



CENTRAL LAND COUNCIL

Central Land Council

Submission to the ‘Options for Regional Governance in the Northern Territory’ consultation process

June 2013

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Introduction

The Central Land Council (CLC) welcomes this opportunity to provide a submission to the Northern Territory Government in response to its consultation paper, ‘Options for Regional Governance in the Northern Territory’.

The CLC is a Commonwealth statutory authority pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976*, and also a Native Title Representative Body pursuant to the *Native Title Act 1993*, operating in the southern half of the Northern Territory. Traditional Aboriginal landowners own 52 per cent of the land covered by the CLC region, totaling 407,985 square kilometres of Aboriginal freehold land under the Aboriginal Land Rights Act. The Central Land Council provides a number of services for the benefit of traditional owners and other Aboriginal residents of the CLC region, including:

- Providing a strong voice for the Aboriginal people of Central Australia
- Helping Aboriginal people get back country
- Helping Aboriginal people manage their land
- Consulting with landowners on mining activity, employment, development and other land use proposals
- Protecting Aboriginal culture and sacred sites.
- Assisting with economic projects on Aboriginal land.
- Promoting community development and improving service delivery.
- Fighting for legal recognition of Aboriginal people's rights.
- Helping resolve land disputes, native title claims and compensation cases.
- Running the permit system for visitors to Aboriginal land

This submission sets out the history of the CLCs engagement with local government and Aboriginal governance matters, provides some comment on the proposed two options, and suggests an alternative way forward. Key recommendations are set out below.

Recommendations

1.

That the Northern Territory Government recognise that reforming local government must be viewed in the context of both the history local government arrangements in the NT, and the consistent call from Aboriginal people for Aboriginal governance models beyond local government.

2.

That the Northern Territory Government commit to a process of negotiation, rather than consultation, to allow Aboriginal people at both the regional and local level, to participate in the design of their own governance arrangements.

3.

That Option 1 not proceed as it is likely to result in yet another round of confusion and change for little gain. Instead, the status quo should effectively be maintained while the hard work of negotiating and designing new arrangements is commenced.

4.

That Aboriginal people and their organisations, the Northern Territory Government and the Australian Government agree on a framework for negotiating a comprehensive Aboriginal governance arrangement, including allowing sufficient time and resources for genuine Aboriginal governance development work.

5.

There needs to be a considered negotiation of possible new Aboriginal governance arrangements for both community and regional governance in the NT that is open to the evidence and to the innovative concepts and thinking that are often coming from Aboriginal people themselves. An 18 month phase of informed negotiation should be sustained and backed by a collaborative government mandate. See **OPTION 3: REGIONAL AUTHORITY/ASSEMBLY (BELOW)**

History of local government reform in the Northern Territory and the CLC's engagement with these issues

Since the passage of the *Aboriginal Land Rights (Northern Territory) Act (Cth)* in 1976 the Central Land Council has been engaged in discussions around regional governance and consideration of the extent to which local government arrangements might facilitate or stifle Aboriginal governance aspirations. The Council has consistently asserted the right to self-determination and self-management, including in the context of local government arrangements. However, Central Land Council engagement with issues around Aboriginal governance has always extended beyond discussion merely about local government and service delivery. Articulated Aboriginal aspirations for a strongly local level of organisation and representation should not be mistaken with governance aspirations that are limited to the sphere of mainstream local government.

1989- Regional autonomy explored

A joint submission by the CLC and the NLC to the Federal Government in 1989 called for the 'establishment of a mutually acceptable consultative arrangement to ensure future Aboriginal participation in Government policy determination and implementation at the local level.'¹ Then, as now, the central concern of Aboriginal people was identified as being 'where Aboriginal government [or governance] fits into the picture.'² That submission documented concerns about the inconsistency of proposed local government legislation with principles of self-determination and self-management set out in the Barunga statement and the flawed adoption of a 'mainstreaming' approach. Such strong sentiments as were expressed in the Barunga statement were reaffirmed in the Kalkaringi statement in 1998 where the Combined Aboriginal Nations of Central Australia (CANCA) affirmed that the right to self-determination and inherent right of self-government of Aboriginal peoples must be recognised.³ Around this time, the CLC resolved to support the principles expressed in the Kalkaringi Statement and to work to assist Aboriginal people in the region to achieve their aspirations. Over the next several years, the CLC supported investigation of options for achieving regional autonomy and Aboriginal self-government for Central Australia.

¹ Central and Northern Land Councils, *Aboriginal Local Government in the Northern Territory*, Submission to the Commonwealth Ministers for Aboriginal Affairs and Local Government, 4 April 1989.

² *Ibid*, 1.

³ '[The Kalkaringi Statement](#)' made at the *Constitutional Convention of the Combined Aboriginal Nations of Central Australia* at Kalkaringi 17-20 August 1998.

Late 90s- Amalgamation pressures

Since 1999, the Northern Territory Government approach to local government reform has explicitly centred around the creation of amalgamated larger regional councils (or authorities) that would replace the many small and not well connected community councils.⁴ This was first articulated as a policy that would offer economies of scale and improve service delivery under the Local Government Reform and Development Agenda of the CLP with Lorraine Braham as Minister.⁵ The position of the CLC at the time was that Aboriginal communities should have nothing to do with NT government strategies which had not been developed together with Aboriginal people. The CLC, and most Aboriginal communities in this region, viewed the proposed amalgamation process as an attempt by the NTG to increase their influence and control over Aboriginal communities, undermine the operation of the Land Rights Act, and impede the development of more far-reaching Aboriginal governance options. More importantly the proposals, constrained as they were within a Local Government Act framework, did not adequately respond to the aspirations set out in the Kalkaringi Statement for self-government and adequate legal protection thereof.

In light of the unsatisfactory nature of local government reform proposed by the NT Government in responding to aspirations for greater regional autonomy and more responsive local service delivery, there was considerable planning and consultation done over the next several years by the CLC and collaborators on developing options for the establishment of a regional authority or authorities in Central Australia under Commonwealth legislation. At a meeting at Alpururulam in 26 June 2001, the CLC passed a resolution to support the work of CANCA towards a Commonwealth statutory regional authority and rejected the NT local government reform agenda. The Council called on the Department of Local Government 'to stop trying to force councils to amalgamate.'

2001-2006: Change of Government- change of approach?

⁴ From the late 80s there had already been a push, to an extent, by the Northern Territory Government to regionalise local government arrangements. According to Sanders this led to the creation, along with 2 others, of the Anmatjere Community Council in 1993. No further amalgamations occurred in the 1990s despite 'ongoing encouragement' from the Northern Territory Government.

⁵ L Braham, 'Ministerial Statement: The Reform and Development of Local Government in the Northern Territory, 17 February 1999, Northern Territory Legislative Assembly.

In 2002, the incoming Labor Minister for Local Government Jack Ah Kit said that it was ‘almost impossible to find a functioning Aboriginal community anywhere in the Territory’ and reform of community government councils was needed to address this.⁶ Such reform, he continued, would ‘completely recast’ the narrow push for amalgamation initiated by the prior CLP government and would ‘look at regional governance issues relating to specific service delivery functions, rather than narrowly looking at the amalgamation of Community Government Councils.’ Promisingly, Ah Kit said reform must ‘allow the development of forms of governance that allow Aboriginal people the power to control their lives and communities.’

Shortly after Ah Kit announced his plans for reform an initiative to create a regional authority structure for the communities of Papunya, Mount Liebig, Haasts Bluff and Kintore commenced (the Wangka Wilurarra regional governance project). Over the five years that this model was considered and developed the desire for greater regional autonomy was evident. In the context of developing the framework for a regional authority, participants sought commitment from the Labor Government to amend the Local Government Act in order to create the space for these aspirations beyond the, ordinarily limited, context of local government reform. Interestingly, the current Minister for Local Government was central to the push for more extensive regional decision making power to be vested in the local communities under a ‘Regional Authority’ model.⁷

The *Building Stronger Regions-Stronger Futures (BSRSF)* initiative was developed and formally launched by Ah Kit in 2003.⁸ It was described as signalling ‘the start of a new era in regional development in the Northern Territory.’ Amalgamation was to ‘provide an effective framework for good governance and service delivery’ in a space that ‘has been marked by separateness.’ The initiative promoted voluntary establishment of regional authority structures under Northern Territory legislation ‘which will have the authority, economies of scale and legislative force to carry a full range of functions currently available under the local government

⁶ J Ah Kit, ‘[Community Government process to be reformed](#)’ 7 March 2002 (Media Release)

⁷ Holcombe notes that ‘the concept of [Wangka Wilurarra] grew out of strong leadership of Alison Anderson, a Luritja speaker and member of the Papunya community: S Holcombe, *The politico-historical construction of the Pintupi Luritja and the concept of tribe* (2004) Oceania, 257-275.

⁸ Northern Territory Department of Community Development, Sport and Cultural Affairs, *Building Stronger Regions, Stronger futures Northern Territory* (foreword by John Ah Kit, Minister for Regional Development), 2003

legislation.’⁹ The functions of this authority were also to include those which might be negotiated, under outcome focussed regional agreements, with the Territory, Commonwealth and other statutory authorities.”¹⁰

The Wangka Wilurarra regional governance project was specifically identified as a project under the BSRSF initiative. Whether regional structures developed under the Local Government Act could be an appropriate step towards greater regional autonomy that would meet the Aboriginal people’s aspirations of self-determination and governance remained questionable. The Wangka Wilurarra project lost momentum and support due in part to fears that the Regional Authority would be dragged in under the Local Government Act without amendments that would enable greater regional autonomy (and greater influence over areas such as health, education and housing).

In 2004, despite the enormous shake up caused by ATSIC’s impending demise, the CLC hoped that the representative ‘vacuum’ left by the abolition of ATSIC regional councils might provide a significant opportunity for Aboriginal people in the Northern Territory to design and implement a governance solution which recognised their unique needs and aspirations. At the time the CLC advocated for new regional governance arrangements that would:¹¹

- be based on the informed consent of land owners with boundaries determined by the relevant Aboriginal communities;
- deliver Aboriginal people and communities control over matters which impact on their region;
- have the power to enter in to agreements with all tiers of government and third parties; and
- have the capacity to receive direct Commonwealth funding.

The hope was that such a regional governance model would allow for monitoring, control and coordination of service delivery in the region (in relation to health, housing, education, local

⁹ Ibid, foreword.

¹⁰ Essentially, option 2 of the current Regional Governance paper describes something similar as a long term option

¹¹ See e.g Central Land Council, Submission to the *Senate Select Committee on the Administration of Indigenous Affairs*, August 2004.

government etc). The aspirations consistently articulated by members of the CLC for greater regional autonomy went, and continue to extend, beyond what are generally understood to be roles of local government.

At the Northern Territory Government level it was thought that NT statutory local government entities should fill the hole left by the ATSIC's regional council's dissolution. 'Mainstreaming' was again the mantra at the Federal level and the allocation of almost all prior ATSIC funding to the mainstream Government Departments undermined CLC attempts to advocate for a regional governance structure which would meet the aspirations of Aboriginal people and coordinate service delivery for the whole of Central Australia.¹²

In 2004 the then Chief Executive of the Department of Community Development, Sport and Cultural Affairs said that NT statutory bodies should exist right across the Territory and have real resources. Under the NT Governments mooted model, 'Aboriginal people, who control most of the local governments in the Northern Territory, ought to be, in a sense, supported, strengthened and given the power to exercise the rights they are entitled to.'¹³

The regional authority model was pursued in earnest in West Central Arnhem Land, in Wadeye through Thamarrur Regional Council and in the Nyirraggulong region east of Katherine through the Nyirraggulong Mardruik Ngadberre Regional Council.¹⁴ Significant steps were taken at the community level to move towards and adopt a locally developed regional authority model in these places. Despite having been undermined by a stark change in policy these examples warrant better consideration in considering future reform to give greater control to Aboriginal people at a regional level.

Late 2006 -2008: Shire amalgamation devised and forced through

¹² Di Smith, below n 15, notes that the bilateral agreement that provided for the transfer of this funding support for regional authorities was included in mid 2005. 'Shared goals for the two Governments...included working together to ensure 'effective and legitimate representation' etc. Despite the promising language, in the event this translated in to the mainstreaming Shires approach.

¹³ M Dillon, [then] Chief Executive, Department of Community Development, Sport and Cultural Affairs, Northern Territory Government, [Evidence to Senate Select Committee on the Administration of Indigenous Affairs](#), 24 August 2012, 20.

¹⁴ Ibid, 20-23. See also Di Smith, below n 15 in relation to the West Arnhem project.

Whatever the pros and cons of the BSRSF initiative, by 2006 there were still 63 recognised local governing bodies across the Territory. At the start of 2001 there had been 68. A proposed review of the Local Government Act 1978 (NT) under the initiative which was to provide a better statutory foundation for regionalised local government never occurred.

In October 2006 the Northern Territory Government, now with Elliot McAdam as Minister for Local Government, announced 'far reaching reforms to local government structures':¹⁵

Community councils have carried a heavy load for a long time, and these reforms will improve local government structures, expertise and services, creating financial security and a sustainable future

The 61 remaining councils were to be reduced to just 13 by 2008. Of these 53 were the small remote, primarily Aboriginal community councils, and were to be amalgamated into nine shires (in the CLC region 26 councils were amalgamated into 4 Shires). Under the changes, local government would also expand to cover the whole land mass of the Northern Territory, rather than the 10 per cent previously covered. During this period the CLC provided a representative to the NT Government's Local Government Reform Advisory Board and provided considerable input regarding the concerns about the interaction of the Local Government Act and the Land Rights Act, particularly over broad acre Aboriginal freehold, and the need to maintain strong local arrangements. The NT Government's emphasis was very clearly placed on anticipated improved service delivery rather than concern with local decision making power or control of community affairs. According to Di Smith:¹⁶

The sudden demise of the BSRSF policy owed much to the ideological dissatisfaction and implementation difficulties experienced by government bureaucrats in trying to accommodate Indigenous ideas about 'regions' and representation for local government, and their consensus modes of decision making about these matters. Discussion and decision making took time, internal negotiation and sensitive

¹⁵ E McAdam, '[Local Government Blueprint for the Future Announced](#)', 11 October 2006 (Media Release)

¹⁶ Di Smith, 'Cultures of governance and the governance of culture: transforming and containing Indigenous institutions in West Arnhem Land' in *Contested governance : culture, power and institutions in indigenous Australia* /ANU E Press Janet Hunt et al (Eds), 83.

facilitation—all of which challenged the capacity, commitment and resources of both the NT and Australian Governments. The political imperative for fast results chafed at the more measured pace of voluntary regionalisation... The [new] policy did away with any formal recognition of culturally-based processes for determining local government regions, and effectively turned a blind eye to the potential for using Indigenous governance systems and issues of cultural geographies as the basis for the shire model...regionalisation was still the goal, but it was to be mandatory and meet government-imposed deadlines.

The consultation about the proposed reform occurred in a climate of considerable confusion particularly as it coincided with the start of the Northern Territory Emergency Response (which was announced on 21 June 2007). At local government reform meetings attended by Desert Knowledge researchers in what was to become the Barkly Shire a lot of the time was taken up with ‘questions about the impact of the NTER, particularly on housing, income and CDEP.’ Elvin, notes that ‘the lack of successful communications meant that less than two months before the reforms took place, many community residents did not know what a shire was or the implications of losing their council and gaining a Local Board.’ Community government councils were abolished by the making of ‘restructuring orders’ by Minister McAdam on 16 October 2007 pursuant to the newly amended Local Government Act.¹⁷ Most of these councils were also Indigenous Community Housing Organisations (ICHOs). Due to not being separately incorporated these ICHOs were also abolished by that law. The Shire reforms took full effect from 1 July 2008 and the changes were widely perceived across the CLC region as inextricably linked with the Intervention even though they were, in fact, separate processes.

Local boards

In 2010 the CLC presented a study of local boards. Local Boards replaced community government councils as the only community level mechanism to provide input under the new Shire system.¹⁸ The aim of local boards was to provide a reference group within the community that the shire could consult on Shire business- no decision making power was to be

¹⁷ Northern Territory Government Gazette , 17 October 2007.

¹⁸ Central Land Council (2008) [The governance role of local boards: A scoping study from six communities.](#)

vested in these boards. The CLC initiated research and gathered perspectives and experiences from the community residents on their understandings of the legitimacy, role and functioning of the local boards. The research was intended to inform the CLC of the role and work of local boards in relation to broader community governance issues. The research was undertaken in six communities: three communities in the MacDonnell Shire and three communities in the Central Desert Shire.

The study found that while Shires had established local boards in all major communities and were supporting their development through training and/or resourcing of meetings, there are a number of structural and procedural issues (often beyond the Shires control) that limited the effectiveness of the local boards as a mechanism for local decision making. The research found that the selection process for membership on a local board was not well understood by community members. In some cases, community members suggested that shire staff have picked local boards members. Frequently, the residents argued the community had 'lost their voice' and the local boards were not seen as strong representatives or a legitimate body for the community. Even those community members who were local board members were sceptical about their contribution. Many wanted to get off the board. The lack of responsiveness of the shires to community issues or requests raised at local board meetings was found to be a significant factor leading to decreased interest and participation of community members in local board meetings. This lack of response to community issues was found to be due, in part, to the limited scope of local government functions.

There was some anger regarding what local board members were encouraged to focus on in the meetings as opposed what the community considered to be priority issues. More broadly there was strong concern that there were less community meetings now, signalling increasing tensions between a community being 'consulted' and community members 'making decisions'. There is little incentive for community members to play a role in achieving effective community governance when they are not involved in the final decision.

Overall the research found a very poor story of community engagement in community governance processes under the imposed Shire model. One reason behind this was that fact that local boards (and other recent government driven governance processes) are primarily

consultative groups – with no decision making or financial delegation – this does little to recognise the role that community leaders play in their community. Community members were angry about the top down approach by the government in demanding ‘how, when and on what the community’ is consulted on, which appeared to be in contrast to their previous experience of community councils.

There were widespread views expressed that conveyed fundamental concerns with the imposed structures and procedures of local boards. Participants raised the following concerns:¹⁹

“Used to be Anangu [Aboriginal people] and white fellas working together. I was a councillor before. Anangu and white fellas worked together, they were level in that council. “

“Everyone in the council used to talk. There’s lots of white people in the meeting now. Make me shamed, feel no good. I don’t feel like talking. I am a bit shy. “

“We have nothing to stand-on. Nowhere to go and look for any support. We used to make decisions here. We had things moving. At least we got the government to hear what we were asking for.”

Researchers heard that local boards were less representative, had less authority, less decision making power and less capacity to resolve community issues than the previous community councils. The difficulties and lack of relationships between shire staff and Aboriginal people was often a point of comparison. These findings, though confined to consideration of local boards, rather than the Shire system as a whole, are indicative of the considerable concern consistently expressed throughout the CLC region of the fundamental undermining of community control that was entrenched by the Shire system. There is some anecdotal evidence that Shires have become more responsive to issues raised at local boards. But the

¹⁹ Ibid, 40.

fundamental nature of purely advisory boards, where once there was community level decision making power, remains a significant concern.

Taking account of community views, and the obvious 'governance gap' in remote communities, the CLC developed a 'Building Effective and Legitimate Community Governance' Project to pilot an alternative governance development approach in Lajamanu. The project was supported by the Commonwealth Coordinator General for Remote Indigenous Services, received ABA funding from the Commonwealth Minister for Indigenous Affairs, and was eventually supported by the Northern Territory Government. Interestingly, the Local Government Association of the NT was strongly opposed to the CLC undertaking this work, describing it as 'the thin end of the wedge'. Needless to say, the project has been particularly challenging given the current lack of policy and program recognition of Aboriginal residents involvement in community decisions and the immense disempowerment that residents have felt, however the work is build capacity and confidence of Aboriginal leaders in this community. This project is entering its third year of operations and is proving a valuable tool for building community governance in Lajamanu, and for learning important lessons about how to approach Aboriginal community governance work. It is clearly demonstrating how critical it is that Aboriginal people are supported to design their own governance arrangements.

In 2012 the former Labor Government released a discussion paper that suggested that:²⁰

amendment of the current provisions of the Local Government Act relating to Local Boards could be an effective way to strengthen the purpose and role of Local Boards within the local government framework. Strengthening the role of the Local Board needs to reflect the fact that it is the elected Councilors who are responsible for council actions.

This was an inadequately limited attempt to address fundamental community concerns with the Shire system which, it seems likely, cost them the election. A financial sustainability report

²⁰ Department of Housing, Local Government and Regional Services, Northern Territory Government, Strong Local Boards, Strong Shire Councils (July 2012), 3.

was also completed in 2012 which found that Shires 'are financially unsustainable in the longer term'.²¹

The 2012 Election and Shire reform

The Country Liberal Party vowed to reform the Shire system if elected, emphasising the need for more local control and flagging the possibility of smaller shires. The 'Options for Regional Governance in the NT' consultation paper seeks to follow through on these pre-election commitments. The CLC believes it is critical that this latest round of options for reform of local government are viewed in the context of both the history of local government arrangements and reform processes in the NT, and the consistent call from Aboriginal people for Aboriginal governance models beyond the ordinarily narrow purview of local government .²²

Recommendation

That the Northern Territory Government recognise that reforming local government must be viewed in the context of both the history local government arrangements in the NT, and the consistent call from Aboriginal people for Aboriginal governance models beyond local government.

Specific comments on the consultation paper

A representative from the department of Local Government attended the recent Strong Aboriginal Governance Summit (April 2013) convened by the Aboriginal Peak Organisations NT, and attended by over 200 Aboriginal people from across the NT. In respect of local government reform, the agreed outcomes from the Summit were very clear:

The consistent, strong message from people who attended this session was that everyone is unhappy with the way communities have been disempowered under the current shire arrangements, and with the poor level of local government service delivery and support.

²¹ Deloitte, [Review of council's financial sustainability](#) (2012)

²² Mowbray notes that the prevalent disjunct between Aboriginal regional governance aspirations and the 'relatively circumscribed and subservient way in which [local government] is conceived in Australia and other Anglo American jurisdictions': M Mowbray, ['If Indigenous governance = local government, what are the options?'](#) Seminar Series: 'Indigenous Governance – Challenges, Opportunities and Outcomes' (11 May 2005), 5.

Many people were also unhappy with the current local boards (lack of communication and no real decision-making powers).

People talked about the old days of community councils as a time when residents had more local say in decisions, local planning and funding. But people didn't want to go back to the past. They talked about wanting strong governance in communities that would work well today, and would help them connect up with other communities and groups.

There was a lot of interest in the Murdi-Paaki [Regional Assembly] model - especially how communities could keep local control over the things that mattered locally, but at the same time be able to work together and make decisions at a regional level - for example, by creating an alliance or assembly of their representatives. People were keen to hear more about this structure. Some ideas and opinions kept coming up.

People kept saying that any new local government structures in communities and regions must be based on:

1. **Real decision-making control at the local level.** Aboriginal people must be "on top" in any community governing structure "so no one can come along and take over". "We got to have ownership in community".
2. **Negotiation, not consultation with communities.** "Consultation is just all talk from government, and they got their idea already sorted out what they will give to us, and what they won't".
3. **Proper time to consider.** "We were starting to get things sorted out under that Regional Authority idea before". "A lot of good things happening elsewhere. We want to see what others are doing, get ideas". "So we need our own time and space to think all this through".
4. **Local solutions, not imposed models.** "We can walk side-by-side with government, but not to get ideas pushed onto us. We got our own idea". "People have to support each other as leaders in our community to make

sure there is a united voice about what the community wants”.

5. **Aboriginal cultural foundations.** The very strong message from the group was that Aboriginal culture has to be the foundation for any new governance. Culture, Law, values, relationships and connections should be the basis for local government structures. Culture is seen as a solution not a problem, and the way to give real local credibility, authority, and support to local government. (Summit Report, 2013)

The message from the Summit echoes the views put forward for the last 30 years – Aboriginal people are seeking a governance solution based on their own culture and priorities. Importantly, Aboriginal people are not talking about going back to the past, but want to negotiate governance solutions that are appropriate, effective and strong.

Recommendation

That the Northern Territory Government commit to a process of negotiation, rather than consultation, to allow Aboriginal people at either the regional or local level, to participate in the design of their own governance arrangements.

Option 1: Regional Council

The Regional Council option comprises small changes that may deliver slightly more control back to the local level. The main difference between the Regional Council model and the current Shire model appears to be that Shires would be called Regional Councils, and may perhaps be based on smaller boundaries, and Local Authorities rather than local boards would operate at the local level.

It is proposed that Local Authorities would be allocated a specific local budget for allocation towards repairs and maintenance and personal services. Without any indication as to the extent of this budget allocation or the mechanisms for its expenditure it is difficult to ascertain the degree to which this will alleviate concerns regarding local control. It is not entirely clear

how the legislative provisions for Local Authorities will differ from those providing for local boards given that it is already possible for Shires to delegate functions to local boards.²³

Presumably the Local Authorities will not be able to receive and expend the budget items in their own right so achievement of Local Authority goals will be entirely dependent on the ability of the local Regional Council offices to undertake those tasks. Similarly, the local boards are already supposed to provide input and guidance to Shire plans, so it is not clear how this arrangement will be any different.

The assertion that the Local Authority 'would become the only body to be used in community consultations by Australian or NT Government agencies' is easy to state but more difficult to achieve. Firstly, local communities will need to feel sufficient ownership of the Local Authority to support it to be the primary 'community voice'. Certainly, local boards do not appear to have achieved this degree of legitimacy and it is not clear what governance development work will be done to ensure that the Local Authorities are seen to be legitimate, representative and effective. In some communities this may happen easily but experience shows that yet another government-initiated governance solution is unlikely to resonate with many communities in central Australia. The CLC does recognise the absurdity of the explosion of unpaid community consultative mechanisms with no decision-making powers, however, our experience with the Lajamanu governance project demonstrates that developing a truly legitimate governance arrangement takes time, resources and development expertise.

While it may have the advantage of being achievable, in the CLCs view Option 1. is:

- not significantly different to the current arrangements;
- unlikely to deliver significantly greater local control;
- unclear about how economic development will be progressed, nor what is expected to be progressed;
- based on assertions, particularly of the potential legitimacy of the Local Authority model, without providing any detail about how this would be achieved; and
- not based on Aboriginal community governance principles or priorities.

²³ Local Government Act (NT), section 32.

In the context of the rapid pace of change over the past five years, the CLC recommends that Option 1 does not proceed as it is likely to result in yet another round of confusion and change for very little gain. Instead, the status quo should effectively be maintained while the hard work of negotiating and designing new arrangements is commenced in earnest.

Recommendation

That option 1 not proceed as it is likely to result in yet another round of confusion and change for little gain. Instead, the status quo should effectively be maintained while the hard work of negotiating and designing new arrangements is commenced.

Option 2: Regional Authority

The CLCs governance work regarding the development of a Central Australian Regional Authority in 2004 was based on the following principles:²⁴

- Regional governance arrangements need to be based in, or compatible with, Aboriginal law. Only Aboriginal people can determine how, and to what extent, this can be achieved;
- Reforming institutional arrangements and creating new regional governance arrangements can only work if it is a community driven process;
- Regional governance arrangements need to deliver control over matters which impact on that region (funding allocations, economic development, service delivery etc) to Aboriginal people from that region;
- Regional governance arrangements would need to be based on clear initial agreements between Aboriginal traditional landowners and the new governing body;
- Any proposal for a new governance structure should require the informed consent of traditional landowners or native title holders;
- A regional body must have the power to enter into agreements with all tiers of government, and third parties;

²⁴ Central Land Council, Regional Governance Paper, April 2004, 2-3.

- The capacity to receive direct Commonwealth funding is an essential feature of any regional governance arrangement, in addition to receiving funds from other government agencies and external sources;
- Regional governance must allow for the monitoring, control and coordination of service delivery (eg health, housing, education, local government services etc). Such a body could either directly deliver services, and/or contract the delivery of services;
- The boundary of any new regional arrangement must be determined by the relevant Aboriginal communities; and,
- Ideally, the new Aboriginal regional governance arrangements would be provided for by a Commonwealth statutory regime.

The Option 2 'Regional Authorities' model appears to be similar to the model put forward by the CLC at that time, in the following ways:

- It envisages a partnership arrangement and the ability to receive direct funding from both levels of government;
- It envisages the ability to undertake functions beyond local government; and
- It promotes a regional development approach encompassing both communities and outstations.

But Option 2. also differs from the CLC's earlier Regional Authority model in the following fundamental ways:

- It is clearly located under the NT Local Government Act whereas the CLC model expresses a preference for a Commonwealth statutory framework. *The CLC's current thinking also incorporates the possibility of a model with no statutory basis at the regional governance level, with reliance on incorporated bodies to undertake specific roles under a regional umbrella (Regional Assembly model);*
- It is firmly entrenched in actual service delivery whereas the CLC model suggests that while a Regional Authority could deliver services it may prefer to contract service delivery to local organisations but set policies and performance benchmarks;

- It talks about 'including the land councils' whereas the CLC model envisages a strong partnership between the Regional Authority and the Land Council as two separate and strong entities, including an agreement between the new body and traditional owners/native title holders; and
- It does not appear to countenance the incorporation of traditional decision-making processes into the operations of the Regional Authority.

Both models have in common the need for a great deal more work, including extensive on-ground consultation, to address the many complex factors needed to develop a new governance arrangement. In that sense, the CLC agrees with the proposition that Option 2 is a longer term goal. However, the CLC is strongly of the view that work needs to commence immediately on negotiating a framework for moving towards this longer term goal. Settling on this framework which would effectively be an agreement between Aboriginal people and their organisations, the Northern Territory Government and the Australian Government is really the only way to actually progress this difficult work. Focusing our combined efforts on this more comprehensive governance work will be more worthwhile than fiddling around the edges of the current local government arrangements.

Recommendation

That Aboriginal people and their organisations, the Northern Territory Government and the Australian Government agree on a framework for negotiating a comprehensive Aboriginal governance arrangement, including allowing sufficient time and resources for genuine Aboriginal governance development work.

Need to acknowledge Land Rights and Native Title Regimes

The consultation paper would benefit from a more explicit acknowledgement of the interaction between the *Local Government Act and the Aboriginal Land Rights (Northern Territory) Act 1976*, and the *Native Title Act 1993*. This could have been briefly mentioned in the context setting discussion before proceeding to options. The suggestion that Local Authorities could include specific representation, including a representative from the 'mining industry or an economic development advisor' fails to recognise that there are both land rights and native title regimes operating that need to be complied with, including the specific

functions of the Land Councils in these areas, particularly in relation to mining. What would a mining adviser on a Local Authority actually do given local government has no role in consulting on, or negotiating exploration or mining agreements? Providing a more accurate description of the operating environment, and emphasising a cooperative approach with the Land Councils would have been useful and will need to be considered in devising future plans.

CLC PROPOSAL FOR A WAY FORWARD:

OPTION 3: REGIONAL AUTHORITY/ASSEMBLY (An integrated approach with both short and longer term goals and actions)

1. The Status Quo

We currently have an unworkable governance environment in Central Australia. This is a consequence of pendulum-swinging policy initiatives and poor implementation over many decades, combined with governments at all levels being unable to consider and make the necessary systemic adjustments.

Local institutions of governance in Aboriginal communities and towns now have little coherence, interconnectivity or practical collaboration owing to the plethora of informal advisory committees, task forces, working groups, reference groups and boards. Many of these have been created and are run by government departments for the purpose of delivering outcomes on already-formulated government policy and service goals. For example, in Lajamanu there are over 30 such informal structures created largely by governments. Over 60 local yapa men and women work on these committees and reference groups; mostly receiving no sitting fees. They do so, primarily to give practical effect to government policies and service-delivery goals, but have no role in actually making the policies themselves and they remain highly skeptical as to whether their input is considered and/or valued by those who consult them.

These informal community institutions invariably operate as pipelines to silos, reporting back to their founding departmental or centralised agencies. Incorporated Aboriginal organisations in communities and regions are also part of this patchwork, and are routinely overloaded with

program administration and financial compliance, at the same time as being underfunded to do their real jobs on the ground. Local boards in communities are simply another such silo within communities, and so further undermine the potential for more cohesive community governance solutions to arise. Furthermore, the *regionalisation* of local government has effectively been set up to fail as a result of severe underfunding from the NT Government, whilst at the same time being expected to assume greater responsibility for smaller Aboriginal communities and program initiatives funded by *both* the NT and Australian Governments.

Revision and reform to local government in the NT has been constant, with almost *annual* changes to government policy, programs, departmental structures, Ministerial portfolio responsibility, and funding arrangements. Countless reviews have been carried out to little effect. Chronically poor implementation has been the consequence, as both government bureaucrats and Aboriginal people on the ground struggle to understand and action the latest bright policy idea and related funding changes. To the extent that progress has been made, the hard work put in to seriously considering locally appropriate models has simply been set aside.

At all levels of government there appears to be no one Minister or department responsible for taking an overall holistic view of the impact of such changes on Aboriginal people in the Central Australia region, or NT more widely. And despite the rhetoric from several successive NT Governments, Aboriginal people have been, and continue to be, left outside the policy-making process itself. Indeed, over the last decade Aboriginal people have become consultation rich, but governance-outcome poor: being *more* disempowered and isolated from genuine decision-making authority about their own governance arrangements as a result of unilateral changes imposed by governments.

These 'governance-disempowering' initiatives by government include, for example, the unilateral turnaround made by the NT Government from the Ah Kit regionalisation policy, without consent by Aboriginal people; the Australian Government's unilateral Intervention into communities; the undermining of the permit system; removal of homelands funding; removal of the CDEP scheme; removal of ICHOs and the wholesale transfer of community housing to Territory Housing; and statutory community councils being replaced by advisory local boards. Such initiatives, when combined with the dramatic increase in government-created informal

committees in communities, have seriously eroded Aboriginal people's own governance authority, experience and confidence.

This fractured, constantly changing governance environment in Aboriginal communities has not led to *sustained* improvement in service delivery or governance capacity. It is not surprising that the new Shires are seen by many Aboriginal people as lacking legitimacy, voice, power and effectiveness.

2. More of the same will not work

The CLC asserts that fiddling around the edges of broken, impoverished government policy will no longer work.

In Central Australia there is a clear need for a governance vision that goes beyond service provision, financial compliance regulation, and the implementation of government intervention policies.

We need a governance vision that:

- includes innovative Aboriginal solutions, cultural preferences and decision-making;
- enables more integrated networked governance on the ground;
- will win the support of Aboriginal people as being legitimate; and,
- is committed to building practical and effective governance capacity and resilience over the long haul.

This governance vision needs to be underpinned by sound and resourced governance development work to systematically build expertise, confidence, capacity and resilience.

With that vision in mind, the CLC puts forward the following proposal as the basis for a way forward.

1. An 18 month Negotiation Phase:

There needs to be a considered negotiation of possible new Aboriginal governance arrangements for both community and regional governance in the NT that is open to

the evidence and to the innovative concepts and thinking that are often coming from Aboriginal people themselves. This phase of informed negotiation would be sustained and backed by a collaborative government mandate.

2. Development of Models and Options (for both community and regional levels):

Out of the negotiation phase would arise models for more whole-community and/or regional, cohesive governance arrangements that would then be assessed and refined via their implementation as a series of '*Innovative Aboriginal Governance - Demonstration Projects*'.

3. Negotiation Principles and Process:

The negotiation phase would commence with all governments and the CLC agreeing upon a set of operating principles and processes relevant to the CLC region. This approach could be extended to the whole of the NT.

A basic principle of negotiation would be acknowledgement and respect for the fact that Aboriginal people in the NT have legally-enforceable land rights with land holdings and resources, have existing cultural geographies and traditions of governance, and hence can pursue culturally-informed solutions of governance for their communities and regions.

4. Fiscal Revamp:

Central Australia has an inadequate economic base to support the infrastructure and capital requirements needed for effective governance solutions. Fiscal federalism, as it currently operates, has been well-documented as allowing the NT Government to apply revenue assessed by the Grants Commission against needs of remote communities to be allocated independently of those community needs. This loophole must be reconsidered as part of the vision for innovative solutions, to ensure Aboriginal governance strategies are properly resourced into the future.

Once a community (or region) has negotiated and designed an agreed Community Governance Model, all governments would need to support that initiative; whether

that be through providing officer support, access to governance capacity-building program funds, through legislative support or policy readjustment.

5. Governance Rationalisation:

The need for the myriad of government-created informal governing structures across Central Australian communities would be reassessed and rationalised as part of the negotiation phase and design of governance models for demonstration projects. The goal here is not to do away with *all* institutions of governance at the community level, but to create a more streamlined, cohesive community governance environment where the continued operation of different governing mechanisms are judged by their contribution to an *integrated governance network* within each community and region, and their contribution to a *collective impact*.

6. Local Government:

Local government solutions must be part of a holistic package of bottom-up, Aboriginal governance solutions, not the cause of further fracturing and competition. Under this proposal, local government is acknowledged as being simply one part of the overall governance environment that needs to be considered in order to develop effective workable solutions.

Over the 18 month negotiation phase, existing Local Boards could be given a more devolved decision-making role with respect to current local government services and funding priorities (under existing legislative provisions).²⁵ But they could also form part of a new *Community Governance Aboriginal Working Group* with representatives from community leadership, organisations and various committee/reference groups, whose job it would be to develop a more inclusive ‘whole-of-community’ model of governance (that would then proceed into a governance demonstration project’ phase).

Importantly, the *Local Government Act (NT)* would need to be reviewed to support negotiated outcomes.

²⁵ Local Government Act (NT), section 32.

7. Localism and Networked Regionalism:

The advantage of this 'bottom-up' approach via *Community Governance Working Groups* is that, over the 18 month period, communities will be able to consider and develop their own local solution and put forward proposals for more regionally networked approaches; eg via a set of culturally-aligned communities forming a network into a Regional Authority or Regional Assembly model based on a specific cultural geography. The Authority or Assembly may or may not be incorporated – all options should be considered.

Both the community and regional models would have a wider focus than Local Government. For example, it may well be that a community might initially want to focus only on local government. But it might be that a community immediately wants to integrate several other existing informal reference groups/committees into a single, more cohesive community governance arrangement. In the latter case, the new wider governance model could contract to provide local government services, as well as carry out other functions and deliver other services.

In both cases, the *Local Government Act* would need to be changed to be able to immediately support a variety of evolving community governance models, of which local government is but one component. From this slightly different perspective, the *Local Government Act* would form part of a more enabling statutory environment that focuses on supporting whole-of-community and regional governance arrangements.

8. CLC support:

If such principles and scope were the basis for negotiated, culturally legitimate Aboriginal governance solutions at both community and regional levels, the CLC would be prepared to assist by giving effect to a comprehensive communication and negotiation process with Aboriginal people in its region, so all agreed models are based on informed support and so have wide credibility and a greater chance of successful implementation over time.