experience is that substantial resources (human and other) are needed by Aboriginal people and their community organisations in order to compile, interpret and manage not only their own land and resource data, but new forms of technical information and data. It is clear that the progressive development of these land management capacities is making a valuable contribution not only to Aboriginal people and their communities, but also to the Territory population and economy as a whole.

Case study : Capacity development outcomes of the NLC Caring For Country Unit.

The NLC instituted the Caring for Country Unit (CFCU) in 1995 to assist Aboriginal land owners and their communities to develop locally appropriate and sustainable community based natural and cultural resource management programs, particularly in areas where traditional land management practices are inadequate to address emerging environmental problems. The CFCU has both a conservation and development focus including a commitment to the principles of developing the capacity of Aboriginal land owners and respecting and drawing on two sets of knowledge to promote best practice in both traditional Aboriginal and science-based knowledge systems. The CFCU employs a generalised model for developing community-based land and sea management programs. The process is always flexible and driven by Aboriginal people. The following description of the CFCU model provides an overview of how the CFCU has successfully

operationalised Aboriginal land and sea management capacity development in remote areas in the Top End of the NT. The process includes:

- *consultation* with Aboriginal land owners, using participatory and action planning methods to determine the land owners' needs and priorities.
- *employment* of an Aboriginal land management team that has been chosen by land owners, through a community-based agency.
- *land assessments* with land owners to help ensure the development of a shared understanding of priorities for on-ground action. The process can incorporate collaborative research with government and other agencies when the process is well established.
- *an acknowledgement of two sets of knowledge*: Aboriginal traditional knowledge and western science-based knowledge are both acknowledged and viewed as two 'tool boxes' available to Aboriginal land owners.
- *training and education*: The CFCU acts as a broker and facilitates accredited, issues-based training (eg weed control) and the delivery of tertiary level broad-based land management education where desired. Tertiary land management courses available to Aboriginal people range from full-time, on-campus courses to delivery on the management site.
- *networking*: The CFCU recognises the value of networking and regional support mechanisms, and provides support to foster these networks across bio-regions and the development of a formalised structure for Aboriginal land management across the Top End.
- *research*: CFCU and land management coordinators facilitate collaboration with research and management agencies to undertake issues-based projects including enterprise development that is based on the sustainable use of natural resources. Projects generally start small, involve land owners, contribute to capacity development and grow with the community's ability to deal with issues.
- *"getting people back onto country"* by assisting land owners with planning and the acquisition of resources to move back onto country, either permanently on outstations or seasonally.
- *conservation of Aboriginal traditional knowledge*: through the National Strategy for the Conservation of Biodiversity and the International Convention on Biological Diversity Commonwealth, state and territory governments have committed resources to support the conservation of indigenous knowledge. The CFCU recognises the urgent need to conserve Aboriginal traditional knowledge and use a combination of 'on country' and 'off country' strategies as part of its program.
- *economic initiatives to fund land management*: CFCU works in partnership with the NTU Key Centre for Tropical Wildlife Management to support local initiatives to develop sustainable enterprises based on the use of native flora and fauna. Profits generated from economic initiatives programs will be invested in community land and sea management programs.

The CFCU has achieved considerable capacity development and employment outcomes, for Aboriginal people who are living on their country, through the development of over thirty community-based land and sea/ranger management programs across the Top End (refer to Map at Appendix A). There are an estimated 200 Aboriginal people employed, on a full time basis (ie. CDEP), in these community-based land management programs. These positions represent high quality and long-term training and employment opportunities for Aboriginal land owners. All participants initially receive initial basic training and are then introduced to formal, accredited land management training programs. To date, nearly twenty Aboriginal participants have successfully completed Certificates in Resource Management.

These land and sea management/ranger groups are engaged in a wide range of small and large-scale management activities and projects. For example:

- *Conservation of indigenous knowledge project*: Facilitated by the CFCU, with the support of Environment Australia and the Tropical Savannas CRC, the project operates in two nodes; the western Arnhem Land Plateau and the Ngukurr region of south-east Arnhem Land (Refer to Appendix A). Through “back to country knowledge camps” the project facilitates the transfer of traditional Aboriginal knowledge, relating to ethnobotany, ethnobotany, ethnozoology, weather, calendars, traditional ecological knowledge terms, place names and more, from senior Aboriginal land owners to younger workers, family and community members.
- *Weed management*: The CFCU is a key partner in the Top End Aboriginal Land Management and Employment Strategy (TEALMES) which focuses on developing the capacity of Aboriginal land owners and their organisations to manage the highly invasive floodplain weed *Mimosa pigra* (*mimosa*). With funding assistance from the ILC, DEWR and DEET, this five-year project began in 1998 and has significantly reduced the heart of the mimosa infestation. Importantly, the spread of mimosa is being effectively managed by Aboriginal community-based programs in its eastern (ie. south-east Arnhem Aboriginal Land Trust) and western (southern Daly/Port Keats Aboriginal Land Trust) most extremes. This ongoing work is of national significance.
- *Collaborative fire research*: The Arnhem Land Fire Abatement (ALFA) Project is a collaborative research project between CFCU, Aboriginal land owners, NT Bushfires Council and CSIRO to undertake fire management in Arnhem Land. The project aims to achieve a dramatic reduction in greenhouse gases by utilising traditional burning regimes in an area of about 60,000sq km (three times the size of Kakadu National Park). With funding assistance from the ILC and DEWR, the CFCU supports Aboriginal community-based groups to get back onto the plateau (sometimes after an absence of 50 years) to reinstitute traditional burning practices and develop their capacity (eg. through the transfer of traditional knowledge from senior Aboriginal land owners to younger land owners) to manage fire projects throughout this vast area. It is estimated that a return to these traditional burning regimes, that are characterised by early and strategic burning, will prevent 300,000t of nitrous oxide from entering the atmosphere per annum.

These Aboriginal community-based land and sea management programs are funded primarily through CDEP with additional short-term funding from a variety of programs such as Landcare, Bushcare, ILC, WWF and others. There is a critical and urgent need for the provision of broad-based, flexible, long term funding to ensure the ongoing capacity development of these community-based groups. These groups are pivotal to the emergence of resource based enterprises and eventual economic independence. The CFCU has a primary and long-term role in developing the capacity of Aboriginal land owners so they can develop and implement sustainable community-based resource management programs and enterprises. The CFCU has the knowledge, expertise and methodology to fulfill this role. However, it is seriously under funded as a result of the capping of NLC core funding over the last nine years and the politicisation of peak federal funding bodies. The Unit's operation relies on a patchwork of external funds that are applied for annually. There is a critical and urgent need for multi year block funding over the long term to ensure the CFCU can consolidate and extend its significant capacity development role and activities.

5.3 *The capacity for effective governance*

- 5.3.1 The issue of capacity for effective governance is raised at several different levels under the ALRA and NTA. The Land Council has a statutory duty to act as a representative of

Aboriginal people with traditional rights and interests in land, as well as Aboriginal communities and groups who live on the land. It does this through the claims process, through its more recent land management support activities, through its dispute resolution role and, importantly, through the statutory requirement for consent and agreement-making for any use of, or access to, Aboriginal land.

- 5.3.2 One of the great strengths of the ALRA currently is expressed in the concept of 'informed consent'. The Land Council is legally required to consult with, and have regard to, the views and interests of all relevant Aboriginals and Aboriginal communities and groups, and cannot approve any development without approval of, and instructions from, the traditional owners, given in accordance with their own traditional decision-making processes. The ALRA recognises the operation of Aboriginal law and decision-making processes, and provides a statutory mechanism (s77A) to allow these vital governance processes to continue to operate and to provide an important interface, insofar as land is concerned, between Aboriginal law and Australian law.
- 5.3.3 The NLC has made major efforts over the last two decades in developing its own organisational capacity for participatory governance; in delivering its services as a representative body; and in operating under instruction in a transparent and accountable way.
- 5.3.4 The statutory criteria under which it operates provide a strong set of guiding principles (for example, regarding accountability, transparency, conflict of interest, and performance) not only for the Land Council's own governance processes and structures, but also for its work in supporting the practical development and strengthening of Aboriginal community and organisational governance at the local level. It has been the Land Council's experience that in order to participate fully in critical decision-making processes with government and the private sector, Aboriginal people continue to require community-based training ('learning by doing') in negotiation skills, financial management and administration.
- 5.3.5 Within the NLC, effective governance and capacity for governance are important priorities. The organisation functions under a mosaic of Commonwealth legislation, most notably the *Aboriginal Land Rights (NT) Act 1976* and the *Native Title Act 1993*. The provisions of the *Commonwealth Authorities and Corporations Act 1999* is also significant in that members, particularly the Chief Executive, Chairman and Executive have director-like responsibilities.

The members of the Council are selected by Aboriginal people on the basis of regional representation. The selection takes place every three years, however a western-style voting system is rarely used. The Land Rights Act allows the scope for Aboriginal people to select the appropriate person by whatever means is appropriate, which often means that the member is selected on the basis of seniority and knowledge in Aboriginal law. This is an important aspect of legitimate governance. It is the NLC's observation that Aboriginal organisations which operate wholly within a western-style decision-making structure are often not perceived as legitimate within Aboriginal society.

At the first meeting of each new council, members are given an induction/training program which introduces them to the role, responsibilities and processes of the Council.

One of the key areas for effective governance is ensuring that members and constituents of the NLC understand the "separation of powers" which exists between the Full Council and traditional owners. Section 23 of ALRA provides that, for any land use decision or agreement, the Council must ensure that

- (1) traditional owners have been identified and have given their consent (or otherwise)

- (2) other affected Aboriginal people have been consulted
- (3) the agreement is reasonable.

The important point to note is that the Council itself does not make the decision over the land use/agreement. That decision is made by traditional owners. The Council performs a different function of ensuring that the decision has been made properly. Through this important mechanism, ALRA preserves the legitimate governance processes of Aboriginal people in relation to their own land, while also providing a vehicle through which that decision can be translated into non-Aboriginal law.

This model is also employed, to the extent possible, for decisions relating to native title rights and interests.

The advent of the Native Title Act and the additional functions the NLC acquired as a Native Title Representative Body, has given rise to a new set of issues and decisions for Aboriginal people in the Northern Territory. The prospect of the establishment of a number of Prescribed Bodies Corporate (PBCs) as a result of native title determinations raises quite urgent governance and capacity development issues. Since the NTA does not provide for the same mechanism of review and quality control as ALRA, decisions of PBCs over their native title interests need to be made with extreme care. The NLC is currently developing a "Native Title Capacity Building project" to assist firstly its Council members, and ultimately PBC members to understand the native title regime and exercise their powers appropriately. It is hoped that the project would have wider applicability than the NLC's region and could ultimately be used by other NTRBs and PBCs. The NLC has had some assurance of funding for this program from ATSIC.

5.4 *Capacity development for sustainable economic development*

- 5.4.1 It is increasingly recognised that sustainable economic development is highly dependent on the long-term development of a range of human and organisational capacities at the local level. The ALRA establishes a financial regime which provides (for different purposes) the Land Council, Aboriginal people affected by mining, and the broader Aboriginal population, a share of mining 'royalty equivalents' raised through mining activity on Aboriginal land. The NTA has more recently begun to facilitate resource and land management agreements that have the potential to provide significant benefits to statutory classes of Aboriginal people. As a consequence, some Aboriginal groups, communities and organisations face a number of financial, human resource, administrative and planning challenges in order to derive the best economic outcomes possible. Not the least of these challenges is the pressure to establish financially viable and economically successful enterprises to generate local employment and to create investment strategies in remote locations. The establishment of such enterprise activities in remote locations is severely limited by the severe cost disabilities, lack of viable labour markets and access to capital.
- 5.4.2 A relevant example of these pressures and capacity deficits are to be found in the operation of so-called 'royalty associations' in the Northern Territory. These organisations represent a microcosm of the challenges facing many Aboriginal organisations and communities in the Northern Territory. The Land Council has made several submissions to various reviews documenting the significant gaps in their organisational and financial capacities.
- 5.4.3 Royalty associations are complex, ranging from small local organisations, to bodies with a regional coverage, and delivering to members a wide range of social, cultural and political as well as economic services. For example, NT royalty associations not only manage income streams tied to royalties; they have become financial agents and advisers on behalf of their membership and other incorporated associations; managers of

investment portfolios; business administrators with employees and staff; enterprise developers and joint venturers; and service providers to their community members (delivering, amongst other things, outstation, health, education, training, housing and infrastructure, accounting, transportation, land management and conservation, employment, and cultural services); they also operate as resource and community development agencies; cultural representatives and brokers; property owners and landlords; and charitable trusts and welfare organisations.

- 5.4.4 There is evidence, that in some situations, impressive local and regional developments have been initiated by a small number of these associations and community organisations. However, there is also evidence of some notable failures in terms of financial accountability, management and economic development outcomes. And even the best appear to be operating sub-optimally.
- 5.4.5 The Land Council has suggested that stronger statutory frameworks and incentives are required to facilitate the acquisition by these organisations of the necessary skills base they need. A program of internal capacity development (particularly in the areas of financial management, governance and administration) will involve consistent external support and mentoring.
- 5.4.6 Economic development is highly contingent on the informed consent and participation of the appropriate land owners. This suggests strong links between sustainable economic development and organisational arrangements that support Aboriginal land owners aspirations and needs. The Land Council's experience is that economic development will not happen without robust, effective governance by land owner controlled community organisations. The challenge for a capacity development approach is not simply one of assisting individuals escape economic dependency, or of building individual work skills and habits, of finding jobs for people or supporting their continuing involvement in their own customary economies, although all of these can be regarded as critical. On Aboriginal lands, the task over the long term is to build on the existing cultural knowledge base and traditional governance and economic systems of landowners as part of transforming the generally ineffective, non-traditional systems of governance and economic foundations of their communities. Comprehensive programs of relevant capacity development activities, that are delivered locally, supported by long term stable funding, and which reinforce local control and responsibility are critical to this process. A major impediment to achieving this goal is the lack of 'capacity to deliver' a coordinated approach by government and its agencies.

Case study: capacity development for sustainable economic development: NLC employment, training and capacity development activities.

The Aboriginal population is growing in all NLC regional areas in the Top End including remote, rural and urban centres and is predicted to continue growing over the next twenty years (Taylor:2000, ABS: 1996). In all regions, across all functional areas examined by the Commonwealth Grants Commission, 2001, indigenous people experienced entrenched levels of disadvantage compared to non-indigenous people. For example, educational disadvantage is greatest in remote regions, training outcomes such as employment are poor and the employment rate of indigenous Australians is far higher than any other group in society. Unemployment rates move to about forty per cent when CDEP participation is excluded from employment statistics.

The changing demographic and population distribution trends of Aboriginal people in the NLC region, over the last three decades, coupled with their ongoing and entrenched disadvantages, has significant implications for the NLC. The Land Council needs to continue developing its internal organisational and operational capacity to help meet the

growing needs, of its increasing number of constituents, for community and economic development. As part of meeting the expanding social and economic needs of its constituents, the NLC has a focused objective to assist Aboriginal land owners maximise their interests and benefits from major infrastructure and resource development projects, including training, employment, contracting and capacity development opportunities. These agreements and commercial licenses provide a fundamental base for economic and capacity development on Aboriginal land as well as supporting and building the local and regional economy of the Top End.

The NLC is using its strategic position to assist Aboriginal people increase their participation rate in the regional economy by:

- Exercising its statutory responsibility, through the *ALRA 1976* and the *NTA* to negotiate and broker a wide range of agreements and commercial licenses with government and private companies, for the development and operation of most major infrastructures and resource development projects in the Top End. Under the *ALRA 1976* Aboriginal traditional owners must give their consent for all land use agreements pertaining to their country (eg. mining, telecommunications, infrastructure projects), and under the *NTA* native title-holders have a right to negotiate land use agreements. When applicable these agreements and licenses include clauses that provide training, employment and contracting opportunities for Aboriginal people.
- Utilising a network of strategically located regional staff that has constant access to a large number of regionally based Aboriginal people. There is no other organisation that has this level of access to Aboriginal networks in the region.
- Facilitating successful Aboriginal training, employment and capacity development outcomes for Aboriginal people in the region through the CFCU and more recently through the NLC Alice Springs to Darwin Railway Employment Training and Contracts Project.

To maximise the participation of Aboriginal people in employment, training and contracting opportunities, generated by the construction and operation of the Alice Springs to Darwin Railway Project, the NLC established a dedicated Employment and Training Railway Project Team to: negotiate job and training vacancies with ADRail; develop a comprehensive database of Aboriginal people seeking employment; match people listed on the database to job and training vacancies; and to provide mentoring and other assistance to participants. The Aboriginal training and employment outcomes achieved by the NLC in the first nine months of this project (up to April 2002) are significant. The NLC facilitated a commitment from ADRail Services to employ 100 Aboriginal people on the Railway Project. Within nine months, 94 Aboriginal people were employed on the Railway Project out of a total workforce of 350 people, an overall Aboriginal employment participation rate of 27%. The retention rate has been outstanding with only six Aboriginal people leaving employment after three months. The NLC also facilitated a commitment from ADRail to provide accredited training opportunities for 200 Aboriginal people on the Railway Project. A total of 34 people had completed training by April 2002. NLC also gained a commitment from ADRail Services that Aboriginal people would be considered in all decision-making processes about contracting. These outcomes are directly attributable to the high level of resources the NLC dedicates to the Project and the team's focus on capacity development.

The NLC is now further developing its internal organisational and operational capacity so it can implement a recently formulated NLC Indigenous Employment and Training Program. The Program builds on the successful principles, methodologies and outcomes of the NLC Railway Project and the CFCU and is pivotal to maximising training, employment and capacity development opportunities for Aboriginal people, in major infrastructure and resource development projects, and through commercial licenses.

The NLC Training and Employment Program has the potential to be self-funding within three years. This would be achieved by generating funds through the development of successful financial partnerships with JNPs and by negotiating funding and resources in future agreements and licenses. In the interim, the provision of medium-term block funding by governments is critical to the NLC's capacity to strategically develop and implement a coordinated and integrated Program. The current incremental funding arrangements significantly reduce the capacity of the NLC to fully operate the Program. This will in turn negatively impact upon the achievement of the training and employment targets of the Program and the ability of the Program to become self-funding.

6. Factors impeding sustained capacity development

6.1 Overview

In the three key areas of land management, governance and economic development the NLC has identified a number of obstacles which impede and undermine the development of sustained capacity by Aboriginal land owners, their organisations and communities. These obstacles include:

6.1.1 Program and resource delivery

- i. The 'stop-start' government approach to funding—delivered by a multitude of departments, via small separate grants that are subject to changing program packaging, inflexible conditions and timeframes; and overloaded with heavy administrative and 'upward' accountability burdens.
- ii. Lack of government multi-year, block-funding arrangements to enable community organisations (especially governing bodies) to carry out forward-planning and deliver stable (rather than piloted) programs for the long-term development of local capacities.
- iii. The lack of effective coordination mechanisms between government departments and program areas, and a related lack of 'downward' fiscal and program accountability by State and Federal Governments to communities.
- iv. Continued government centralisation of control of policy formulation, program funding and service delivery contrary to the recommendations of numerous government inquiries and purported government policy objectives.

6.1.2 Service delivery

- i. The ongoing poor health and socioeconomic disadvantage of many residents in Aboriginal communities in the Northern Territory. This entrenched disadvantage is evident in the increasingly dysfunctional and chaotic social climate of many larger Aboriginal communities.
- ii. Difficulties faced by Aboriginal land owners and other community members in obtaining finance to support economic development initiatives.
- iii. The significant structural difficulties in establishing local employment and enterprises in remote communities and regions.
- iv. Inadequate community infrastructure and technology.

6.1.3 Governance Issues

- i. The lack of clearly devolved jurisdictional authority and related capacities, from governments to the local level, to support economic and cultural management of Aboriginal land and resources.

- ii. Ambiguity over who is responsible for assisting Aboriginal owners to develop capacity; in particular, the issue of cost shifting and substitution between governments and departments, and the uncertain role of the private sector.
- iii. The dispersed and fragmented environment for community governance where multiple local organisations compete for scarce resources, are often captured by local elites so their broader representative functions are undermined; and are often of such a small scale that continuity of knowledge, administrative systems and capacity within them are hard to achieve.

6.1.4 *Training and development issues*

- i. The lack of targeted training and induction processes for the Aboriginal members of Boards and Governing Committees of key community organisations.
 - ii. The lack of education and training programs (and related funding) to support an 'integrated learning' approach (that is, 'learning by doing') and provision of relevant skills in communities.
 - iii. The lack of support (funding and training) for strategic and business planning in key community organisations, and the related lack of coherent management structures and clear lines of accountability between management, Boards and staff.
 - iv. A shortage of local Aboriginal personnel who are adequately skilled and educated in organisational and financial management.
 - v. The low levels of general and financial literacy amongst community members and leaders of key organisations, and the lack of any systematic process for training and mentoring key Aboriginal staff in financial management.
- 6.2 Any initiatives recommended by the HORSCATSIA Committee for the development of a realistic and strategic approach to capacity development for Indigenous Australians must seriously address these obstacles and consider the guiding principles outlined above.

APPENDIX A

Map 1. Aboriginal community ranger/land and sea management programs in the Top End of the Northern Territory.

