

# Thinking about Indigenous Community Governance

W. Sanders

DISCUSSION PAPER No. 262/2004

ISSN 1036 1774

ISBN 0 7315 5637 2



CENTRE  
FOR ABORIGINAL ECONOMIC  
POLICY RESEARCH

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Hanna Neumann Building #21  
The Australian National University  
Canberra ACT 0200  
Telephone 02-6125 8211  
Facsimile 02-6125 9730

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Professor Jon Altman  
Director, CAEPR  
The Australian National University  
June 2004

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Will Sanders is a Fellow at the Centre for Aboriginal Economic Policy Research, The Australian National University.



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## ABBREVIATIONS AND ACRONYMS

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ALP	Australian Labor Party
ANU	The Australian National University
ARC	Australian Research Council
ATSIC	Aboriginal and Torres Strait Islander Commission
CAEPR	Centre for Aboriginal Economic Policy Research
CLP	Country Liberal Party
ICC	Island Coordinating Council (Torres Strait)
NARU	North Australia Research Unit
PBC	Prescribed Bodies Corporate

## ABSTRACT

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This document brings together four papers on Indigenous community governance which were written as verbal presentations for conferences, seminars and workshops between 2000 and 2003. They argue, from different starting points in response to conference and workshop themes, that Indigenous community governance is as much about process as about structures and that dispersed governance has benefits as well as costs. In doing so they challenge some common assumptions of would-be reformers of Indigenous community governance.

The papers have been brought together for convenience and as a point of departure for debate, as part of an ARC Linkage project between CAEPR and Reconciliation Australia on Indigenous Community Governance.

## ACKNOWLEDGMENTS

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Diane Smith deserves particular acknowledgement as the driving force in the establishment of the ARC Linkage project Indigenous Community Governance between CAEPR and Reconciliation Australia. Jon Altman, as the Director of CAEPR, has also been continuously supportive of my work in this area. Frances Morphy and John Hughes assisted with layout and editing. I am also indebted to many people who have responded both positively and critically to these ideas when presented at the conferences, seminars and workshops.

## INTRODUCTION

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In mid 2003, the Centre for Aboriginal Economic Policy Research (CAEPR) was awarded an Australian Research Council (ARC) Linkage project grant to work with Reconciliation Australia on Indigenous community governance. This discussion paper brings together four brief papers on this topic which I have written either in the lead up to this project or during its early months. The first, and longest, was delivered as a seminar at the Australian National University's North Australia Research Unit (NARU) in Darwin in October 2003. The second was written as a speech for a conference on 'Building Effective Indigenous Governance' held at Jabiru in the Northern Territory in November 2003. The third was prepared somewhat earlier for an Indigenous Governance conference held in Canberra in April 2002. Reconciliation Australia had a major role to play in organising both these conferences and sought my contribution to both. The fourth paper was presented in Canberra in March 2000 as part of a workshop for an earlier ARC-funded project on 'Indigenous Governance Structures On and Off Native Title Land' undertaken by Garth Nettheim, Gary Meyers and Donna Craig in conjunction with the National Native Title Tribunal. Although until now not published in full, this last paper was quoted from in the final report of that project (Nettheim, Myers & Craig 2002: 349–50).

All four of the papers bear the hallmarks of a text to be delivered as a speech. Three were delivered largely as written. However, in the case of the second paper, entitled 'Hastening slowly', which was delivered to the conference at Jabiru, I diverged from the text quite markedly and simply referred in passing to the prepared paper. The Jabiru conference had more Aboriginal participants from remote areas than any of the other three and, taking a lead from common Aboriginal practice, I began by telling a little of my family history, from Birmingham and Scotland in the nineteenth and early twentieth century, and of my own different associations to country having grown up in Sydney, and moved in adult life to the Northern Territory and Canberra. I used this personal information to illustrate the difficulty of clearly identifying and delineating political communities as people move around from place to place over time. Sullivan (1996: 12) makes a similar point using the life history of an Aboriginal man in the Kimberley region of Western Australia. Membership of political communities is not easy to define. But, of course, groups do specify their membership, however roughly and imperfectly, and do get on with governing themselves, including addressing membership issues.

Political communities are not easy to work with, or in, as people both within and outside them have different views about values and priorities. This latter point too seemed worth making at the Jabiru conference because there was a sense in which Indigenous people at the conference seemed to be receiving criticism for not getting their community governance quite right. Governance is hard work, and we all get it less than fully right. Indeed there were numerous instances of quite successful Indigenous community governance reported on at the Jabiru conference, as well as the usual criticisms. The best that we can ask of the members of any political community, Indigenous or not, is that they keep on plugging away at the governance process.

There are some constant themes which run through these papers, and which may become a little repetitious when presented in this format. However, some ideas are, to my mind, worth repeating, again and again. Among those I would put the idea that governance is as much about process as about structure. At various points in these papers, I point to an over-emphasis in governance thinking on getting structures right at one point in time and an under-emphasis on good governance processes over time, almost irrespective of structure. Another point worth repeating is that the current pattern of highly localised and dispersed governance which has emerged in Indigenous communities over recent years has significant benefits and advantages as well as costs. Dispersal and localism can aid the autonomy of Indigenous people, even if they do also lead to some other problems. I make no apologies for repeating these ideas, in order to defend Indigenous community governance against the seductive appeal of the idea of a single, central, culturally-appropriate governing structure which will fix everything. This idea is a chimera.

I trust these four brief papers will be of some interest to those thinking about Indigenous community governance. I also trust that bringing them together in one Discussion Paper will be of some convenience to such readers.

# 1. DISPERSAL, AUTONOMY AND SCALE IN INDIGENOUS COMMUNITY GOVERNANCE: SOME REFLECTIONS ON RECENT NORTHERN TERRITORY EXPERIENCE

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When the Northern Territory was granted self-government in 1978, one of the first pieces of legislation to be passed by the new Legislative Assembly was the *Local Government Act*. The Territory at that time had formal local governments in its four major urban centres, but none elsewhere. Part XX of the new Act provided for a form of local government, called community government, which was intended for small urban settlements and outlying areas, including Aboriginal communities. Community government was to be an option for communities to take up and it was intended to be more flexible than municipal local government.

I begin by reflecting on some work that was done on community government at the North Australia Research Unit (NARU) in the late 1980s by Canadian, Jackie Wolfe, and in the early 1990s by Tim Rowse. I then move on to more contemporary developments surrounding local government in Indigenous communities in the latter days of the long-standing Country Liberal Party (CLP) government and in the two and a bit year term of the current Martin Labor government. My aim, if this is indeed possible, is to be both critical and supportive of recent Northern Territory government attempts to reform local government structures and processes for Indigenous communities.

Recent reform efforts have raised the possibility of the introduction of somewhat larger, more regionalised local government arrangements than have emerged over the last 25 years. Some of these reform efforts have already come to fruition. In 2001 a single Tiwi Islands local government replaced three pre-existing local councils, and in 2003 the Nyirrangguling regional grouping of councils was established to the east of Katherine and the Thamarrur community government was established to replace the Kardu Numida council in the Wadeye region. To mention these instances of newly emerging more regionalised local government structures is, however, to foreshadow the end of the paper and the contemporary situation, whereas I want to start with a little bit more policy history and a review of past literature.

## COMMUNITY GOVERNMENT, DISPERSED GOVERNANCE AND AUTONOMY

In 1989, Jackie Wolfe wrote a NARU monograph entitled *That Community Government Mob*, about the introduction of local government to small Northern Territory communities. She documented the introduction of the community government provisions of the Northern Territory *Local Government Act* first in 1978 and then in slightly amended form as part VIII of the Act in 1985–86. Although Wolfe's detailed case studies were of open mixed population towns, she was also interested in the use being made of community

government in discrete Aboriginal communities. Hence the relevance of her work to Indigenous community governance.

Wolfe noted the CLP government's line that community government was not to be imposed on communities, but rather was an opportunity which people living in unincorporated localities outside the Northern Territory's major urban areas might or might not take up. She also noted the legislation's flexibility in terms of what functions and powers community government councils could take on and also in terms of their boundaries and electoral systems. The Australian Labor Party (ALP), she noted, had in Opposition, endorsed the community government provisions of the local government legislation whenever they came before the Northern Territory Legislative Assembly, seeing them as potentially enhancing moves towards community self-management that were already underway and as giving local governing bodies 'legal status and recognised authority' (Wolfe 1989: 38).

Wolfe saw the Northern Territory government's implementation of the community government provisions of the *Local Government Act* as being divided into two phases: a laissez-faire phase from 1978 to 1985 and a more active promotional phase from 1985 to 1988. During the first eight-year phase, just four Aboriginal communities had taken up the community government option, while during the second four-year phase, nine communities had, including three or four more mixed population towns (Wolfe 1989: 87). Neither this early laissez-faire period, nor the ALP Opposition's support for the CLP's legislation, however, saved the community government provisions of the Act from becoming quite controversial during the 1980s. This was because the Commonwealth-created Aboriginal land councils saw the community government provisions, when applied on Aboriginal land, as potentially in conflict with their responsibilities to traditional owners under the Commonwealth's *Aboriginal Land Rights (Northern Territory) Act 1976*; as they potentially were. Indeed on one reading of the situation, the community government provisions of the *Local Government Act* were an attempt by the Northern Territory government to subvert the Commonwealth-imposed Aboriginal land rights regime (Mowbray 1986). Wolfe, I should add, did not subscribe to this view and saw herself as offering a somewhat less partisan, but also less promotional view of community government than any of the Australian players directly involved. She wanted to look at the legislation and its implementation on its merits in comparison with other local government systems elsewhere, but still quite critically (Wolfe 1989: xv).

As it turned out, Wolfe had both complimentary and critical things to say about the community government provisions. For example she noted that the adoption process had 'more detailed requirements for community consultation than is the case in most local government legislation' and that a 'careful, slow adoption process' over an extended period of time was 'a strength of the legislation and its implementation' (Wolfe 1989: 46-47). However, she also noted that it was not always easy to ascertain who exactly should be party to the consultation and what it meant for a majority of residents to be in favour of a proposed scheme. In no community, she noted, had 'any attempt been made to identify the full roll of residents and to conduct a poll or referendum on community government' in pursuit of this idea of majority support. Instead, bias had been introduced in favour of 'existing interests' through 'protracted discussions... with members of existing

councils or associations' (Wolfe 1989: 48). In addition Wolfe argued that it was 'vital to the long term success of community governance' that schemes have regard to the 'needs of minorities', as well as majorities (Wolfe 1989: 49).

On boundaries and electoral systems, Wolfe noted the variety of approaches that had been adopted both by mixed towns and by Aboriginal communities. Although 'efficiency' considerations pointed to the inclusion of small outstations with larger Aboriginal communities, this could, she noted, 'run counter to the wishes and interests of outstation residents' who often wished 'to remove themselves from a central settlement, its lifestyle and its authority' (Wolfe 1989: 55). Residency requirements for both voting and standing for office ranged, in the schemes adopted, from three months to five years and in some Aboriginal communities voting rights were also accorded to non-resident traditional owners. Some electoral systems operated 'at-large', over the whole area of the community government scheme, while others divided their constituency into sub-groups, either geographically in wards or, in a number of the Aboriginal community schemes, into clan or language groups. The variety of arrangements was in many ways quite astounding, and Wolfe was generally supportive of this, though in the case of the Yugul Mangi scheme which had adopted a 'no-vote', language-group-based electoral system Wolfe was somewhat sceptical, if not outrightly critical. The formal language of the Yugul Mangi scheme stated that:

The method of election of a language group shall be effected by agreement between the persons eligible to participate in the election as to the persons they wish to be represented on the council (Yugul Mangi Community Government Scheme (1988: 8) quoted in Wolfe 1989: 66).

Wolfe's comments on this provision, and on the Yugul Mangi scheme more generally, were as follows.

The above clause can be interpreted as a recognition both by the community and by Territory officials responsible for implementing community government that formal elections are not the way Aboriginal people identify leaders...Given the opportunity for flexibility afforded by the community government electoral provisions, a community has found a way to avoid elections.

On the other hand, the Yugul Mangi scheme may also be regarded as extraordinarily complex, and probably unworkable. It covers a huge area, including large and tiny blocks of land, central communities, outstations and pastoral excisions...; has representation by language groups; and has a large council, small executive and nominated representatives...The history of the communities covered by the Yugul Mangi scheme gives cause for concern over the appropriateness of establishing community government at all. The outstations arose out of many people's mistrust of the Ngukurr community council...Outstation people vigorously opposed the control of Ngukurr council, because of what they regarded as inequitable distribution of funding and resources...Community government places a new formal political and administrative body over the disparate pieces (Wolfe 1989: 66).

In light of Yugul Mangi's subsequent history, these were prescient comments. To be fair, however, Wolfe was not just being critical of Yugul Mangi's language-group-based, no-vote electoral system, but rather of the whole idea of putting together a disparate congerie of partly rivalrous Indigenous localities into one

Indigenous community government scheme. This was perhaps a consequence, or symptom, of the Northern Territory government's more promotional approach to community government after 1985.<sup>1</sup>

On the functions that community government councils might undertake, Wolfe noted that when the Northern Territory government began to actively encourage communities to adopt community government from 1985:

it was assumed that all functions presently being carried out in the communities by existing councils and community agencies such as housing associations, pastoral companies, store associations and social clubs, would come under the aegis of the new community government council (Wolfe 1989: 69).

The reasons for this assumption on the part of the Northern Territory government were, as Wolfe characterised them, to do with 'efficiency':

All funding for community facilities and endeavours is funnelled through council. There is one contact and one decision point. Ideally council can coordinate delivery of services. Councils can begin forward planning of service improvements. Equipment can be shared, not duplicated. On the human services side, council can begin to establish priorities, and encourage co-operation between related services such as adult education and training, health, hygiene and nutrition. If necessary related services can be overseen by committees of council, along the lines of conventional local government elsewhere. In terms of the efficiency model of service delivery this makes sense (Wolfe 1989: 69–70).

This was a very orderly, managerial view of what community governance involves and in the next turn in her argument Wolfe provided a much needed, more realistic political analysis. What was not adequately recognised in this managerial, efficiency model, Wolfe argued, was:

the power of existing organisations and their relationship to the community council. Each has a role in the distribution of status, prestige and power and in the allocation of scarce resources within the community. Positions not only on council but also on the boards and committees of associations afford individuals status and the opportunity to exercise some power, both as individuals and on behalf of clan, language or other groups. People who hold these positions are unwilling to have them subsumed under the authority of a community government council. A community government council will tend to concentrate power, prestige and access to valuable assets such as money, jobs, transportation and trips. Furthermore, sub-groups such as clans, have often gained responsibility for a specific functional area, such as housing or rubbish collection, and are reluctant to lose their power base... The dispersed governance typical of many NT Aboriginal communities may not be the most efficient structure for delivery of services. But communities may find it more effective, at least for a while, to let the associations continue, rather than lose the support of influential individuals and clans, and further undermine cooperation in the interests of coordination (Wolfe 1989: 70).

This more realistic political analysis pointed to the attractiveness to many Aboriginal people of a dispersed governance model in their communities and it noted that, in practice, this is what had already emerged in the Northern Territory by the 1980s. The fact that many Aboriginal communities did not have community government councils by the time of Wolfe's study did not mean that they did not have community

governance structures and processes. Other organisations such as progress associations, housing associations, sports and social clubs and more general community resource agencies had been incorporated under other pieces of legislation in previous years in order to receive public funds and deliver certain services. Indeed in an early chapter in Wolfe's monograph, the director of NARU during the 1980s, Peter Loveday documented Commonwealth government efforts to promote local government councils in Northern Territory Aboriginal communities from the 1950s to the 1970s (Loveday 1989). So the field of Indigenous community governance in the Northern Territory was by no means a *tabula rasa* when the Community Government provisions of the *Local Government Act* came along in the late 1970s.

Wolfe argued that this historically-developed, rather dispersed model of Indigenous community governance may be hard to change and, perhaps in the short term at least, that it may not be worthwhile to change it in the name of efficiency. I think this is Wolfe's most important contribution to community government debates of the late 1980s and one which would-be reformers of Northern Territory local government for Aboriginal communities, even today, need to take seriously to heart. Together with Wolfe's comments, noted earlier, about the difficulties of pushing together partly rivalrous locations such as outstations, pastoral excisions and central communities in cases like Yugul Mangi, this was a fairly cogent defence of the highly localised and highly dispersed system of Indigenous community governance which had emerged in the Northern Territory by the 1980s. This is not to say that this system is without problems. Rather, it is important to understand the social and political forces among Aboriginal people which have produced this dispersed pattern of community governance in the Northern Territory and the degree of difficulty, or resistance, that might be encountered in trying to change that pattern.

For the moment I wish to turn briefly to the other previously mentioned piece of NARU research, Tim Rowse's *Remote Possibilities* (1992). Rowse's work is much more general than Wolfe's and it only devotes two chapters of six to the community government debate in the Northern Territory, but it usefully reinforces and extends Wolfe's work.

Rowse noted that Wolfe was, in her work, responding to:

one of the most common and seductive assumptions in the discussion of Aboriginal self-government: that community power is, or should be made to be, a unified centralised sovereignty (Rowse 1992: 89).

Rowse also noted that Wolfe had identified an 'alternative model for us to consider', that of 'dispersed governance', and that this model draws on 'already practiced traditions of service delivery' in which 'a series of resource agencies ... negotiate cooperation with one another when the need arises' but against a background of each being 'secure in their autonomy' (Rowse 1992: 89–90). In my view, Rowse's most important contribution to the community government debate was to link this dispersed pattern of community governance to the larger theoretical idea of autonomy. Hence the title for this paper.

Wolfe had made relatively little use of the idea of autonomy in her analysis. To the extent that she had used the idea, it had been when referring to the constrained autonomy of community governments in relation to the Northern Territory tier of government. The 'upper tier', as Wolfe referred to it, retained

significant oversight powers, including the 'ultimate power' of dissolution and also imposed quite stringent requirements for financial accountability. Together with the community government's rather weak revenue raising capabilities, this meant, for Wolfe, that community governments had 'little meaningful autonomy'. They were not in a position 'to set and implement their own priorities' and were:

self managing only in so far as they... administer the programs, primarily for physical services and physical infrastructure development, that the Territory wishes to devolve' (Wolfe 1989: 84–5).

Rowse took up the idea of autonomy in an importantly different way. He had included in his more wide-ranging work a review of anthropological, or ethnographic, accounts of the Aboriginal domain and their relationship to ideas of self-determination. In the context of the community government debate and the dispersed governance model, he concluded that:

If there is one lesson that must be drawn from an anthropological consideration of Aborigines' emerging instruments of self-determination, it is that 'autonomy' refers not only to Aborigines' relationships with non-Aboriginal society, but, just as important, it refers to their relationships with one another' (Rowse 1992: 90).

Emerging from the ethnographic literature, in Rowse's view, was a common recognition of a drive towards highly localised, even individualised, autonomy as a major 'feature of the Aboriginal domain'. This feature was in danger of being overlooked and 'trivialised in an administrative ideology' which presumed 'unification of local sovereignty to be the best or only basis of technical efficiency in service delivery and financial accounting' (Rowse 1992: 90). Here was a strong, much more theoretically and ethnographically informed defence of the dispersed governance model than Wolfe's, based on the value placed on autonomy within the Aboriginal domain. This was Rowse's significant contribution to the debate and it suggested that moving beyond the dispersed governance model of Indigenous community governance might be even harder for Northern Territory local government reformers than Wolfe had suggested. Dispersed governance in Aboriginal communities was not just something which had happened as the result of a particular history of Commonwealth and Northern Territory policies, but was deeply embedded in and reflective of the value placed on autonomy within the Aboriginal domain.

## SCALE AND THE POTENTIAL FOR REGIONALISATION

I now want to take the discussion of Indigenous community governance in the Northern Territory in a somewhat different and more contemporary direction and to be somewhat more positive about the need and potential for local government reform in relation to Aboriginal communities. By the mid 1990s, the Northern Territory government recognised about 70 local governing bodies within its jurisdiction, about half of which were incorporated under the community government provisions of the *Local Government Act*. The other half were either municipal councils in urban areas or, so-called 'association councils' in Aboriginal communities. This latter term meant that the councils were recognised for funding purposes as local governing bodies but were still incorporated under some other legislation than the *Local Government Act*,

such as the Northern Territory *Associations Incorporation Act* or the Commonwealth *Aboriginal Councils and Associations Act*. Community government was no longer new by the mid 1990s and the Northern Territory government had become more concerned with the ongoing running of community governments than about their establishment. Clearly during these years community governments and association councils in Aboriginal communities were not always running smoothly, and the Northern Territory government began to think about different ways in which councils could be organised, or structured, in order that they might run better. One idea that the Northern Territory government focused on in this attempt was that of scale.

In February 1999, the CLP's Minister for Local Government, Lorraine Braham, launched a local government reform agenda in which it was argued that the 62 local governing bodies recognised by the Northern Territory government in 'rural and remote areas' were too small to attract 'sufficient numbers of qualified, competent and ethical staff' or to 'generate the revenue necessary to support the delivery of minimum services or to sustain an administration that allows for the achievement of any economies of scale.' Some Northern Territory local councils were servicing populations as small as 300 people. The Minister argued:

councils with a population of less than 2,000 people encounter greater difficulties in maintaining adequate levels of administration and service delivery over the longer-term than those with larger populations (Braham 1999: 3–4).

In support of these arguments about scale, Minister Braham went on to cite the example of Victoria, which had recently reduced its number of local governments from 210 to 78. This, one would have to say, was a somewhat inappropriate argument of convenience, since Victorian local governments were, even before the change, servicing populations well in excess of 2,000. However, Minister Braham was onto something in questioning the ability of small organisations to sustain administration and staff on a long term basis, and this does need to be further explored.

The incoming Territory Labor government in 2001 also picked up on the issue of scale. Minister Ah Kit in a statement to the Legislative Assembly in March 2002 argued that it was difficult to find a fully 'functional' Aboriginal community anywhere in the Northern Territory and that outcomes from highly localised service delivery arrangements were not as good as they should be. In May 2003, the Minister announced a *Building Stronger Regions Strategy*, a key part of which was the encouragement of Regional Authorities under the *Local Government Act*. In addressing the Local Government Association of the Northern Territory about this initiative, Minister Ah Kit stated:

Unfortunately, in many parts of the Territory the services that are being delivered are not achieving the outcomes that are required.

The concept of Regional Authorities that we propose is straightforward. They will be established pursuant to the power provided under the *Northern Territory (Self-Government) Act 1978* that gives Parliament the power to make laws in relation to local government. The constitutions of Regional Authorities will give them the power to govern, and make by-laws for the area that they cover.

We are not inventing a new tier of government, but we are creating the capacity for councils to voluntarily come together for improved service delivery (Ah Kit 2003: 13)

Elsewhere in this address Minister Ah Kit reflected on tendencies towards regionalism within Aboriginal society. He stated:

There is a completely false view that Aboriginal communities, from outstations and pastoral excisions, to larger communities and townships—through indeed to inhabitants of towns and cities—exist in splendid isolation from each other. It is a view based on colonialist notions encouraged by the days of the mission, the settlement and the pastoral property. It is an idea designed to divide Aboriginal people from our lands, our languages and our ceremonial connections.

It is an ideology that deliberately denied the fact that Aboriginal people of what is now known as the Northern Territory have always worked together—socially, culturally and economically—as a series of overlapping and interconnected regions (Ah Kit 2003: 6).

The Minister then went on to give some examples of Indigenous regionalism which focused on ritual, or ceremony, as an Indigenous socio-political phenomenon taking place on a quite large geographic scale. He wrote:

Across the Territory, the 'finish up' of major ceremonies involve hundreds—at times thousands—of participants, from many clan and language groups, drawn from communities scattered across thousands of square kilometres. These ceremonies are not the exclusive possession of individual, discrete communities – they are shared across regions, they are the domain of owners and custodians linked in ways that have nothing to do with mere domicile.

Indeed, the idea that a ceremony is the exclusive possession of a particular community is both bizarre and offensive. Major ceremonies express themselves socially and politically—indeed economically—as regional forms of governance and communal relationships.

So the idea of looking at the Northern Territory as a series of regions – both overlapping and interconnected – for service delivery is not borne of bureaucratic convenience or ministerial faddishness on my part. It is based on an understanding of the reality of the Northern Territory's population – which is remarkably decentralised and dispersed on the basis of traditional affiliation to lands (Ah Kit 2003: 7).

This identification of Indigenous tendencies towards regionalism and socio-political activities undertaken on a quite large geographic scale is an important contribution to the contemporary debate on Indigenous community governance in the Northern Territory which Minister Ah Kit has perhaps been able to make all the more forcefully because of his own Indigenous identity. However, local government is an inter-cultural exercise and it is also important to pay attention to arguments emanating from the non-Indigenous side of the partnership. CLP Minister Braham had a point when she spoke of the difficulty of attracting to Aboriginal community governments 'sufficient numbers of qualified, competent and ethical staff'. I take this

to be a reference primarily to managerial staff, such as council clerks, who are predominantly still, though with some notable exceptions, of non-Indigenous or extra-community origins.

Small organisations do seem to face particular problems in relation to the recruitment, retention and development of managerial staff. Many current local governments in Northern Territory Aboriginal communities are in fact likely to have only one or two such staff, and sometimes only a council clerk. An enormous amount of responsibility for the administrative and broader well-being of these organisations can be focused on this one person. This person may also be the target of considerable community pressure over the allocation of resources such as jobs, vehicles and buildings, including houses, to particular community projects and to particular individuals within the community. These tasks are undertaken by these isolated managers without peer support and unsupervised by more senior managerial staff. The only form of oversight is from the council and from funding and regulatory bodies, such as the former Aboriginal and Torres Strait Islander Commission (ATSIC) and the Office of Local Government within the Northern Territory Department of Community Development, Sport and Cultural Affairs. This is a very isolated managerial existence, and it is likely that people in such positions are often not so much unethical or incompetent at the start of the task, but rather become somewhat jaded and dissatisfied during its course. In these small organisations with only one or two managerial staff, there is no real way of relieving pressure on staff, even by giving them leave or by moving them to another location. And there is no real career path identified for the managerial staff, or a plan for succession within the organisation when the time comes that they will move on. This is a recipe for managerial disaster. It is highly likely that over time tensions will develop within the community over the allocation of resources and that these will be seen, in personal terms, as reflecting on the manager and his or her relations with particular people on the council or in the wider community. It is also highly likely that, in the face of these sorts of tensions, the manager will, at some point leave the organisation and the community without succession having been fully put in place and hence with virtually no passing on of corporate knowledge. The administration of these small Aboriginal local governments may at this point in the cycle fall into complete disarray, before the whole rather inadequate cycle of isolated managerialism starts once again.

This idea of a cycle of isolated managerialism gives greater substance and definition to the somewhat imprecise notion that there are problems of scale in small Indigenous local governments in the Northern Territory in the area of staffing. It directs our attention away from the Indigenous aspects of community government reform efforts to some predominantly non-Indigenous concerns surrounding extra-community managerial staffing. The idea raises issues and questions for Northern Territory local government reform such as the following. How can predominantly non-Indigenous managers drawn from outside Indigenous communities be given the support they need to be effective operators within an Indigenous community context on a sustainable ongoing basis? How can they be given adequate more senior managerial supervision and opportunities for relief and career development? These are big issues and questions, but they are in sense also more precise issues for local government reform to grapple with than often somewhat vague ideas about regionalised service delivery. Good sustainable systems for the recruitment, retention and

development of good managerial staff are crucial, perhaps a pre-requisite, to sustainable service delivery of any kind on any geographic scale. Managerial staffing issues demand the attention of Northern Territory local government reformers as much as service delivery issues.

I would argue that there are ways in which the regional reform agenda in Northern Territory local government could be quite innovatively brought to bear on this crucial issue of sustainable managerial staffing. There could be development of regionalised teams of managerial staff who support and relieve each other within regional groupings of communities and provide each other with ideas and opportunities for career development. There is also potential for small Indigenous local governments to develop ongoing staff exchange and mentoring relationships with larger municipal local governments, not just in the Northern Territory but all over Australia. This could apply to general and technical staff as well as managerial staff, and could be as much about locally-recruited Indigenous people expanding their employment experiences outside the community as about bringing local government managers, or technical staff from elsewhere into the community for short term support, relief or secondments.

Local government in Indigenous communities is not, after all, so totally different from local government elsewhere in Australia that skills acquired and issues dealt with by staff, and indeed councillors, in one context are not also relevant in another. In southern Australian urban local government there is a long tradition of involvement in physical infrastructure services and also a long tradition of 'parochialism and particularism' in decision making (Painter 1974). There is even a current debate about moving back towards smaller local councils, as opposed to the dominant idea of recent years of moving towards larger local councils (Allen 2003; Dollery 2003). The Northern Territory local government system is indeed unique in Australia in being so caught up in issues of Indigenous community governance, but it is not so unique as to have nothing to gain from links and comparisons with Australian local government elsewhere.

## CONCLUSION

I will conclude by returning to one of Wolfe's comments about community government made in 1989. There was an 'assumption', she argued, 'implicit in the community government model... that if proper structures are developed, other important matters will correspondingly fall into place' (Wolfe 1989: xvi). Wolfe clearly did not believe this assumption, and neither do I. Ongoing processes of council policy development, administration and staffing are as crucial as initial structures to good governance, if not more so. Structures, such as electoral systems, boundaries and lists of functions, are at one level quite alluring and easy to focus on. But they are only the beginning of the Indigenous community governance story—a means to an end. Sustainable ongoing processes of community management and decision-making within those structures are the ultimate end or challenge, and these are much harder to grapple with than structures. If there is a danger in the current regional reform agenda for Northern Territory local government in Aboriginal communities, it is that the creation of regional authorities becomes a new form of 'structuralism'. The assumption that if we get the regional structures right everything else will follow is as naïve now as it was during the first

round of community government formations back in the 1980s. There are, as we have seen, forces towards both localism and regionalism operating within Northern Territory Indigenous societies, and community governance structures alone will not manage or resolve the tensions between these forces. More thought needs to be given by local government reformers to processes for managing these tensions between localism and regionalism on an ongoing basis within Indigenous community governance, almost irrespective of structures.

## 2. HASTENING SLOWLY: LEGISLATIVE AND POLICY REFORM FOR INDIGENOUS COMMUNITY GOVERNMENT UNDER THE NORTHERN TERRITORY LOCAL GOVERNMENT ACT

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Since the Martin Labor government came to power in the Northern Territory in August 2001, it has been hastening slowly with legislative and policy reform for Indigenous community governance under the Northern Territory *Local Government Act*. It has been pushing reform quite concerted, but also quite carefully. Minister John Ah Kit has identified service delivery effectiveness problems in Indigenous community governance and pushed for changes, such as the introduction of larger, more regionalised governance groupings possibly called regional authorities rather than local or community governments. However, as yet under the Martin Government, only two such new regionalised governance groupings have been introduced, and in both those cases it could be argued that there were movements in that direction already well underway before Labor came to power. Also, the Martin Labor government has not, as yet, amended the Act in pursuit of this policy reform agenda, nor has it yet firmly settled on a strategy of either major or minor legislative amendment to spearhead the policy reform.

This strategy of hastening slowly is, to my mind, a sound and commendable one. There are a number of reasons why reform for Indigenous community governance in the Northern Territory is a very difficult endeavour, which I will explore in this paper under the headings 'self-government and land rights' and 'dispersed governance and localism'. I will argue in a subsequent section of the paper that the existing Northern Territory *Local Government Act*, at base, provides a quite useful and workable framework for building more effective governance in Indigenous communities. However I will also argue for some conceptual reworking of the constitutional and theoretical underpinnings of the Act.

### SELF-GOVERNMENT AND LAND RIGHTS

In the 1980s and 1990s Aboriginal land rights got caught up in some rather adversarial politics between the Commonwealth and Northern Territory governments. The issue was the limited nature of the self-government granted in 1978. The Aboriginal Land Councils, which were established as part of the Commonwealth's land rights system were often cast by Northern Territory governments of the time as the major protagonists in this adversarial tussle. But the basic protagonists were the Commonwealth and Northern Territory governments, while the Land Councils were playing out the subsidiary role assigned to them by the Commonwealth land rights system—representing the interests of traditional owners of Aboriginal land. Naturally enough, since the basic protagonists were playing their politics in a very adversarial manner, so too, did the subsidiary protagonists.

The election of the Martin Labor government in 2001 created an opportunity to move to a less adversarial style of politics in the Northern Territory. In the area of land rights this opportunity is being taken up by the land councils. This is fortunate, because the practice of the Commonwealth land rights system over the last 25 years has revealed some quite complex Indigenous governance issues which need to be addressed. But it was difficult, if not impossible, to address them under the old adversarial politics. First among these issues is the relationship within Indigenous governance of traditional owners and residents. The question to be answered, in political science terms, concerns the nature of the rights of Indigenous residents in areas in which they are not traditional owners and how these rights can be balanced and coordinated with the rights of traditional owners. These are a big questions with no simple answers, but ones with which Indigenous people must grapple.

## DISPERSED GOVERNANCE AND LOCALISM

As part of the attempt to move towards policies of Indigenous self-determination and self-management in which upper-tier Australian governments have been engaged in over recent years, Indigenous people have often been allowed some considerable degree of choice in the organisational structure to be developed for the conduct of Indigenous governance. The pattern which has emerged from this choice tends to be both highly localised and highly dispersed. Indigenous people seem to have preferred to group themselves into organisations of quite small geographic scale, for quite limited organisational purposes. Many little organisations have emerged, with somewhat different, although at times also somewhat vaguely stated and inter-related purposes.

This pattern of highly dispersed and highly localised Indigenous community governance has come in for a lot of criticism. Duplication, overlap, inefficiency and fragmentation are the derogatory buzz words used, and to some extent their use is justified. But there are also good sides to dispersed governance and localism, which might be suggested by terms like power sharing, responsiveness and autonomy. Ten years ago Tim Rowse argued that there was a link between the emerging pattern of highly localised and dispersed governance in Indigenous communities and the value placed on autonomy within Aboriginal society. Self-determination he argued, was as much about Aboriginal people having autonomy from each other, as from non-Indigenous people and governments (Rowse 1992: 89–90).

There are, of course, forces pushing towards coordination between people operating in Aboriginal society as well as ones that encourage local and even individual autonomy. As Minister Ah Kit pointed out in his speech in support of the Martin government's push towards regional authorities in early 2003, in the area of ceremony these forces that push towards coordination and relatedness often extend to the scale of quite large geographic regions covering several thousand people (Ah Kit 2003: 7). So Indigenous localism and autonomy has to be seen in the context of, and balanced with, Indigenous regionalism and relatedness. There are grounds within Indigenous society on which to build regional governance structures and processes, but such processes need to be built and worked for, through argument and action over time, rather than just

asserted as superior at the outset. In the process it might be useful at times to acknowledge that there are good things about the present highly localised, dispersed governance arrangements, which could possibly be preserved in thoughtful and innovative regional arrangements.

## THE NORTHERN TERRITORY LOCAL GOVERNMENT ACT

I began by commending the Martin government for hastening slowly in Indigenous community governance reform and their approach to the amendment of the *Northern Territory Local Government Act* is illustrative of why I did so. After more than two years in power, the government has not yet, as I understand it, developed a firm view on whether this Act should undergo major reconstruction and renaming or some lesser form of amendment. This is understandable in that at one level the Act provides a quite workable framework for Indigenous community governance. It is very flexible in regard to matters such as the physical areas that are covered by a community government scheme, what the residency and other requirements are for those who can stand for office and vote, indeed even whether voting is required, and also how the constituency will be structured, either 'at large' over a whole community government area or into sub-groups defined either geographically or in terms of some other factor such as language or clan. The Act is also quite flexible in terms of functions that can be undertaken by community governments, although there are some functions which the Northern Territory government guards fairly closely to itself. Also the Act gives community governments a general power to do whatever is necessary in pursuit of their functions and provides some scope for the recognition of Indigenous ways of doing things which are quite different from western governmental ways. Thus there are quite a lot of fairly empowering provisions in the community government provisions of the *Local Government Act*, if it is implemented in a way that is sympathetic to Indigenous interests.

It is perhaps partly because of these provisions that the Martin Labor government is uncertain as to whether it wants to significantly change and rename the Act or to simply amend it.<sup>2</sup> It is not clear at this practical level what Labor could do all that differently. But if there is one thing that we in Australia have learned about Indigenous affairs policy making of recent years, it is that practical measures alone are not enough. The symbolic or theoretical ground on which Indigenous affairs policy making proceeds has also to be addressed. And it is perhaps in this sense that the Northern Territory *Local Government Act* is now somewhat out of date. Dating from before Mabo and Native Title legislation nationally, the Act is not as imbued with the spirit of recognition of Indigenous polities as perhaps it should be.

We talk often of three tiers of government in Australia—local, State or Territory and Commonwealth. But we should also talk of two *orders* of Australian government—the colonial order and the pre-existing Indigenous order. Indigenous societies might not have had parliaments or councils housed in big buildings before colonial settlement, but they did have mechanisms or systems of community governance, and norms for guiding the behaviour of members of communities and for working things through in groups. The continuation of these mechanisms and systems, albeit in modified form after colonisation, means that philosophically and theoretically we need to talk about a continuing Indigenous order of Australian government and how it

articulates with and relates to the imposed colonial order. When we do talk thoroughly and consistently in this way—through pieces of legislation like an amended or new Northern Territory *Local Government Act*, the *Northern Territory Self Government Act*, or perhaps in the future a statehood act, and the *Commonwealth of Australia Constitution Act*— then we will be starting to move towards genuine constitutional recognition of Indigenous governance and towards a truly post-colonial system of Australian government. This is of course a long way off, but one small step along the way could be the recognition of the Indigenous order of Australian government within the new or amended Northern Territory local government legislation.

### 3. GOOD GOVERNANCE FOR INDIGENOUS COMMUNITIES AND REGIONS: MORE DISPERSED THAN UNIFIED, AS MUCH PROCESS AS STRUCTURE

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It is always tempting, in approaching any topic, to try to define central terms and set performance standards at the beginning of discussion and independent of any actual cases. However, in reality, both our definitions and our performance standards emerge during discussion and from experience and observation of actual cases in actual times and places. My ideas about good governance for Indigenous communities and regions have emerged from observation of the Australian scene over the last 30 years. Based on that observation, I want to argue, as the sub-title for this paper indicates, that good governance for Indigenous communities and regions is more dispersed than unified, and as much about process as structure.

#### DISPERSAL AND UNITY

One of the commonest observations made about Indigenous governance in Australia during the last 30 years has been that governance structures for Indigenous communities and regions are too many in number, and too fragmented and varied in their responsibilities.

In 2003 I did some work with a Central Australian community of some 300 people that had four community-level councils: a health council, a store council, a women's council and a general community council. A few years ago they used to have a fifth, an outstation council, but this had, in recent years, folded back into the general community council.

At the regional level—or rather regional levels, for the scale and boundaries of regional organisation are many—that community participated in at least three structures. Together with two or three other communities, the community constituted and provided representatives for one of the nine regions of the Central Land Council. At a roughly similar geographic level, it was being encouraged by the Northern Territory government to rationalise and coordinate its community council structures. And at a larger scale, the community participated in the Papunya or Apatula ATSIC Regional Council, covering most of Central Australia outside Alice Springs.

All this for a community of just 300 people may seem like a very heavy burden of Indigenous community and regional governance. And this description could be repeated for many Indigenous communities around Australia. It is understandable and tempting, therefore, to suggest that the amount of Indigenous community and regional governance in Australia is simply too much, that present Indigenous governance structures are too fragmented, and that a unified Indigenous governance structure at some appropriate geographic level would be better. I want to argue strongly against this view.

Ten years ago, in his book *Remote Possibilities*, Tim Rowse noted that the idea that 'community power is, or should be made to be, a unified, centralised sovereignty' was 'one of the most common and seductive assumptions in the discussion of Aboriginal self-government'. There was, he argued, 'an alternative model for us to consider' which he referred to as 'dispersed governance'. In this model, which was already being practised in Indigenous Australia, community authority relating to various issues was exercised by a 'series of resource agencies, able to negotiate co-operation with each other when the need arises, but secure in their autonomy'. Autonomy, he noted, 'refers not only to Aborigines' relationships with non-Aboriginal society, but, just as important ... to their relationships with one another' (1992: 89–90).

Rowse's analysis is, I believe, just as pertinent today. The false virtues of a unified approach to Indigenous community governance are as misleadingly seductive as ever, while the benefits of dispersed governance are as overlooked as ever. Expanding on and perhaps moving beyond the very general idea that dispersed governance allows autonomy of Aboriginal people in relation to each other, I would argue that the benefits of dispersed governance for Aboriginal communities and regions are essentially twofold. First, dispersed governance divides the tasks of community and regional collective decision-making into 'do-able' bits and pieces. And second, it offers opportunities for the representation of a diverse range of interests and points of view.

In the central Australian community I referred to at the outset, the health council focused its attention on the running of the health clinic, the store council focused on the running of the store, the general community council focused on physical infrastructure and housing services, and the women's council focused on personal care services. These were, in my terms, all quite 'do-able' and reasonably discrete bits and pieces of the community governance task. So too was attending to land matters at the local and regional level through the Central Land Council, and to other matters, such as program funding, through the ATSIC regional council.

If one single organisation at the community or regional level had to attend to all these tasks, it would be heavily overloaded. It would need to devise some quite elaborate internal departmental structures and processes, so that all the necessary tasks were attended to. It would have to develop rules about matters such as budget allocations and respecting each other's departmental turf—which, of course, is not too dissimilar to what already exists through the operation of the separate community and regional councils.

A single council would, in all probability, also concentrate community and regional decision-making power in the hands of those few elected to it. A variety of councils, on the other hand, disperses such power and perhaps allows routinely for a greater representation of a wider range of community interests, or for the representation of community interests of greater relevance to the particular task at hand.

There are dangers and costs of dispersed representation, such as particular community interests capturing particular governance tasks or a lack of coordination between tasks. However, there is no guarantee that these costs will not also be experienced under a unified community governance structure and indeed, in the case of the capture of governance by particular interests, it could be all the more powerful and difficult to overcome.

There is, of course, also an enormous degree of dispersal of authority in the non-Indigenous institutions of Australian government. Elected State, Territory, Commonwealth and local governments all play different roles and claim strong degrees of autonomy from each other. Courts, different houses of parliaments and executive agencies also claim different roles and degrees of autonomy. So there is nothing unusual in Australia about dispersed governance. It is in fact the norm, and the best model we have come up with yet, even if it does have its faults.

## PROCESS AND STRUCTURE

Thus far my discussion has been almost entirely about the structures of governance; what governance looks like organisationally. We also need to recognise that good governance is as much about process as structures. Open consultative policy-making debate carried on in conjunction with clear understandable executive implementation of decisions and accountability back to constituents would seem to be a crucial part of all good governance, whatever its organisational setting. Such processes will ensure that diverse interests are indeed given a chance to be brought to bear on the tasks of governance and that there is appropriate ongoing feedback between executive and representative functions. The search for particular types of good organisational structures is, in this sense, a distraction, or at least only a partial addressing of issues. Processes also need to be addressed.

What would be the point, for example, in having a well worked out structure of governance for an Indigenous community or region, if the organisation never convened any meetings or, if when it did, it kept no records of proceedings? In the absence of such records, how could it be shown that different points of view had been put and respected before the resolution of an issue in a particular way? How could executive implementation be monitored and made accountable without reporting back to constituents and subsequent similar such meetings? Structures are hollow and meaningless without good processes. And conversely, good processes can probably make almost any governance structure work.

In pushing the discussion towards processes and the benefits of dispersed governance, I would not want to be misconstrued as arguing that there is no room for the reform of structures in the current governance of Indigenous communities and regions in Australia. For a number of reasons, I believe there is. Over the last 30 years in Australia, it has in some ways been too easy for dissatisfied people within existing Indigenous organisations to go off and set up another. In the language that Hirschman made famous in a book published over 30 years ago, 'exit' has been an easier option than 'voice' or 'loyalty' (Hirschman 1970). Getting out of Indigenous organisations has often been easier and more attractive than staying in them and talking through differences. And because there have been many different Commonwealth, State and Territory government bodies around trying to do their little bit in Indigenous affairs, a funding sponsor for a new organisation could often be found. But, in politics, staying in organisations and talking through differences is the more robust and enduring solution. So it probably is the case that too many Indigenous organisations have sprung up around Australia over the last 30 years. But the way forward in reducing this number is incremental

and gradual, rather than radical—like the merging of the outstation and central community councils in the Central Australian community with which I began. And at the end of that incremental process, community and regional authority in Indigenous governance should ideally still be quite dispersed.

## UNITY IN TORRES STRAIT

I want to conclude with an example from elsewhere in Australia where, in my judgment, Indigenous community and regional governance structures actually became somewhat too unified about a decade ago and have suffered some criticism since as a result. The example relates to Australia's second Indigenous minority, the Torres Strait Islanders, and the governance of their island region of the Torres Strait.

In the 1980s and before, the Queensland State government encouraged a very unified Indigenous governance structure in the Torres Strait. Each island community had a single island council based on fairly strong residential criteria and, from 1984, the chairs of those 17 councils constituted a single overarching body, the Island Coordinating Council (ICC). When the Commonwealth government's ATSIC proposal was put forward in 1988–89, the ICC asked that its members become members of the Torres Strait Regional Council of ATSIC as well. To this the Commonwealth agreed, with the proviso that a couple of other separately elected representatives be added to represent Torres Strait Islanders living on the more mixed-population inner islands of the Torres Strait, which did not have island councils. Thus the ICC members also became members of the Torres Strait Regional Council of ATSIC, and in 1994 of the Torres Strait Regional Authority under the ATSIC Act. When Native Title Representative Bodies were created under the Commonwealth *Native Title Act* of late 1993, the Torres Strait Regional Authority also volunteered to be that representative body for the region. So Indigenous regional and community governance structures in Torres Strait were, by 1994, very unified.

In recent years there has, however, been growing criticism of this arrangement and some pressure to move away from such a strongly unified structure. Islanders living outside the Strait feel shut out from the structure, while some Islanders in the Strait feel that too much power and responsibility is focused on the chairpersons of the island councils—who are also the ICC and Torres Strait Regional Authority representatives. There is something of a move building for separate elections for at least the Torres Strait Regional Authority representatives—which is conceptually a move for a bit more dispersal in the representative elements of the governance structure.

Good governance for Indigenous communities and regions should, as the sub-title of this paper suggests, be more dispersed than unified and as much about process as structure.

## 4. GOVERNANCE STRUCTURES FOR INDIGENOUS AUSTRALIANS BEFORE AND AFTER NATIVE TITLE: MOVING BEYOND THE IDEA OF SINGLE, UNIFIED, CULTURALLY APPROPRIATE BODIES

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My knowledge and experience in Indigenous affairs lies outside the land rights and native title areas. I have been involved more in service delivery issues, in areas like housing, and in observing the development of Indigenous community-based organisations as players in such service delivery. I have also worked on local government in the Indigenous Australian context, including the processes by which Indigenous organisations in remote areas become local governments (Sanders 1996).

In reading the nine discussion papers arising from the Governance Structures On and Off Native Title Land project I was struck by a dichotomy in the approach and also what seemed, in the light of that dichotomy, to be something of a gap or lacuna.<sup>3</sup> The dichotomy was between work on governance structures within Australia arising out of land rights or native title processes, and work on Indigenous governance structures overseas. The gap between these two bodies of work was, as I saw it, work on governance structures for Indigenous people within Australia which did not arise out of land rights or native title processes. Many such structures existed well before native title was rediscovered in Australia and have continued to exist since. Yet these sorts of structures are only mentioned somewhat fleetingly and dismissively in discussion papers 4 (Way n.d.) and 7 (Nettheim n.d.) of the project— though I do acknowledge that in Nettheim's paper there is a quite extensive discussion of the trials and tribulations of the Commonwealth *Aboriginal Councils and Associations Act 1976* under which many of these organisations are incorporated. But I think that more, and more positive attention should be given to the operation of these organisations themselves, not just the operation of one Act under which many of them are incorporated.

The sorts of governance structures I have in mind are Indigenous community organisations which deliver services to Indigenous communities, such as housing associations and outstation resource agencies, or perhaps more importantly, general purpose community councils in Indigenous communities which take on the role of local governments. These are not necessarily strictly Indigenous-specific organisations and they are not all incorporated under the Commonwealth *Aboriginal Councils and Associations Act*. But they can just as effectively be Indigenous governance structures. They could, for example, fulfil a local government role in remote areas with predominantly Indigenous populations—of which there were around 60 in the early 1990s (see Sanders 1996).

There are enough of these sorts of organisations in Australia to make study of them as governance structures for Indigenous people worthwhile and productive, and of relevance to a project on governance structures for Indigenous people on and off native title land. I sense, however, a dismissive attitude to them in the project's work, as for example in discussion paper 7 when the Fingleton review of the *Aboriginal Councils*

*and Associations Act* is quoted, and at least implicitly agreed with, to the effect that 'State legislation', such as the Northern Territory *Local Government Act*, the Western Australia *Aboriginal Communities Act* or the two Queensland *Community Services Acts*, does not 'provide for forms of effective culturally appropriate regional or local governance' (Nettheim n.d.: 40). Or in discussion paper 4 when Northern Territory community government councils are dismissed as 'not designed specifically for Indigenous governance' and as having 'few differences from 'mainstream' local government' (Way n.d.: 29). Or again when it is noted that the Queensland Aboriginal and Torres Strait land Acts do not provide for the establishment of land councils, but rather hand over land to be 'administered by community councils acting as trustees' and that these councils do not provide for 'an Indigenous person with traditional or historical associations with a shire area to vote for an Indigenous council if they are not resident in that area' (Way n.d.: 60).

There are certainly issues here to be addressed, such as the question of traditional or historical association versus current residence as the basis of the right to participate. But these organisations based in State and Territory legislation deserve more serious consideration as structures of Indigenous governance rather than dismissive treatment. There is a little too much of the Commonwealth 'white knight' theory of Indigenous affairs in these dismissive assessments—by which I mean that the States and Territories are considered able do no right in Indigenous affairs and it is deemed to be up to the Commonwealth to ride into the policy arena and to attempt to put matters to right.

Let us consider, for example, the Torres Strait. The individual Island Councils established under the Queensland *Community Services (Torres Strait) Act* have forebears going back to 1899, while the regional Island Coordinating Council (ICC) has antecedents dating to the 1930s. Both command considerable support from Islanders as governance structures for their islands and region. Hence in 1989 when the Commonwealth wanted to establish an ATSIC regional council in the Strait, Islanders wanted their Island Council chairs who are members of the ICC also to be members of that new Commonwealth regional body. When native title came along in the early 1990s, Islanders wanted the ATSIC regional council's successor body, the Torres Strait Regional Authority, to be the native title representative body for the region. It would seem a little unfair to say that the Island Councils and the ICC established under the Queensland legislation have not been able to provide for 'forms of effective culturally appropriate regional or local governance' since they have evidently commanded considerable loyalty and support among Islanders.

This is not to say that there are not contentious issues. Island Councils have been defined in terms of a residential constituency and, as Eddie Mabo well knew, there has long been the potential for tension between Island Councils and non-resident Islanders who claim a traditional affiliation. The resident versus non-resident Islander issue has become a major one in Torres Strait politics ever since large scale migration of Islanders away from the Islands began in the 1950s. But it is an issue which the new native title Prescribed Bodies Corporate (PBCs) in the Strait are having to grapple with just as much as Island Councils. And neither the Island Councils nor the PBCs can be said to be 'culturally appropriate' governance structures just on the basis of their membership or constituency. The PBCs that are emerging do represent a broader constituency of resident and non-resident native title holders. But the practical reality of holding meetings and dealing

with land issues on the islands may mean that residents' interests are still likely to predominate over those of non-residents in the affairs of PBCs—and this may not necessarily be an entirely bad thing. On the other hand, there are Islanders and other people resident on the Islands who do not claim a traditional affiliation to the Island on which they live, and who want and need to have some say in island affairs through the Councils representing residential constituencies.

If there is anything which, at the present time, can perhaps command the label of 'culturally appropriate governance structure' in Torres Strait, it is probably the combination of Island Councils and emerging PBCs together. As is now the case on Mer, Saibai and Moa, each provides a locus of power and authority for one of the two countervailing constituencies of native title holders and residents. Without the intentionality of conscious institutional design, something of a checks and balances system between these two different constituencies in Torres Strait politics may now be emerging. This may turn out to be the greatest legacy of the native title era in Torres Strait politics, for up to now the balance—or imbalance—of institutional design has been somewhat in favour of residents.

There has also been some interaction between the design of these organisations. The Saibai Island Council has recently changed from an undifferentiated residential electorate to one defined in terms of seven clans, like the new PBC. But it is still a residential electorate and constituency, not one of native title holders.

In Torres Strait it is not possible to say that the Island Councils and Island Coordinating Council governance structures that exist, and have existed for some considerable time under Queensland legislation, are culturally inappropriate. They may not be perfect, and they may be evolving in the light of native title, but they do have considerable support among Islanders, which is the first test of some degree of cultural appropriateness and legitimacy. The individual Island Councils, in particular, were strongly defended by Islanders before the Commonwealth Parliamentary Committee inquiring into 'greater autonomy' for Torres Strait in 1997 and the Committee accordingly and wisely agreed that they should be retained (see Sanders 2000).

In the Northern Territory, the situation is clearly somewhat different. Issues of Indigenous governance have been caught up in chronic tensions between the Commonwealth and the Northern Territory government over land rights and Territory self-government. Because the Commonwealth retained the land rights responsibility for itself, the Northern Territory government has felt less than fully self-governing and significantly aggrieved in comparison to the States. There is no doubt that the Northern Territory government's encouragement of community government councils in Aboriginal communities has been intended to provoke the Commonwealth and the land councils by asserting the Northern Territory government's powers to the limit – and it has certainly done that. But it is still not sufficient just to dismiss the community government councils created under Northern Territory legislation as somehow culturally inappropriate, while portraying land councils and land trusts as culturally appropriate. Again, it may be the case that the organisations represent different constituencies, such as residents and traditional land owners, both of whom need to be represented in local Indigenous politics. And again it may be the case that if

there is anything which can claim the label of 'culturally appropriate governance structure' for Aboriginal communities, it may be the combination of these organisations.

I conclude by quoting a favourite passage from Rowse's *Remote Possibilities: The Aboriginal Domain and the Administrative Imagination*. Having surveyed the perspectives of the main players in the 1980s debates over community government, he notes that on all sides there is an assumption that 'community power is, or should be made, a unified centralised sovereignty' (1992: 89). Rowse agrees with Wolfe (1989) that this is a seductive, but ultimately misinformed assumption. There is much to be said in favour of the 'dispersed governance typical of many NT Aboriginal communities' (Rowse 1992: 89). Different organisations doing different things can represent different interests in the local polity. So in a sense we need to begin, politically, by identifying the major interests that can and should be recognised in the local polity and asking whether institutional structures allow adequately for that representation. That is a bigger task than just establishing a single, well designed organisation. It probably requires an ongoing dynamic of interacting interests and that may be more easily maintained when there is some plurality of local organisations. Hence the search for governance structures for Indigenous people does not consist in devising one structure that fits just right; rather it involves an ongoing process of constituency and interest management.

## NOTES

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1. Yugul Mangi Community Government was established in May 1988.
2. Between November 2003 and the time of publication in June 2004, the Act has undergone some minor amendments. The Martin government is now saying that the *Local Government Act* will be subject to major review in the next year.
3. Participants at this workshop were asked to respond to these discussion papers of the 'Indigenous Governance Structures On and Off Native Title Land' project in the light of their knowledge and experience.

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