

## Indigenous Public Policy and Aboriginal Communities in the Northern Territory.

### **1 Introduction**

This overview describes some of the main historical developments in respect of policies, programs and intergovernmental relationships concerning Aboriginal communities in the Northern Territory.

It focuses on the period from the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to the signing of the Memorandum of Understanding between the Australian Government and the Northern Territory Government on Indigenous Housing, Accommodation and Related Services in September 2007 and includes the implementation of the Northern Territory Emergency Response (NTER) in 2007.

A number of themes have shown remarkable persistence in the administration of Aboriginal affairs in the Northern Territory, especially in respect of the relationship between the Northern Territory and the Commonwealth. As some of these themes have their origins before Land Rights the historic and policy setting for the dramatic changes in Aboriginal Affairs in the 1970s are first described briefly.

### **2 Before land rights and self-government**

A number of the themes that continue to play out in the Territory in fact go back to the days before land rights and Self Government.

Arguably the most important of these has been the constant contest for power between the Northern Territory on the one side and the Commonwealth (colloquially 'Canberra') on the other. Oddly enough, this contest even precedes Self Government. The local administration, even when comprised of Northern Territory divisions of Commonwealth departments, preferred to run its own show, although ostensibly answering to Canberra. Locally-based centres of bureaucratic and political power existed in the Northern Territory well before 1978.

#### *Welfare Branch Days*

Most important was the all-encompassing Welfare Branch of the Northern Territory Administration (NTA), headed by its Director Harry Giese.

Welfare Branch exercised a large degree of control over the Aboriginal population and also over who inter-acted with that population. The vexed issue of permits, for example, argued by modern commentators to be a result of land rights and self-determination, can be seen as a continuation of the control exercised by the Director of Welfare over entry to Aboriginal reserves and missions.

The policy objective of the Welfare Branch era was assimilation. This policy reached its apogee in the late 1960s early 1970s, although the winds of change were blowing from the mid 1960s, influenced by the decolonisation process through the United Nations. The assimilation policy was implemented with significant resources and committed staff, including graduates of the Australian School of Pacific

Administration (ASOPA) who formed the backbone of much of the administration of Aboriginal settlements.

The major legacy of the assimilation era in the Northern Territory are the major remote communities. From the late 1930's through to the late 1960s the NTA set up a network of settlements. Although they have different histories these were basically an exercise in social engineering with the objective of the transformation of remote, nomadic, traditionally-oriented Aborigines into a settled community-based society. The Administration set out its objectives for settlements as follows:

Welfare Branch: Objectives of Settlements<sup>1</sup>

1. To bring natives together into a community and to teach them the habits and skills of living in such a community;
2. to provide welfare services fitted to the needs of the people concerned bearing in mind the stage of social development they may have attained;
3. to provide a means whereby education and training may be given, particularly to children and adolescents;
4. to introduce the general concept of 'work' as a worthwhile aim in life;
5. to develop in the younger and middle-aged groups an attitude that settlements (and mission stations) are there to provide health and education facilities for the children, so that the latter may be prepared for a future life as adults in a wider community than the tribe;
6. to provide a temporary home wherever necessary for natives in transit.

As many of the 73 'prescribed' communities under the NTER were set up by Welfare Branch, these objectives merit consideration. The question arises whether there is any degree of resonance between Welfare Branch objectives for the settlements and current policy settings and emphases, given the tendency in the Northern Territory for policies to recycle.

The story of the major settlements is well documented – how people were 'encouraged' to come into the settlements and what happened to them when they did so. There is little doubt that new communities were for many Aboriginal people a social and personal disaster – they created enormous stresses and strains on Aboriginal society with inter-family and inter clan conflict, loss of control over children and the beginnings of delinquency, alcohol and other substance abuse, illnesses associated with sedentary life styles and dependence on processed foods, and loss of contact with traditional country and important sites.

The situations of outstations and similar small communities (see below) have to be viewed in the historical context of the settlements created in the 1940s to 1960s. To a large degree (although not entirely) the outstation movement, which got properly underway in the mid 1970s (a few outstations had existed well before then), was a reaction against the negative effects of settlement life.

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<sup>1</sup> NTA document quoted in Tim Rowse, *White Flower, White Power*, 1998, pp 147-8.

Welfare Branch, as well as providing housing and municipal and essential services, ran a parallel administration on the settlements in health, education etc. That is, there were two systems of administration in the Territory, one for the urban areas such as Alice Springs, Katherine and Darwin, and one for the Aboriginal settlements and missions.

Responsible for most functions on Aboriginal reserves and, by proxy, on missions, Welfare had extraordinary powers and a number of influential and committed senior bureaucrats with strong views about policy. The influence of Welfare Branch remained important past its abolition. The ethos of a separate power base, with an active interest in keeping Canberra at a distance can, arguably, be traced back to Welfare Branch days. This has remained an important theme of the administration of Aboriginal affairs in the Territory.

#### *Welfare Branch 'mainstreamed'*

The election of the Whitlam Government in 1972 saw the official ending of the assimilation policy, and with it the disbanding of Welfare Branch and the retraining of officials to the new policy objectives of self management and self determination. This was in fact an early exercise in 'mainstreaming'. The fact that Self Government followed relatively shortly after probably added strains within the system of administration which was still adjusting to the process of 'normalisation'.

#### *Equal wages in the pastoral industry*

The other important influence from this period, with a significant legacy to today, was the introduction of equal wages in the pastoral industry around 1968, and the concomitant abolition of Government subsidies to pastoralists in respect of dependent Aboriginal women and children.

This change greatly accentuated the shift of population from pastoral properties. There was a dramatic increase in the population of settlements on the fringes of pastoral country (such as Warrabri – now Ali Curung) and in fringe camps around urban areas such as Alice Springs and Katherine. In effect a large displaced population was created in a short time. This created significant difficulties at the time. Many Aboriginal people were distressed at having to leave the country to which they were attached. Over the following decades they expended much energy in trying to get back onto their land through obtaining excisions.

In sum, the period 1950 to 1970 saw a major displacement of the Aboriginal population both to settlements as a result of the assimilation policy and to settlements and urban fringes as a result of changes in pastoralism, particularly the introduction of equal wages. To this day, a significant proportion of Aboriginal people do not live on their traditional country as a result of these major changes wrought within a period of two decades or so, changes which were very destabilising. This is an important part of the context of Aboriginal affairs in the Northern Territory but one that tends not to be recognised.

### **3 Self-determination and self-management**

The abolition of the assimilation policy meant that Aboriginal Affairs would now be guided by the principles of self-determination and self-management. Under these policies decision making would be placed in the hands of Aboriginal people through community councils and other representative organisations and service delivery would increasingly be through Aboriginal community-based organisations, usually incorporated under the Commonwealth's Aboriginal Councils and Associations (ACA) Act eg Aboriginal Housing Associations, Aboriginal Medical Services, Aboriginal legal aid services, organisations such as Tangentyere, community store associations etc. In fact, self-determination and the growth of Indigenous organisations to manage services have been seen as co-extensive.

A range of services that would normally be delivered through government agencies, with the career structures, professional standards and the critical mass of the public sector, were outsourced for delivery through a multiplicity of community-based organisations and councils. These organisations were often problematic in terms of effective and efficient service delivery. They were subject to capture either by family groups or by employees. It was difficult to attain achieve economies of scale and to attract and keep competent staff. This particular model of self-determination contributed over time to a degree of disillusionment with the policy of self-determination.

### *Community councils*

Under the self-determination policy emphasis was placed on the role of community councils.

There were two main problems with community councils:

1. The 'communities' were not communities – they were instead the artificial artefacts of the assimilation policy and were comprised of different language groups, clans and families – the idea that they could be melded into 'communities' was unrealistic.
2. 'Democratic' models of elected councils did not sit well with traditional arrangements of authority and decision-making and so councils had problems of credibility with their Aboriginal constituency.

However, this was the model of community governance that was provided for the major communities. It has rarely been fully effective and the contradictions with traditional authority have not usually been addressed successfully. The new shires (see below) are largely a replication of this model on a larger scale - whether the amalgamation of councils into shires will resolve, or conversely amplify, these governance problems remains to be seen.

### *The retreat of government*

Under the policy of self-determination, the Commonwealth government (and mission authorities) withdrew from the day to day administration of communities. Community and mission superintendents were replaced by community advisers and similar positions answerable to the community councils which hired their own staff and managed their own affairs. Various grants were delivered both through community

councils and through a range of Aboriginal community organisations. Community organisations basically 'hired off the street'. Sometimes, of course, this gave good results, but it placed communities in a difficult situation given the lack of formal education and experience in Aboriginal communities to deal with the political and bureaucratic complexities involved.

Problems of accountability, transparency and lines of responsibility were often evident. The self management systems have been as good or as bad as the outside staff. Incompetence, nepotism and corruption have all been present. The vacuum created by the withdrawal of government personnel from the communities is the legacy facing many of the communities today. Government Business Managers can be seen as one attempt to fill that vacuum.

#### **4 Land rights**

The *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (the 'ALRA') set up a new and complex system of governance on Aboriginal lands which was separate to, but overlapping with, the governance arrangements for the individual communities.

The ALRA system was a triangle:

- the land was held by a trust on behalf of the traditional owners. But not all trustees had to be traditional owners - the trustees were recommended by the Land Council and appointed by the Minister. These trusts were 'bare' trusts, that is they had no independent decision-making or executive capacity but must act in accordance with the directions of the relevant Land Council.
- the Land Council constitutes the second arm of the triangle. Before instructing a Trust to take an action, the Land Council must ascertain the wishes of the traditional owners for the land in question and obtain their informed consent. The Land Council must also consult with any other affected Aboriginals. The Land Council has other statutory functions, but at the heart of their role is the ascertaining of the wishes of the traditional owners.
- the traditional owners constitute then the third arm of the decision making apparatus set up under the scheme of the Land Rights Act. Essentially decisions about their land have to be made by them.

There are important implications of this scheme:

1. It is complex and difficult for traditional owners (and others) to understand.
2. Trust members may, naturally, assume they have an active role. In fact the complexities of the ALRA scheme potentially give the Land Councils, with professional expertise such as lawyers and anthropologists, and administrative capacity, a major role in decision-making and negotiating about Aboriginal Land. This has sometimes caused serious tensions between traditional owners and Land Councils.

3. The fact that funding for the Land Councils has come in part from mining royalties has also created concerns about potential conflict of interest and whether Land Councils are always willing to actively represent the interests and wishes of traditional owners especially where they may be opposed to mining or want to restrict its impact.

### *Iconic status*

Despite its problems, the ALRA has achieved a degree of iconic status because of the strong position, including veto powers, of traditional owners in respect of proposals to use Aboriginal land. It is seen as the high water mark of such legislation and, for example, provides a stronger negotiation regime than the *Native Title Act 1993* (Cth).

The position of the traditional owners in the scheme of *ALRA* can be seen as the biggest break with the earlier assimilation policies given the recognition of the on-going viability and significance of traditional law and custom. Consequently, any attempts to revitalise assimilation-type policy objectives may target the role of traditional owners in the *ALRA* scheme. In some quarters the role of traditional owners is seen as an obstacle to ‘modernisation’ and ‘democratisation’. Breaking the nexus between traditional owners and decision-making was a key thrust of the Reeves Report into *ALRA*.<sup>2</sup> Proposals to lease Aboriginal townships can, wittingly or unwittingly, effectively remove traditional owners from decision-making processes for that Aboriginal land. Such leases can be seen as constituting a ‘roll-back’ of *ALRA* in respect of the rights of traditional owners.

### *Patriation*

*ALRA* is an arrangement for decision-making about Aboriginal land that clearly comes under Commonwealth jurisdiction. This means that the Commonwealth has remained a major player for a significant proportion of the Territory land mass. The terms of the *Northern Territory (Self Government) Act 1978* (Cth) and consequential amendments to *ALRA* made clear that, notwithstanding any law of the Northern Territory, the application of *ALRA* in relation to Crown lands would extend to Crown land vested in the Northern Territory.

This arrangement has caused on-going resentment on the part of the Territory and demands to ‘patriate’ the *ALRA*, especially in the context of moves towards statehood. However, Land Councils and traditional owners have consistently opposed patriation, and have been consequently nervous about statehood itself because of its potential for patriation.<sup>3</sup> This situation reflects a long-standing suspicion by Aboriginals of the *bona fides* of Northern Territory governments in respect of Aboriginal affairs in general and land rights in particular. The Rowland Report into the operation of the *ALRA* as far back as 1980 noted that :

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<sup>2</sup> John Reeves QC, ‘Building on Land Rights for the Next Generation – The Review of the Aboriginal Land Rights (Northern Territory) Act 1976’, ATSIIC 1998. See Chapter 10 in particular.

<sup>3</sup> See Barbara McCarthy MLA, Legislative Assembly Northern Territory, ‘Progress Report – Reference to the Standing Committee on Legal and Constitutional Affairs on the Advancement of Statehood for the Northern Territory’ 21 June 2007 at <http://www.statehood.nt.gov.au/news/documents/ChairtablingStatementCthReportFINAL.pdf>.

In particular, many Aboriginals say that they prefer that the Commonwealth should remain closely involved with Aboriginal land rights issues. They say that they are not convinced that the Northern Territory Government always looks after their interests...<sup>4</sup>

The vigorous opposition and obstructionism of the Northern Territory to claims made under the ALRA only served to strengthen this atmosphere of suspicion and hostility. This suspicion of the Northern Territory is a key ingredient in the mix of Commonwealth/Territory relationships around Indigenous Public Policy. Despite the policies pursued by the Howard Government in the last few years it is likely that the preference for a strong Commonwealth presence remains. This is a highly persistent and pertinent theme in the Northern Territory. Aboriginal people in the Northern Territory, and perhaps elsewhere in Australia, see their primary relationship as being with the federal government.<sup>5</sup>

## **5 Self Government, settlements and outstations**

### *Introduction*

Going back to the arrangements for Self Government, the situation in terms of the respective responsibilities of the Commonwealth and the Territory for Aboriginal communities in the Territory is vexed, complicated and often inconsistent. Funding arrangements and service delivery responsibilities for major settlements, smaller communities, outstations, homelands, community living areas on former excisions, and town camps are intertwined and difficult to separate. Whilst the basic division of responsibilities goes back to the 1978 Self Government agreement, definitions and distinctions between communities have not been clear, communities have drifted (or been pulled) from the responsibility of one level of government to the other, and even where a community has basically fallen under the Commonwealth umbrella or the Territory umbrella, programs and services from the other level of government have also usually also been present.

Distinctions are not clear cut. The 73 'prescribed' communities cannot be seen as separate to the other 500 to 600 hundred discrete Aboriginal communities as this does not accord with the realities on the ground. Transparency and accountability are difficult to maintain in these circumstances.

### *The Self Government arrangements*

The *Memorandum of Understanding in respect of Financial Arrangements between the Commonwealth and a Self-Governing Northern Territory* (MOU), was developed as part of the arrangements for Self-Government. It dealt with 'Assistance for Expenditure on Aboriginals' at paragraphs 44 to 46. The MOU affirmed that:

Overall responsibility for policy planning and co-ordination in respect of Aboriginal affairs will remain with the Commonwealth which may provide

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<sup>4</sup> B W Rowland QC, 'Examination of the Aboriginal Land Rights (Northern Territory Act 1976-80)', DAA (1980), p 23.

<sup>5</sup> In the United States the relationship of the Indian tribes is directly with Congress, and the States are minor players in this relationship.

finance for special measures to assist the Aboriginal people of the Northern Territory as appropriate. (para 44)

On the other hand, the MOU also provided that:

The Northern Territory Government, for its part, undertakes to give full consideration to the needs of the Aboriginal people in setting its expenditure priorities. (para 45)

It can be seen that these are key paragraphs.

The specific arrangements in respect of outstation funding are found in correspondence between the Northern Territory Chief Minister, Mr Everingham, and the Minister for Aboriginal Affairs, Senator Chaney. Senator Chaney (27 June 1979) agreed to the finances for the Department of Aboriginal Affairs' (DAA) program for municipal and local government type services in Aboriginal townships being transferred to the Territory (42 communities at the time, now 73). Senator Chaney noted that this offer was made on the understanding that the Northern Territory Government would accept future financial and other responsibility for the provision of such services in the Aboriginal communities concerned and in any other communities that may in future develop to the point where they were townships and needed such services.

The Commonwealth wished to retain responsibility for the provision of municipal and to some extent essential services to outstations. Senator Chaney stated that:

For a number of reasons, I would not at this stage wish to consider the transfer to your Government of funds used for grants in support of the small communities ('outstations' or 'homeland centres') on Aboriginal land and on pastoral properties. In my view, these are not townships where residents might expect to have municipal services provided.

Senator Chaney did note a role for the Territory Government in respect of outstations:

I acknowledge that, because of the transfer of the essential services functions, your Government already has a vital role to play in these communities, essentially in relation to the provision of water supplies, and I am not in any way suggesting a change to this arrangement.

Finally Senator Chaney noted:

The issue is, of course, open to review. There is ample scope for the Northern Territory Government to demonstrate its intentions and effectiveness in the larger communities, and this will be of interest to the Commonwealth in any future consideration.

At the time the Northern Territory's preference was to receive the outstation funding along with the funding for other Aboriginal communities. The Northern Territory Government's opposition to the Commonwealth's retention of responsibility for outstations is clear in the exchange of letters between Senator Chaney and the Chief



Minister, Mr Everingham. Mr Everingham argued strongly for the immediate transfer of responsibility for outstations to the Territory. Senator Chaney did not accede to these arguments. However, he did indicate that he was happy for the arrangements to be reviewed in the future. In February 1980, Mr Everingham wrote that agreement had been reached concerning the transfer of programs and resources in respect Local Government/Municipal Services. This apparently included agreement to the Commonwealth retaining the responsibility for support for outstations.

#### *Northern Territory concerns*

Since these original negotiations in the context of Self-Government, the Northern Territory developed a number of concerns about the funding implications of outstations:

- the implicit cost implications for the Territory from the establishment of outstations, even though the Territory was not directly responsible;
- the potential diversion of resources from larger communities;
- co-ordination of planning; and
- concerns about expectations of Territory funding of services when outstations grew into larger communities.

Consequently, the establishment of outstations has at times been a matter of some contention between the Territory and the Commonwealth, as exemplified by the 1999 Report of the Public Accounts Committee of the NT Legislative Assembly in respect of its *Inquiry into the roles of various funding bodies in the development and maintenance of roads, airstrips and barge landings on Aboriginal communities and outstations in the Northern Territory*.<sup>6</sup> The Committee noted that:

While there is consensus on the benefits of such a movement [ie the movement to establish outstations], there is considerable disagreement between the various jurisdictions regarding funding and service delivery responsibilities.<sup>7</sup>

The Committee noted that this situation was compounded by a perceived lack of planning and co-ordination between the respective spheres of government in regard to establishing outstations and homelands. The Committee saw the responsibility for the costs associated with the development and maintenance of outstations as being both beyond the capacity of the Northern Territory and mainly the responsibility of the Commonwealth. Thus:

As the Commonwealth has been the major catalyst for this expansion through its funding programs and the granting of land rights in the Northern Territory, it is unreasonable to expect the Northern Territory to accept responsibility for

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<sup>6</sup> Legislative Assembly Public Accounts Committee, *Inquiry into the roles of various Funding Bodies in the Development and Maintenance of Roads, Airstrips and Barge Landings on Aboriginal communities and outstations in the Northern Territory*, 19 August 1999 at <http://www.nt.gov.au/lant/parliament/committees/pac/pacreports/pacreport34.pdf>.

<sup>7</sup> Ibid p. 59

the provision of essential services without a substantial injection of additional funding.<sup>8</sup>

The Territory's position has not really changed, despite the fact that it has now been compelled to accept responsibility for outstations. The Territory still believes that it is beyond its capacity to take responsibility for outstations, that the transfer of funding has been inadequate and that the backlog in infrastructure simply magnifies the impossibility of the task.

## **6 Revision of the 1978 arrangements – the MOU of September 2007**

An *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia*<sup>9</sup> was signed by the former Prime Minister, John Howard and the former Chief Minister, Clare Martin, on 6 April 2005. It was the first bilateral agreement to result from the *National Framework of Principles for Delivering Services to Indigenous Australians* endorsed by the Council of Australian Governments (COAG) in June 2004.<sup>10</sup> The Agreement set out areas of priority and was intended to strengthen government efforts in the area of Indigenous affairs.

The COAG *National Framework of Principles* provided for the streamlining of service delivery, with the objective of addressing jurisdictional overlap and rationalising government interaction with Indigenous communities. This principle requires:

negotiating bi-lateral agreements that provide for one level of government having primary responsibility for particular service delivery, or where jurisdictions continue to have overlapping responsibilities, that services would be delivered in accordance with an agreed coherent approach.<sup>11</sup>

There were three Statements of Intent scheduled to the Agreement. These set out commitments dealing with Sustainable Indigenous Housing, Strengthening and Sustaining the Indigenous Arts Sector, and Regional Authorities. Schedule 2.1, *Sustainable Indigenous Housing*, provides that all existing housing programs would be streamlined from 1 July 2006 with the Northern Territory Government delivering the integrated programs. The Statement of Intent acknowledged that further work was required on a common policy framework to guide the delivery of housing to Indigenous people in the Northern Territory and to allow the full integration of the housing program to commence.

In addition, to address the task out in paragraph 5 of Schedule 1 of the Agreement, that is to 'rationalise essential services delivery in towns and outstations',<sup>12</sup> a parallel

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<sup>8</sup> Ibid.

<sup>9</sup> *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005 – 2010* at <http://www.facsia.gov.au/internet/facsinternet.nsf/indigenous/nav.htm#4>

<sup>10</sup> *National Framework of Principles for Government Service delivery to Indigenous Australians – June 2004* at [http://www.facsia.gov.au/internet/facsinternet.nsf/indigenous/framework\\_principles.htm](http://www.facsia.gov.au/internet/facsinternet.nsf/indigenous/framework_principles.htm)

<sup>11</sup> *Overarching Agreement*, at Attachment A.

<sup>12</sup> Ibid, Schedule 1, paragraph (5).

process of discussion commenced in respect of the planning, co-ordination, management and provision of essential services to the smaller Indigenous communities beyond the (then) 72 communities already serviced by the Northern Territory.<sup>13</sup> It was intended that this parallel process would be completed before 1 July 2006.

The negotiations were primarily, from the Commonwealth perspective, about the divesting itself of functions that it saw as properly belonging to the states and territories - this may have been a more important driver to the process than the 'motherhood' goals of 'rationalisation' and 'avoiding duplication'. Negotiations continued, although they were somewhat derailed by the 'out of left field' attack on outstations as 'cultural museums' by conservative commentators (echoed at political levels). Nevertheless, agreement was reached in September 2007 with the signing of *The Memorandum of Understanding Between the Australian Government and the Northern Territory Government on Indigenous Housing, Accommodation and Related Services September 2007*.

The Memorandum overturned the division of responsibilities set up under Self Government. It is arguably the single most important document in respect of Indigenous affairs in the Northern Territory since Self Government. However, it appears to have received little public attention.

#### *Principles and Priorities*

The MOU sets out the 'principles regarding the funding and delivery of Indigenous housing, accommodation and related services in the Northern Territory using funds provided under the Community Housing and Infrastructure Program (CHIP) and the Australian Remote Indigenous Accommodation (ARIA) Program from 2007-08 to 2010-11 inclusive.

The funding provided under this agreement by the Commonwealth of \$793 million was made on the basis that the Northern Territory Government will (paragraph 5):

- take over the responsibility for the delivery of services to outstations; and
- take on provision of services in town camps.

Paragraph 6 makes crystal clear that the Commonwealth intends to completely remove itself from Aboriginal service delivery in the Territory, *viz* (paragraph 6):

The Australian Government will have no further responsibility for the delivery of Indigenous housing, municipal, essential and infrastructure services in the northern Territory from 1 July 2008.

In effect, the withdrawal of the Commonwealth from Indigenous service delivery that commenced under the policies of self-determination in the early 1970s and continued through the transfer of responsibility for the major settlements under Self Government has now been brought to finality.

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<sup>13</sup> See NT Power and Water Corporation: 'Electricity, water and sewerage services are provided to over 80 remote Aboriginal communities across the Northern Territory' at <http://www.powerwater.com.au>.

### *The MOU and outstations*

Outstations are largely located on land obtained under the ALRA, and to a lesser degree on Community Living Areas and other tenures. However, within the constraints of access to suitable land tenure, it can be observed that, although there are clusters of outstations, they are nevertheless to be found throughout the Territory. Outstations are a Territory-wide phenomenon.

Following the Australian Government's decision to abolish the Aboriginal and Torres Strait Islander Commission (ATSIC), funding for the provision of services to outstations was transferred to FaCS under the CHIP program. This includes support for a number of outstation resource centres that have developed around the Territory to service outstation needs. Typically a number of outstations in an area or region are affiliated to or rely on a resource centre. Outstation resource centres play a critical role in providing essential services to outstations and in planning and coordinating the delivery of those services, including providing and maintaining water, sewerage and power services; supporting access to banking services; delivering CDEP; waste disposal, airstrip and minor and local roads maintenance. There are approximately 17 outstation resource centres that are only servicing outstations across the Territory.<sup>14</sup>

Some outstation resource centres have become significant community organisations. For example, the Bawinanga Aboriginal Corporation (BAC) based at Maningrida<sup>15</sup> was incorporated as an Outstation Resource Agency in 1979 with the objective of providing municipal-type services to about 30 outstations in a 10,000 square kilometre regional hinterland. The organization grew rapidly – it is now recognized as a complex regional organization fulfilling three roles:

- it remains a service delivery agency for outstations;
- it has become a large CDEP organisation; and
- it has evolved into a regional economic development agency.<sup>16</sup>

Other examples of effective and well-established outstation resource centres are Tjuwanpa servicing approximately 40 outstations (some quite large and long established) at Hermannsburg, Mabunji servicing 22 outstations (7 off the mainland) and 3 town camps in the area of Borroloola; and Laynhapuy Homelands Association which provides services and support to 18 homelands in eastern Arnhem Land with a collective population of up to 800 residents during the dry season and about 600-700 during the wet. These are significant organisations that presumably need to be protected in the transfer of responsibilities resulting from the MOU.

The animus in current policy settings against outstations is clear in the MOU. The MOU *confirms and makes permanent* the moratorium that had existed under CHIP on Commonwealth funding for new housing on outstations. The present housing severe housing shortage on outstations and similar smaller communities will be exacerbated under the provisions of the MOU. This situation will feed the drift of population into

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<sup>14</sup> It is noted that some organisations with “resource agency” in their name are not exclusively servicing outstations.

<sup>15</sup> Case Study Altman and Johnson 2000

<sup>16</sup> Ibid.

the major communities and in particular into urban areas/ town camps such as in Alice Springs with an attendant increase in social dysfunction.

### *Priorities*

#### *500 communities excluded from housing*

The key provisions in this regard in the MOU relate to ‘priorities’ in respect of ARIA funding not yet committed. Hence:

#### Funding Priorities (Paragraph 17)

- first order priority - main urban centres and larger/strategically placed growth communities where there will be funding for repairs and funding of existing housing stock **and new housing** to meet existing demand and future growth;
- second order priority - smaller communities where repairs and upgrade will be possible, **and new housing** on a case-by-case basis as negotiated and agreed (eg lease-purchase arrangements); and
- third [and last] priority - ‘other communities’ (including outstations and homelands): **‘No Australian Government funding will be provided to construct housing on outstations/homelands’**. (emphasis added)

Whilst denied access to the ARIA program, the third priority communities will, however, have access to the Housing on Indigenous Land (HOIL) program funds. This program is administered by Indigenous Business Australia and is intended to assist Indigenous Australians purchase their own homes. It is inappropriate for outstations and similar communities.

In identifying the ‘level’ of communities (paragraph 15) the Memorandum identifies around 500 plus as the number of outstations and other communities categorised as third priority. So this appears to be the number of communities affected by the ban on new housing.

However, it should be noted that the term ‘outstations’ in the Territory is used somewhat loosely, hence the use of the term ‘other communities’ in the MOU. Outstations and ‘other communities’ become conflated both in the MOU and in general discussion, but they are not the same thing. This is a major difficulty in understanding the realities of the situation in the Territory. When people talk about ‘outstations’ they are in fact talking about a category that *includes* ‘outstations’.

The figure of 500 communities classed as outstations (paragraph 15 of the MOU) includes communities that do not fit the normally understood idea of an outstation. Some have grown into small to medium size communities of up to 100 or more inhabitants with developed infrastructure and, in certain places, schools and clinics. Such ‘outstations’ are not necessarily the usual idea of an outstation as a small remote group with only two or three or so houses. The 500 figure also appears to include some community living area (excision) communities and town camps. However, it is not clear where the cut-off is between so-called second order priority and third priority is. It may be that the second order communities are some of the smaller of the 73 ‘prescribed’ communities.

The key concept here is the divide between Northern Territory responsibility for 'major communities' under the Self Government arrangements (now 73 approximately) and Commonwealth responsibility up to September 2007 for the remainder, loosely lumped together as 'outstations'. The divide reflects bureaucratic arrangements rather than realities on the ground. In reality there is not a clear-cut distinction between 'major communities' and 'outstations', but rather a range of settlement types with various linkages and inter-connections. The consequences of the transfer of responsibility for 'outstations' to the Northern Territory may go far wider than outstations as usually perceived, although they are certainly part of the transfer.

### *The NTER connection*

According to the FaHCSIA Report on the NTER *One Year On*<sup>17</sup> the September 2007 MOU forms the basis of housing initiatives announced in the context of the NTER. To quote from *One Year On*:

The Northern Territory Emergency Response is helping to lay the basis for major improvements in housing stock and housing management for Indigenous people in the Northern Territory. Housing is critical to children's health, education and wellbeing and to functioning communities.

The Australian Government is investing \$813 million in remote Indigenous housing and infrastructure services in the Territory, **including \$793 million over the next four years for housing projects and related services under a Memorandum of Understanding signed with the Northern Territory Government** (emphasis added). A further \$20 million announced in February 2008 will help refurbish houses in six Indigenous communities.

The main initiative is the joint Strategic Indigenous Housing and Infrastructure Program (SIHIP), announced by the Australian and Northern Territory Governments in April 2008. SIHIP will use \$547 million of the \$813 million committed by the Australian Government, with the Northern Territory Government contributing another \$100 million.

SIHIP will fund capital works in 73 targeted communities and urban living areas. The roll out of SIHIP will improve the living conditions of up to 80 per cent of Indigenous people in the targeted communities.

It is clear that outside the 73 communities and some town camps there is no housing to be provided for Aboriginal communities. Indeed, even within the 73 communities there is prioritisation. Of the \$547 million for SIHIP, \$420 million will be directed to 16 high-need communities for major capital works. This will include building new homes and upgrades to existing dwellings. Other communities will benefit from refurbishments.<sup>18</sup>

### *Implications*

<sup>17</sup> See FaHCSIA at [http://www.facs.gov.au/nter/docs/reports/one\\_year\\_on.htm](http://www.facs.gov.au/nter/docs/reports/one_year_on.htm).

<sup>18</sup> Ibid.

There are a number of points in particular to note about this MOU and the transformation it has wrought in Commonwealth/Territory relations in respect of Indigenous Policy in the Northern Territory:

- (a) there is a direct link between the MOU and the NTER. The expenditure on houses in the 'prescribed' communities and some town camps is part and parcel of the express exclusion of houses on outstations and other communities, as per the MOU;
- (b) the changes, fundamentally affecting the lives of Aboriginal people in over 500 communities, have been made without any reference to those Aboriginal people. The only concession to involving informing Aboriginal people is made in the last paragraph of the MOU, and then only in terms of a vague undertaking to inform the public *post facto* of the new arrangements, *viz* (paragraph 29):

Communications with indigenous communities, and more generally with the Northern Territory public, about the new funding being offered under ARIA, the changed delivery arrangements and the priorities for the delivery of housing in different communities, will be jointly developed and delivered by the Australian and Northern Territory Governments.

Whether such a communication exercise has taken place is unknown to this writer.

- (c) The \$793 million figure also (paragraph 24):

includes \$20 million in ongoing funding that, in the past, has been used by the Australian Government in outstations and similar communities for funding municipal, essential and infrastructure services. The future use of this funding will be a matter for the discretion of the Northern Territory Government on the understanding that **the Northern Territory Government's acceptance of the \$793 million in funding being offered by the Australian Government means that full responsibility for outstations now rests with the Northern Territory Government.**

Indeed paragraph 24 that bodes ill for outstation and similar communities. Features to note are:

- the small amount of money identified as outstations funding, especially taking into account the backlog in infrastructure. The Northern Territory Government makes clear its concerns about the adequacy of this funding in paragraph 25 of the MOU. This concern is also emphasised in the correspondence from Chief Minister Martin, to Prime Minister Howard, covering the MOU (13 September 2007) where Ms Martin comments:

The Territory is required to accept the responsibility for outstations that rested previously with your Government as part of the package.

However the Territory is concerned that the \$20 million offered does not encompass the extent of Australian Government expenditure on outstations from all sources, including that supported through CDEP arrangements. We would seek your support to ensure that an assessment is made with your Government about the ongoing service costs in relation to residents of these communities with provision for adjustment to the package to reflect the outcome of this assessment if necessary.

Whether such an assessment has been made is unknown to the writer.

- The lack of any requirement that any of this money previously earmarked for outstations need be spent on outstations under the MOU; and
- The reiteration that the Commonwealth has completely divested itself of responsibility for outstations.

### *Capacity*

The earlier concerns about the capacity of the Northern Territory to take on responsibility for outstations (expressed at the time of Self Government - see above) remain. No evidence is adduced that the Territory is in any better position today to service outstations than it was in 1978. In fact, in terms of the test set by Minister Chaney, that is that the Territory first show that it could adequately take responsibility for the major communities, this test does not seem to have been met. This implication can be drawn from the Commonwealth's decision to directly intervene in those very communities through the NTER.

It is clear that the Northern Territory has not sought responsibility for outstations at this time and that it is concerned at its capacity to cope especially given the backlog in infrastructure. It would also appear from press reports that there is considerable disquiet in the Aboriginal community about the transfer of responsibility for outstations to the Northern Territory.

### *Social implications*

The major implication is no new housing for outstations and other communities. Some satellite communities close to larger settlements might get under the radar and get funded, but otherwise the huge investment in housing and infrastructure on Indigenous outstations and homelands to date is basically to be left to depreciate to worthlessness. There is no replacement program, let alone additional housing. The significant unmet demand and backlog, and the rapidly growing population, are all to be ignored. The only way to obtain housing in future will be to move back to the large communities.

Underlying this policy is an assumption that a process of attrition will lead to the eventual depopulation of Aboriginal land, except for the larger townships. A number of commentators have noted the thrust towards depopulation. The assumption is that younger people will move to the large communities or to urban centres such as Alice Springs, Katherine etc. Older people will be left to see out their days in the bush. Hence the claim can be made that no-one will be 'coerced' into moving.



Many outcomes of outstation life are not consistent with intuitive understandings. In particular, outstations are often assumed not to be viable because of size and remoteness. The reality is more complex, and in relevant comparisons outstations and similar small communities may in fact at least match larger communities in matters of viability, if not exceed them in some circumstances. In many situations outstations have made a positive contribution to better social and health outcomes. A number are future oriented, seeking to find a degree of independence and prosperity in contemporary market-based Australian society. Some play a key role in substance abuse and youth diversionary programs. Fundamentally, outstations represent an Aboriginal initiative and an Aboriginal choice.<sup>19</sup>

Under current policy settings Aboriginal people living on outstations and homelands are to receive no assistance for housing whatsoever, apart from some repairs and maintenance. This represents perhaps the most significant change in Aboriginal policy and programs over recent years.

Overall, the approach to funding outstations and similar small communities, to the extent that it represents a pattern of disinvestment in remote Australia, has implications wider than Indigenous policy including questions that will arise from leaving large tracts of country without habitation such as border control, fisheries intrusions, feral animals and pest species, fire management etc.<sup>20</sup>

## **7 The issue of accountability**

One feature of Commonwealth/Territory relationships over a long period has been whether the Territory Government applies funding intended for Indigenous communities fully to those communities. This issue has two aspects:

- whether the full quantum has gone to Indigenous communities
- of the monies that have gone to Indigenous communities, have they been used for the intended purposes.

There are doubts in both regards. In some respects this problem is linked to the theme identified above of a tendency to keep the Commonwealth at arms length. These matters have been canvassed in the press recently (particularly by Barry Hansen Director of NTCOSS), so this paper will not deal with them in detail.

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<sup>19</sup> Traditional owners at Yirrkala put the following proposition to the Prime Minister and Cabinet in July of this year:

We have a fundamental human right to live on our land and practise our culture and also a right to access our citizenship entitlements wherever we choose to live and to benefit from the national wealth that our land and culture create. (The Age 24 July 2008)

<sup>20</sup> Many commentators have made this point. For example, Lieutenant General John Anderson in a recent speech observed: 'Of particular concern is the lack of public investment to assist Indigenous interests to sustainably manage the Indigenous land estate that occupies approximately one-fifth of the continent, practically all of it on Remote Australia'. Murdoch University Banksia Lecture 2008 at <http://www.murdoch.edu.au/document/News-team-documents/Banksia-Lecture-2008.pdf/>

Examination of Commonwealth Grants Commission (CGC) data indicate potentially significant underspends in respect of a number of relevant budget areas. This data can be accessed [www.cgc.gov.au](http://www.cgc.gov.au). In particular the *2008 Working Papers Volume 3* shows a list of expenditure categories with summaries for each State/Territory for the last 5 years of expenditure with both \$m and \$ per capita. The apparent underspend that has been most commented on is funding for Indigenous programs. However there is also significant apparent underspending in other categories such as Family & Child Services (child protection), Corrective Services, Public Safety, Roads, Homeless & General Welfare, and Police. As a number of these spending areas are also critical for Indigenous well being, the problem may be more significant than the specific Indigenous services figures alone suggest.

Whilst the Northern Territory will have its own arguments to explain the discrepancies, there is nevertheless a problem in terms of Commonwealth/Territory relations, at the very least in terms of perception, transparency, monitoring and reporting.

The other issue is the concerns that funding, even when spent on Indigenous services, may have been redirected to meet Territory responsibilities rather than the purposes for which the Commonwealth has allocated it. This has been a concern raised by outstation residents where there are no outstation resource centres and money allocated for outstations has been spent through the local community council. It does appear that close monitoring of Commonwealth monies provided for Indigenous services in the Northern Territory may be prudent, at least to prevent such perceptions arising.

## **8 Local government**

The position of local government on Aboriginal lands has been another problematic area in respect of governance arrangements since Self Government. A number of community councils have operated under Northern Territory local government legislation. Whilst the Northern Territory has funded positions such as town clerks, these community councils have nevertheless relied to a degree on Commonwealth funding, for example with their labour force often relying on CDEP.

There has been a degree of competition for influence with Aboriginal communities between the Land Councils and the Territory administration responsible for local government. At times the community councils have been proxies for the Northern Territory and the Land Councils proxies for the Commonwealth, competing for influence over the same land and with the same communities. Added to the local governance mix has been the outstation resource centres.

There has been a tendency on the part of the Northern Territory Government and some commentators to equate indigenous self determination with local government. This tendency has simply been expanded into the shire concept. Opportunity has been taken by the Territory of the demise of ATSIC regional councils – the shires are argued to be filling the gap. The difference of course is that the shires are established under Northern Territory local government legislation which is not the same as the Indigenous representative model under ATSIC.

As Martin Mowbray has pointed out in his examination and analysis of local government and Aboriginal communities in the Northern Territory,<sup>21</sup> within months of gaining Self Government in 1978 the Northern Territory had its first Local Government Act. Its official purpose was ‘to provide by amendment to the Local Government Ordinance a simplified alternative form of local or community government than that which now operates in the major population centres’.<sup>22</sup>

Mowbray argues that an ulterior purpose soon became obvious. This was to provide an urgently needed strategic alternative to the Commonwealth’s *Aboriginal Councils and Associations Act 1976* (ACAA), the functions of which were virtually identical. The ACAA was conceived, developed and enacted in conjunction with the *Aboriginal Land Rights (NT) Act 1976* (ALRA). In the lead up to Self Government, and ever since, the ALRA has been a thorn in the side of the Northern Territory Government.

Mowbray further contends that Indigenous communities generally resisted pressure to come on board under the Territory local government scheme and a significant proportion did not embrace the Local Government Act. Because of such resistance, according to Mowbray, over their years in office (1978-2001) CLP administrations resorted to coercing communities to incorporate as community governments. This was, Mowbray contends, through persuasion and propaganda, badgering, financial favouritism and disparagement of alternative forms of incorporation. The Northern Territory Government encouraged various community government councils as bases for supporting breakaway land councils.

A key theme was that these councils might become regional local governing bodies that effectively merged with the land councils. This became a strategic thrust of the report on the review of the ALRA undertaken by John Reeves. In his 1998 Report, *Building on Land Rights for the Next Generation*, Reeves proposed abolition of the relatively strong provisions for Aboriginal people to obtain and manage their traditional lands. Reeves wanted to see a centrally regulated system of local governance substituted.

After analysing the relevance of local government models, Mowbray concludes his account by noting the views of former Northern Territory Minister for Community Development, John Ah Kit MLA (7 March 2002) when he said, in a much quoted speech:

it is almost impossible to find a functional Aboriginal community anywhere in the Northern Territory’

Mr Ah Kit went on to talk about the [Northern Territory] *Local Government Act*, observing:

It has been said by many people over the years that the legislation has been innovative and progressive allowing as it does for the incorporation of at least some traditional decision making structures in the constitutions and operations

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<sup>21</sup> Martin Mowbray, ‘If Indigenous governance equals local government, what are the options?’ NARU 2005 Seminar Series – ‘Indigenous Governance – Challenges, Opportunities and Outcomes’ at <<http://naru.anu.edu.au/papers/2005-04-11Mowbray.pdf>>.

<sup>22</sup> Parliamentary Record, 20 September 1978:234 quoted in Mowbray.

of these councils. It has also been said by many people over the years that the community government council structures have allowed Aboriginal people on those communities the freedom to make decisions about a very broad range of services that are provided on their communities. It has been said also that these structures have allowed the potential for great strides towards self-determination.

All of this may well be true, but I believe we must now openly and honestly acknowledge that the community government process ... has failed abjectly in improving people's lives.

Ah Kit gave three reasons for this. The first concerned the way local government had been used in opposition to land rights. The second was that 'Aboriginal community councils have been given far too much to do.' The third reason for failure was that the 'councils have been grossly under-resourced in carrying out those responsibilities'.

Central Land Council Director David Ross has observed that:

The challenge now is to create a new framework for Aboriginal governance that reflects customary law, is effective and has some chance of reversing the legacy of the past.

Rushing to put in place a new governance system which directly mirrors the one already failing Aboriginal people will be a further tragedy.<sup>23</sup>

#### *The new shires and outstation resource centres*

Of the various risks associated with the new shires, the greatest risk from the Commonwealth's perspective, given the resources that have been sunk in outstation resource centres and their relative effectiveness in service provision, would appear to be if the outstation resource centres are subsumed by the new Northern Territory shires.

Subsuming outstation resource centres in the new shire structures could consign many Aboriginal communities in the Territory to the risk of years of unsatisfactory service delivery, uncertain governance arrangements and frustration. It could undo the considerable progress that many outstation communities have made over the past 30 years, with the assistance of the outstation resource centres. Outstation resource centres are Aboriginal organisations, and a degree of 'ownership' is evident in the operation and governance of these organisations. Whether the new shires and associated wards will provide the same sense of Aboriginal ownership or whether they will represent another imposed model remains to be seen. At the least it would be yet another change that Aboriginal people will be expected to cope with without any meaningful input from them or consultation and negotiation.

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<sup>23</sup> This part of the paper refers closely to the Mowbray article which provides a sound and comprehensive account of the local government aspect of Commonwealth/Territory relations around Indigenous policy and to largely accord with the writer's understandings and observations. The local government issue is important in understanding the dynamics of Indigenous policies and programs in the Territory.

## 9 CDEP and other social security entitlements

Conditions for eligibility for unemployment benefits (UB) were relaxed in 1973 to allow Aboriginals on settlements and missions to be entitled to apply for benefits. UB replaced various forms of sustenance or income support such as rationing, subsidies to pastoralists for the maintenance of the dependants of stock workers, and the sub-equal wages paid to stock workers. Subsidised maintenance payments were phased out in the 1970s finishing in 1978.

CDEP was announced as part of a national employment strategy for Aboriginals in 1977 and pilot programs were underway in a number of communities by 1979. Interestingly, in the light of recent concerns over passive welfare, CDEP was very much an attempt to ameliorate the perceived deleterious effects of the extension of social service benefits, especially 'sit down' money, to remote communities. There was a concern that this passive welfare would have harmful personal and social consequences.

CDEP was seen as a way of creating employment and training opportunities. High expectations were held for CDEP which was intended to also assist communities deal with social problems such as delinquency and alcohol. It was to provide Aboriginal people with the special training to acquire or upgrade their skills to equip them to take over skilled jobs within their community undertaken by non-Aboriginals or, if they desired, to leave the community to join the open labour market.

As the Secretary for Prime Minister and Cabinet commented in 2005:

CDEP is the classic shared responsibility program. The government puts in the money from welfare benefits and it foots capital on costs in return for the community doing certain things with the resources it receives—fundamentally, a shared responsibility agreement.<sup>24</sup>

Over time CDEP became the main source of wages on communities, and other programs of service delivery became enmeshed with CDEP. Although CDEP has been a contentious program since its inception in the late 1970s, many Indigenous programs could not stand on their own as they were dependent on CDEP support. This remains at least as true for outstation resource centres as other community organisations.

CDEP, the largest Indigenous specific program, was transferred from ATSIC to DEWR in July 2004, along with the central role that CDEP plays in the economic and community life of many discrete Indigenous communities. This transfer no doubt created its own sets of difficulties. Changes to CDEP can have unforeseen 'knock-on' effects on other programs, a point made by the Northern Territory in respect of its concerns over its capacity to taken on the communities that were previously the responsibility of the Commonwealth.

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<sup>24</sup> Dr Peter Shergold, Secretary Department of Prime Minister and Cabinet, *Senate - Hansard*, 8 February 2005, p11.

Income quarantining is a more recent example of attempting to deal with both ‘unearned’ social benefits and the simple problems created by cash in the society. As with the original introduction of CDEP, such limiting and controlling mechanisms tend to be resented by those Aboriginal people who believe they have been acting responsibly and meeting their obligations.

## **10 Policy change leading to the intervention**

The NTER did not emerge ‘out of the blue’. A drift of policy can be discerned in the years leading up to the NTER that suggests that the NTER was the logical outcome of a series of policy changes and their consequent failures. The Commonwealth was firmly committed to crisis intervention models well before instituting the NTER.

New arrangements for the administration of Indigenous affairs were introduced as of 1 July 2004. The arrangements abolished ATSIC and transferred responsibility for ATSIC programs to mainstream agencies. The Government held high hopes for the new arrangements. ATSIC was seen as the cause of the failure to improve Indigenous disadvantage and therefore abolishing ATSIC would clear the way for effective coordinated programs. However, as has been often observed, the abolition of ATSIC created a vacuum in respect of Indigenous views and advocacy which has bedevilled policy and program development since.

Central to the new administrative arrangements was a particular focus on coordination – the ‘Whole of Government’ approach. ‘Whole of Government’ became the mantra of Indigenous affairs. The genesis of the new arrangements is to be found in the Council of Australian Governments (COAG) agreement April 2002 to trial the new whole of government approach to Indigenous communities at eight selected trial sites:

The aim of these trials will be to improve the way governments interact with each other and with communities to deliver more effective responses to the needs of Indigenous Australians. The lessons learnt from these cooperative approaches will be able to be applied more broadly.<sup>25</sup>

The key objectives in the COAG trial sites were to:

- tailor government action to identified community needs and aspirations;
- coordinate government programs and services where this will improve service delivery outcomes;
- encourage innovative approaches;
- cut through blockages and red tape to resolve issues quickly;
- negotiate agreed project outcomes, benchmarks and responsibilities with the relevant people in Indigenous communities;
- work with Indigenous communities to build the capacity of people in those communities to negotiate as genuine partners with government; and
- build the capacity of government employees to work in new ways with Indigenous communities.

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<sup>25</sup> Council of Australian Governments (herein COAG), 5 April 2002, *Communiqué: Reconciliation*.

The trials got underway in some sites in 2002 and in others in 2003. A Commonwealth department was identified for each trial site to lead the Commonwealth's involvement in the trial, with the Secretary of that Department acting as a 'champion' for that community. The sites were to be individually monitored and evaluated as well as evaluating the overall whole of government approach embodied in the trials.

Even though the trials had neither been completed nor evaluated at the time, in July 2004 the Government chose to replicate this whole of government service delivery model on a nation-wide basis through implementing the new arrangements for the administration of Indigenous affairs. The structures of the new arrangements and the philosophy that underpinned them could be seen to have been directly derived from the COAG trials. Indeed, despite the absence of any formal evaluation, the Government continually stated that the new arrangements were based on 'the early learnings' from the COAG trials, as well as findings of the ATSIC Review.

### *The Wadeye evaluation*

Wadeye was selected as the sole Northern Territory site for a COAG trial, in this instance led for the Commonwealth side by the Secretary of the then Department of Family and Community Services (FaCS). The Prime Minister, the Chief Minister of the NT, and other Ministers visited the community during the trial period and there were high expectations of its success. The 2004-05 Annual Report of the Secretaries Group commented:

The trial site at Wadeye is showing how governments can work together with Indigenous communities to improve outcomes for Indigenous people.

Wadeye is the largest Aboriginal community in the Northern Territory. Despite extremely low life expectancy, the population has a very high rate of natural increase. Wadeye has appalling health statistics, serious overcrowding, and significant crime and violence which at times render the community virtually dysfunctional. Wadeye seemed a good choice for a COAG trial – a large community with a number of pressing needs. Initially, there were strong expectations that the COAG trial, based on a whole of government approach and direct engagement with the community (through the Thamarrur Regional Council), would lead to more effective service delivery and consequently improvements in social and economic circumstances.

As part of the trial, a Shared Responsibility Agreement (SRA) was signed between the Commonwealth Government, the Northern Territory, and Thamarrur Council in March 2003. The SRA identified three priority areas for action: Women and families; Youth; and Housing and Construction.

The optimism shown about the trial proved to be misplaced. An evaluation report by Bill Gray AM, indicated significant failure of the Wadeye trial to achieve its objectives. Contrary to the trial's objective of a reduction in red tape, the burden of administering funds increased markedly. Flexible funding and streamlining did not eventuate. Experience of communications within and between Governments was mixed with a reduction in effective communication as the trial progressed. The Government's objective of improving engagement with Indigenous families and

communities was not achieved. There was a significant breakdown in relations with Thamarrur. Other key structures or processes agreed under the SRA such as Priority Working Groups either never became operational or faltered.

The community's expectations of improvements in infrastructure and services were not realised. In particular, nothing was done about the priority area of 'Youth'. The community had expected that youth issues, gang violence and safety would be addressed and resolved at an early stage of the trial. Instead this agreed priority area was allowed to 'fall between the cracks' - if anything, things became worse causing considerable disappointment and anger within the community.

Provision of more housing at outstations was seen by the community as the only sustainable solution to overcrowding at Wadeye. At the end of the trial the pressing needs of Wadeye remained. The community needed a major commitment of resources including an urgent investment in housing, especially at outstations, and support for activities and resources to deal with youth and gang-related difficulties.

ANU researcher John Taylor has observed:

the Thamarrur region is rapidly expanding in population size. Unless a major upgrading occurs, this trajectory means that Wadeye (along with many predominantly Aboriginal towns across the Top End) will be increasingly anomalous in the Australian settlement hierarchy for being a vibrant and growing medium-sized country town yet with almost none of the basic infrastructure and services normally associated with such places.<sup>26</sup>

The Wadeye COAG trial showed that the whole of government approach to service delivery was difficult to implement, required a major investment of time and resources, and had yet to demonstrate that it provided a reliable and realistic platform for the administration of Indigenous affairs.

### *The lessons learned*

The greatest danger arising from the disappointing outcomes of the COAG Wadeye trial, and from similar problems with other COAG trials, was that the wrong lessons would be learned, for example simply moving on to another 'model' of intervention.

The Government moved to abandon the COAG trials. There was an evident lack of enthusiasm for continuing with the COAG model for service delivery to communities.<sup>27</sup>

Comments made at the November 2006 Senate Estimates hearings indicate when and how the trials would be brought to an end:

Mr Gibbons - It [ending the trials] is under consideration with a number of jurisdictions now. If I take the Wadeye one which we have been talking about,

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<sup>26</sup> J Taylor, *Social Indicators for Aboriginal Governance: Insights from the Thamarrur Region, Northern Territory*, CAEPR Research Monograph No 24 2004, pp 35-36.

<sup>27</sup> Mr W Gibbons, *Hansard*, Standing Committee on Community Affairs Estimates, November 2006.



I believe both governments are comfortable with the idea of *transitioning* from a trial into a regional partnership agreement. The negotiations we are having at the invitation of the Chief Minister will probably lead to a longer term commitment to replace the COAG trial.

and

As a result of the evaluations that are about to be considered by government, I think consideration will be given to bringing the trials to an end and moving on, but that will have to be resolved in partnership with the appropriate state or territory jurisdiction.<sup>28</sup>

### *Communities in crisis*

The new approach to be implemented was two-pronged - it both **devolved** the authority for agreement-making for service delivery down (by giving ICC managers authority to commit in a single SRA up to \$100,000, and State managers up to \$500,000) and **moved it up** to the level of high-level agreements between the Commonwealth and State and Territory governments on strategic interventions ('intensive' interventions) in designated regions or communities, usually communities deemed to be 'in crisis'.

It is this second aspect that is relevant to the NTER. The 'upward direction' response to the failure of the COAG trials and the continuing serious problems in a number of Indigenous communities was initially to plan for joint Commonwealth-State 'strategic interventions' in respect of designated priority communities. FaCSIA estimated that perhaps 5 or 6 such communities or regions might be involved in a year. This was to be a 'top-down' approach. This new 'strategic intervention' approach was credited particularly to the then Minister, Mr Brough. Thus:

Since Minister Brough has come in he has very quickly decided that you have got to define an area, put someone in to do an assessment and really coordinate between the Commonwealth and the state **an intensive response** which is coordinated and planned, et cetera. That is basically the route we are going in Wadeye [post COAG trial], as well as a range of other locations across the north of Australia<sup>29</sup>[emphasis added].

This is spelt out a little more in the following description:

A significant change since Minister Brough has been in the portfolio, recognising some of the experience that has come out of the trials and elsewhere, has been the reconstruction of our approach to Commonwealth-state cooperation in this area to lock the bulk of our investment into joint agreements around strategic issues.

The Secretary of FaCSIA, Dr Harmer, put the same point in another way:

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<sup>28</sup> Gibbons, *Ibid.*

<sup>29</sup> Dr J Harmer, *Hansard*, *Ibid*, p29.

..... we are in the process of **changing our approach entirely** and it is an approach based on a very clear bilateral arrangement with the state or territory government - in this case, the Northern Territory. While we are still talking with them, we have not got a document that spells it out but it is very much a focus on ensuring that the state or territory government live up to their responsibilities around schooling and policing and those sorts of things. In return for that, we live up to our responsibilities in the provision of our services. That is basically what it is about.<sup>30</sup>[emphasis added]

This is the context in which the Government was moving to a bilateral interventionist model – the Commonwealth appeared to require some certainty from its State and Territory counterparts on the level and detail of their commitment **before** the intervention commenced, rather than developing this as the program unrolled in the chosen community. It was clear that this interventionist model would put the strategic decision-making clearly in the hands of government – the Indigenous community was to become involved **after** the basic decision to intervene had been made. Although this strategic intervention approach was initially a top down bilateral decision in respect of the region or community chosen, it was claimed that subsequently the detailed planning of the implementation of the intervention would be done in close consultation with other stakeholders, including Indigenous community members and traditional owners.<sup>31</sup>

In his 2006 Social Justice Report, the Aboriginal and Torres Strait Islander Social Justice Commissioner warned against these likely developments:

It appears that ‘strategic intervention’ may mean, in fact, restricted Indigenous participation at a governmental and priority-setting level. Priorities are determined by outsiders (governments), then the insiders (the community) are invited to participate in the detailed planning and implementation – this does not appear to provide a sound basis for ‘ownership’ of initiatives undertaken as part of such strategic interventions.

In these circumstances, to ensure a sound basis to government programs, I urge that full Indigenous participation be guaranteed *from the start*, in determining the priorities and basic parameters of government support. Perhaps the term ‘intervention’ itself is a bit awkward, and a term without a connotation of unilateralism might be preferable.<sup>32</sup>

It should be noted that these comments, and the analysis on which they were based, were made a good year in advance of the NTER. In fact, the 2006 Social Justice Report noted that a new division, the Strategic Interventions Task Force, had been established in FaCSIA to administer the interventions, targeted particularly at communities considered to be in crisis. Apparently the Task Force was to initially focus on Mornington Island, in Queensland; Galiwinku, Alice Springs and Wadeye in the Northern Territory; and Kalumburu in Western Australia.

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<sup>30</sup> Dr J Harmer, *Ibid*, p29.

<sup>31</sup> *Ibid*, p15-16.

<sup>32</sup> HREOC, *Social Justice Report 2006*.

It can be seen that the NTER when it eventuated was consistent with the approach being developed in respect of remote communities following the failure and abandonment of the COAG Whole of Government trials which had faltered under a mass of red tape and, despite good intentions, inability to deliver. The direct intervention model was in the ascendency. In that sense the ‘national emergency’ of child abuse fitted in with these developments. The NTER differed from earlier policy settings only by matters of degree, in particular the initial unilateral rather than bilateral approach when the Northern Territory Government was not at first brought on board, and more particularly in the exclusion of any meaningful dialogue or negotiation with Indigenous communities before the intervention, and apparently after.

The NTER can, then, be seen in the context of an increasingly unilateral and interventionist model of Indigenous policy development and program delivery, with the already weak commitments to consultation being swept aside by the ‘crisis’ nature of the situation.

However, the NTER may leave many of the basic themes and conundrums of Commonwealth/Territory relations around Indigenous Public Policy and Aboriginal communities, described in this paper, unresolved. Perhaps the most glaring is the apparently entrenched unilateralism, where both the Northern Territory Government and more particularly the Indigenous communities of the Territory are left on the receiving end of policies and programs. The other is the apparent abandonment by the Commonwealth of the majority of Indigenous communities, with no guarantees of continuing support from either level of government, even at minimal levels, and a prohibition on Commonwealth funding being used for any new public housing at any time for these communities.