

Indigenous Governance Conference

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The role of Land Councils and traditional owners in supporting effective Indigenous governance

Since the early days of self-government there has been a tension between “local government” and land rights in the NT. It is time to address that tension, and to try to overcome the problems caused by previous governments’ opposition to land rights. The reality is that land rights and native title are here to stay, and equally that we need better, more accountable and more capable systems of governance in our communities and regions.

Both the Land Rights Act and the Native Title Act are based on recognition of pre-existing Aboriginal law and decision-making. Effectively, they recognise Aboriginal governance. However the chequered political history of the NT has not enabled Aboriginal people to use their land rights as a basis for governance: instead the adversarial approach of most of the last three decades has led to complexity, conflict and duplication of governance systems and approaches.

The tension between local government and land rights is historical, and stems largely from the perception that the then CLP administrations were establishing alternative sources of decision-making authority through the Local Government Act without reference to traditional owners, or to the Land Rights Act. While there is no doubt that the Land Rights Act, as Commonwealth legislation, prevails over the NT’s Local Government Act, the tension continued as local government schemes were set up without consultation or collaboration.

A further complicating factor in the establishment of local governing bodies was the pre-existence of Resource Centres and other local service delivery organisations which were already performing local government-type functions. In many cases these organisations had strong existing links with land owners. However as the push for incorporation of local government bodies came, these groups’ functions were at times duplicated by new organisations, which also then competed with them for funds.

There are many people at this conference who have direct experience of the problems this duplication and competition for scarce resources caused.

The role of land rights in governance and development

Since 1976, the Land Councils have been part of the complex tapestry that is Aboriginal governance in the NT. The tapestry consists of both introduced elements – such as local government bodies – and existing structures of Aboriginal law and culture. In many ways, the Land Councils and the Land Rights Act can be seen as half-way houses between the introduced and the indigenous elements of governance.

At the heart of land rights and native title is the principle of the informed consent of traditional owners. This fundamental tenet is an attempt by the Australian law to “see” Aboriginal law in operation, and serves as an important touchstone for all cross-cultural decision-making.

The recognition – evidenced by the convening of this conference - that the current system of overlapping and duplicative structures is working is very welcome. How we, as Aboriginal people, then go about developing new approaches is the hard part. The current lessons from the apparently inexorable dissolution of ATSIC is that grafting systems of governance together does not work.

The lessons from North America clearly point to a different model: taking the strength of our traditional systems as the basis for contemporary Aboriginal governance. We need to look at organic models that build on our existing capacities.

Professor Stephen Cornell’s work in the Harvard Project has shown, in the context of native Americans, that “those tribes that build governing institutions capable of effective exercise of sovereignty are the ones most likely to achieve long-term, self-determined economic prosperity.”

“They are the ones who will most effectively shape their own futures, instead of having those futures shaped by others. For tribes, nation-building is the only game in town.”

This conclusion has been reached by Australian researchers too. The Menzies Institute of Health Research has worked on the immense problems of Aboriginal health for many years.

The work of many published Menzies researchers has concluded that the best results come when the institutions are owned, run and managed by Aboriginal people for Aboriginal people.

In the NT this should mean that local and regional government is based on a recognition of the traditional law that underpins our lives as Aboriginal people. However it must also provide equality of services and opportunity to all residents on our land. Where the system has failed us so far has been in a deliberate refusal within the local government framework to acknowledge Aboriginal governance and law.

How would this work to help Aboriginal people in a practical sense? After all, if we are not talking about concrete improvements in social and economic outcomes, the all the talk of governance is irrelevant.

Let me give you an example of what can be achieved when Indigenous governance is recognised as a critical factor in economic development is happening with the Larrakia people – the traditional owners of Darwin.

The Larrakia people have successfully negotiated with the Northern Territory Government to settle a number of native title claims over new residential areas. The settlement has resulted in the Larrakia – as a group of people under their own law – forming a development corporation and obtaining the rights to develop a significant portion of the new housing estate.

So after too many years of being passive bystanders as their traditional land was ripped from under their feet, the Larrakia are now using their rights to participate in development, at the same time as retaining their identity and protecting cultural sites and their law.

This development could be a model for other native title holders whose land lies within towns. Rather than simply being paid compensation for the value of the land, the Larrakia are participating in an ongoing business on their own land.

How does this relate to service delivery and local government? Very directly. The problems of chronic housing shortages on Aboriginal land, lack of employment opportunities, and low educational aspirations and achievement can be targeted through similar developments, where governments work in conjunction with local land owners and decision-makers.

The capacity for such developments at the new regional centre run through the Thaururr Council is one such opportunity for all of us.

Reform of NT local governance

To return to the structural problems, there are some very specific ways in which the current Local Government arrangements should be reformed so that the conflict with traditional rights is no longer a problem.

1. The Local Government Act (or its successor) should be explicitly consistent with the Aboriginal Land Rights Act and the Native Title Act. This is a simple but important step forward.
2. Agreements between local governing bodies and traditional land owners should be facilitated through the legislation – both on and off Aboriginal land.
3. Local or regional government constitutions should require the informed consent of the traditional owners over whose land they hold jurisdiction. This is a fundamental requirement in order to recognise the ongoing authority of Aboriginal law, on which our societies depend.
4. Opportunities for participation of all residents and landowners in decision-making and administration should be clarified. It is important to recognise that service delivery through local and regional arrangements is for the benefit of all residents.
5. Local and regional economic development needs to be better meshed with existing systems of governance and rights to land, as well as taking account of human rights to health, housing, education and employment. This balancing act is critical to the success of emerging regional structures.

6. Capacity building and development must be given priority, and resources made available, to develop leaders and appropriate governance cultures. The NLC has recently developed an elected members' governance training program which has been very valuable in emphasising the roles and responsibilities of representatives and staff. Similar programs need to be implemented to assist local Aboriginal leaders to perform their jobs effectively.

New approaches

The proposed review of the Local Government Act is an opportunity to start addressing some of the issues I have identified regarding bringing together existing systems of governance for the benefit of all Aboriginal people. In particular, I hope that one of the key outcomes of this conference is a resolution to ensure that the Local Government Act recognises the rights of traditional owners.

Other opportunities for constructive change and develop include the ongoing discussions about creating new, regional bodies such as the Thamurrarr Council, and the Katherine East “Nyirranggulung” council amalgamation.

The NT Government has released a new policy – **Building Stronger Regions** – which sets a framework for greater regional planning and development opportunities.

However there are some very acute issues inherent in these new directions which need to be addressed before we move forward.

Emerging research in the West Arnhem region¹ has identified that the **Stronger Regions** policy really only considers the integration of governance across the existing, formal “local government” sphere.

However, as I have discussed, Aboriginal governance in the NT consists of much more than those local government councils: there are the pre-existing traditional governance systems; Commonwealth bodies such as ATSIC and the

¹ Through the Jabiru Regional Sustainability Project, jointly convened by the NT Government, NLC, Environment Australia & Gundjehmi Association; report not yet published.

Resource Centres; Land Councils; clan or locality-based Aboriginal associations and corporations; and many other bodies.

Harnessing the capacity of all of these bodies, and ensuring better use of resources and more transparent decision-making is obviously a much larger task than simply merging or rationalising the community government councils.

Role of Land Councils

To return to the theme of my speech, there is an ongoing role for Land Councils in local and regional governance because there must be an ongoing recognition of traditional owners in effective governance arrangements.

However, my vision of how this would be institutionalised and operationalised is a far cry from the old perception of “Big Brother” Land Council vetoing proposals for change.

As I described briefly earlier, the most effective way to build traditional ownership into regional and local arrangements is through negotiating agreements. The Land Rights Act is a strong and flexible instrument for these agreements, which would set out the parameters of governance arrangements and identify jurisdictional issues.

In many cases, the agreement could be translated into the constitution of a new local or regional governing body.

Once the agreement is negotiated with traditional owners, of course it requires ongoing monitoring and management, but that role is best carried out by the local players themselves through agreed processes.

Conclusion

Aboriginal governance in the NT is a complex issue. It operates at many levels and across many spheres. Clearly this complexity can lead to duplication and lack of transparency and effectiveness. However in other ways it is an accurate mirror to the challenges we as Aboriginal people face “living in two worlds”.

I consider that using the mechanisms of the Land Rights Act or Native Title is one way to try to marry these worlds together, for the ongoing social and economic benefit of Aboriginal people.