Central Land Council

Submission to the Senate Select Committee on the Administration of Indigenous Affairs
August 2004

Terms of Reference

A select committee, to be known as the Select Committee on the Administration of Indigenous Affairs, is appointed to inquire into and report, by 31 October 2004, on the following matters:

(a) the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;

(b) the proposed administration of Indigenous programs and services by mainstream departments and agencies; and

(c) Related matters.

Table of Contents

Summary and Key Recommendations ... 3

The Central Land Council ... 10

The Federal Context ... 11

Mainstreaming of Indigenous Services ... 11

The NT Context ... 14

Unique factors in the NT ... 15

The Northern Territory Government's position ... 16

Critique of the NT's model ... 17

Key principles in developing an Aboriginal regional governance structure ... 18

Relationship to the Aboriginal Land Rights Act ... 19

Scope of the regional body ... 21

A new model – the Central Australian Aboriginal regional governance structure 25

Regional Governance Options for Central Australia ... 25

The potential of an Aboriginal regional governance structure ... 34

ATSIC Amendment Bill ... 37

Appendix A ... 44

Appendix B ... 47

Appendix C ... 50

References ... 51

Summary and Key Recommendations

The Central Land Council (CLC) welcomes the opportunity to make a submission to this important inquiry.

This submission is informed by many years of discussion by the CLC of Aboriginal governance issues. It also draws on specific consultations held at the Council Meeting held in Lake Nash, July 2004, as well as discussions with the CLC Executive Meeting held in Kalkaringi, August 2004. However, if the model discussed in this submission is to be further progressed it would require thorough, detailed, community consultations.

This submission provides only brief comment on the substance of the *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004*, rather, it focus on the need for the development of a new and innovative model of Aboriginal governance and service delivery arrangements for the Northern Territory (NT). The submission addresses the second term of reference by providing an alternative to the mainstreaming of Indigenous services delivery through the development of a new Aboriginal regional governance structure.

Mainstreaming of Indigenous services

The CLC experience suggests that mainstream services often fail to meet the needs of Aboriginal people in remote communities in Central Australia**.**

Mainstream services will be more appropriately and efficiently delivered by an Indigenous controlled structure operating at a regional level. It is the CLC's contention that service delivery to remote communities requires expertise that can only be developed through direct association with the communities being serviced. In this sense an elected, regional governance structure made up of Aboriginal people from the communities that the services are directed at, seems the most appropriate model.

A regional governance structure would provide the cultural authority and legitimacy, as well as expertise in terms of the needs of Aboriginal people, which the Indigenous Coordination Centre (ICC) simply will not be able to provide.

Legislative benchmarking of outcomes related to service delivery is another important step towards ensuring that mainstream services better meet the needs of Indigenous Australians. This approach, to legislate with respect to specific outcomes, has been adopted in the United States in the *Indian Health Care Improvement Act 1976.*

Recommendation 1

The Central Land Council strongly recommends that if mainstream services are to address aspects of Indigenous disadvantage these services must be delivered:

- by an Indigenous controlled structure operating at a regional level; and,
- be linked to legislatively benchmarked outcomes, which are publicly reported on.

Recommendation 2

The CLC strongly recommends that the Commonwealth and Northern Territory governments provide immediate funding support for outstations and Community Living Areas.

Unique factors of the Northern Territory

The glaring need for a new Aboriginal governance model which is legitimate, effective and able to fill the gap left by the demise of ATSIC, provides a major opportunity for Aboriginal people in the Northern Territory to design a governance solution which recognises their own unique needs, and the unique circumstances of the Northern Territory. The unique circumstances of the Northern Territory include:

- land and native title rights cannot be divorced from regional governance or service delivery arrangements;
- the large Aboriginal population, whose remoteness and extreme levels of disadvantage require a unique solution;
- the strength of Aboriginal law and culture;
- the fact that most Aboriginal communities are not covered by the Local Government Act; and,
- institutional and governance arrangements covering Aboriginal land and peoples have systematically failed to deliver basic citizenship rights, or self determination.

Recommendation 3

The CLC urges the committee to recognise that the uniqueness of the Northern Territory situation means that a specific, Aboriginal initiated regional governance structure that accords with the Aboriginal Land Rights Act, will be the only legitimate and viable model in the NT.

Key Principles in developing an Aboriginal regional governance model

Developing an Aboriginal Regional governance model involves careful consideration of a number of issues. Working from these issues the CLC has developed a number of key principles to guide the development of an Aboriginal regional governance structure. These principles should underpin any new Aboriginal regional governance arrangements in the Northern Territory, and are as follows:

- 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;
- 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.

Recommendation 4

The Central Land Council recommends that the key principles articulated in this submission inform any new Aboriginal regional governance arrangements in the Northern Territory.

A new model- the Central Australian Aboriginal regional governance structure

Adopting the principles associated with regional governance (discussed above), and drawing on the Canadian and Torres Strait experience, the CLC proposes the development of a new model of regional governance in Central Australia.

Recommendation 5

The CLC recommends that an Aboriginal regional governance structure be established in Central Australia which would:

- be a Commonwealth Statutory Authority;
- receive direct Commonwealth funding;
-have the power to enter into agreements with Commonwealth and Northern Territory governments;
-work alongside the CLC but not interfere with Aboriginal Land Rights or the business of traditional owners and native title holders; and
- have the same boundary as the CLC and get representation from the 9 CLC internal regions.

What would the Aboriginal regional governance structure do?

In the Central Land Council's view, it is likely that in the first instance the most appropriate role for the new Aboriginal regional governance structure will be to coordinate and to fund service delivery, and to ensure quality services are provided through various types of contractual arrangements. It would also have a role of assisting Aboriginal communities to achieve equitable and efficient service delivery.

Recommendation 6

The Central Land Council recommends that initially the Aboriginal regional governance structure perform the following functions:

- negotiate and allocate funding for services;
- coordinate and contract service delivery for remote communities and outstations; and,
- provide a strong advocacy voice on service delivery issues for all communities and outstations.

It is expected these functions will evolve over time (refer to recommendation 17).

Recommendation 7

The Central Land Council recommends that any Aboriginal regional governance structure developed in Central Australia has its powers and functions clearly defined and delineated from those of other organisations, including the Central Land Council and local governing bodies. More specifically, the Central Land Council clearly has certain responsibilities under section 23 of the Land Rights Act for Aboriginal Land in Central Australia, and as a result of its functions as a Native Title Representative Body (NTRB). These functions would remain functions of the CLC, and therefore would not become responsibilities of the Aboriginal regional governance structure.

Recommendation 8

The CLC envisages that the Aboriginal regional governance structure would conduct its major service delivery functions by contracting service delivery to other agencies and organisations. However, the CLC recommends that the Central Australian Aboriginal regional governance structure have the legal capacity to deliver services directly to communities.

Should there be one regional governance structure in Central Australia?

There is a question of whether there should be two different regional bodies: one for Alice Springs, and one for the remainder of Central Australia in the Northern Territory. The large base of long established Aboriginal organisations in Alice Springs, and the different challenges faced by Aboriginal people living in town, might suggest that a separate regional body would be appropriate for Alice Springs. Many of these factors also apply to the town of Tennant Creek. The CLC recognises that the Combined Aboriginal Organisations (CAO) of Alice Springs have made a submission to this Inquiry. The CAO submission, which proposes a separate Regional

Authority for Alice Springs, appears to be compatible with the governance structure proposed in this submission by the CLC, however, these matters need further discussion,

Recommendation 9

The Central Land Council recommends there be one Central Australian Aboriginal regional governance structure, representing all of the Aboriginal nations of Central Australia, and based on the CLC boundary. Further discussion is needed with respect to arrangements for Alice Springs and Tennant Creek.

What should the boundaries of the Aboriginal regional governance structure be?

Recommendation 10

The Central Land Council believes that the administrative boundaries of the Aboriginal regional governance structure should be aligned with the 9 Central Land Council administrative regions.

What is the Aboriginal regional governance structure's relationship to local government?

Recommendation 11

The Central Land Council envisages that, at least initially, the Aboriginal regional governance structure could coexist with local governing bodies in Central Australia. However, the Central Land Council recommends that the Aboriginal regional governance structure should have the capacity to both receive local government funding, as well as the potential to be designated as a local governing body in its own right.

Funding arrangements

The funding arrangements for the Aboriginal regional governance structure are crucial in defining its role and responsibilities. Negotiating funding on behalf of the communities, and allocating this funding, could become a major role of the Aboriginal regional governance structure. It could, for example:

- negotiate for the funding of the Central Australian Aboriginal communities with the full range of Northern Territory and Commonwealth departments and agencies;
- receive those funds on behalf of the communities; and
- fund the communities itself directly under one, or a small number of, block funding arrangements.

As a statutory body, the Aboriginal regional governance structure will be subject to the *Commonwealth Authorities and Companies (CAC) Act* 1997 and other relevant accountability mechanisms. Importantly, there will be an appropriate separation of powers between the administrative arm and the elected arm to ensure that funding decisions are made properly.

The Commonwealth Grants Commission has already prepared a comprehensive report on Indigenous funding. That report was focussing on the national situation of indigenous people and the CLC has already highlighted the inadequacies of the Commission's terms of reference and the some of the limitations of the report. However, the CGC is uniquely equipped, given its long experience in assessing the funding principles for the States and Territories, and its work on other territories of Australia, to report on the funding requirements of the Central Australian communities. The CGC has undertaken a similar exercise in relation to the Jervis Bay Territory in 2002 (see attached terms of reference- Appendix C) and the CLC believes that a similar inquiry into the funding requirements of Central Australian communities would establish the baseline information required to negotiate an appropriate funding regime into the future.

Recommendation 12

The Central Land Council recommends that the Commonwealth Grants Commission be authorised to assess the funding requirements of the Central Australian communities. This should be done as a major initial inquiry, to establish the baseline of funding for operational purposes and capital investment, and then on a more frequent basis as is done with the States and Territories. Such an inquiry should take into account a needs based assessment of service delivery, rather than a per capita based assessment.

Recommendation 13

The Central Land Council recommends that, as part of the establishment of an Aboriginal regional governance structure, a new funding regime for Aboriginal communities in Central Australia be negotiated with the Commonwealth and Northern Territory Governments.

Recommendation 14

The CLC recommends that the legislative framework for the Aboriginal regional government sets out an appropriate separation of powers between the administrative arm and the elected arm to ensure that funding decisions are made properly.

Relationship with the Central Land Council

The CLC strongly supports the development of an Aboriginal regional governance structure and envisages a close working relationship between the two organisations. The relationship between traditional owners, native title holders, the Central Land Council, and the Aboriginal regional governance structure is a critical issue. The existence of the Aboriginal regional governance structure would not override the existence or legitimacy of traditional interests; the Aboriginal regional governance structure would be subject to any existing processes for consultation and negotiation under legislation such as the Native Title Act or the Aboriginal Land Rights Act.

Recommendation 15

The CLC recommends that as part of the establishment of an Aboriginal regional governance structure an agreement be signed between the Aboriginal regional governance structure and relevant traditional owners/native title holders, which would clarify their relationship and authorise the Aboriginal regional government structure to undertake certain functions.

Membership of the Aboriginal regional governance structure

Recommendation 16

The Central Land Council recommends that a representative structure for an Aboriginal regional governance structure in Central Australia should have membership based on the 9 Central Land Council regions, with perhaps a male and a female member elected from each region.

The potential of an Aboriginal regional governance structure

Recommendation 17

The Central Land Council recommends that the regional governance structure be established such that over time functions and powers can be transferred from government agencies to the regional structure.

ATSIC Amendment Bill

Recommendation 18.

The CLC recommends that further consideration be given to developing an appropriate Commonwealth legislative regime for regional governance structures, either using the framework of the current Act, or by developing entirely new legislation.

Recommendation 19.

The CLC recommends that further consideration be given to the creation of a legitimate national Indigenous representative structure to undertake national policy and advocacy functions, monitor the government's performance on Indigenous issues, and provide the government with advice regarding Indigenous issues.

The CLC rejects any proposal for a 'hand-picked' Indigenous advisory council.

Recommendation 20.

The CLC does not support the passage of the *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004* without substantial amendment as follows:

- allow for a national Indigenous representative structure to provide policy and advocacy advice at the highest levels;

- allow for a Commonwealth legislative regime to provide for regional Indigenous governance structures; and,
- ensure that assets owned by ATSIC on behalf of Indigenous people remain in Indigenous ownership.

Recommendation 21.

The CLC recommends that the Bill be amended to ensure that monies in the Regional Land Fund are required to be expended in the particular ATSIC region whose Regional Council made that decision.

Recommendation 22.

The CLC recommends that the Bill be amended to ensure that the ILC and the IBA remain as independent statutory authorities, with no increase in Ministerial intervention over their activities.

Recommendation 23.

The CLC recommends that assets owned by ATSIC on behalf of Indigenous people remain in Indigenous ownership. All assets proposed to be held by the Commonwealth must be audited to determine whether it is appropriate to transfer them directly to Indigenous interests, and which Indigenous organisations could hold such interests.

Recommendation 24.

The CLC recommends that the number of review and auditing requirements be simplified and incorporated within one statutory process.

Recommendation 25.

The CLC recommends that the Native Title complaints, decision review and monitoring role be undertaken by an independent statutory agency, rather than by the department that provides the funding.

The Central Land Council

The Central Land Council is a Statutory Authority established under the Commonwealth *Aboriginal Land Rights Act (NT) 1976* (ALRA). The CLC is also a Native Title Representative Body established under the *Native Title Act 1993*.

The CLC is located in the southern portion of the Northern Territory and covers an area of 775 963 sq km, of which, 381 792 sq km is Aboriginal Freehold claimed under the ALRA.

The CLC represents approximately 18 000 Aboriginal people resident in the southern half of the Northern Territory. Aboriginal communities located within the CLC area are diverse and include small family "outstations", large regional communities and urban communities in the larger service centres of Alice Springs and Tennant Creek.

The CLC is directed by its Council, which consists of 90 members who represent traditional landowners and communities throughout the CLC region.

The Federal Context

The two major developments in the federal context are the mainstreaming of service delivery and the proposed ATSIC Amendment Bill (discussed at the end of this submission).

Mainstreaming of Indigenous Services

The Central Land Council understands that 22 Indigenous Coordination Centres (ICCs) have been established in rural and remote areas to coordinate programs and handle services to Indigenous people. These ICCs will have the responsibility to provide the services previously provided by the Aboriginal and Torres Strait Islander Services. Although it is expected by the Federal government that, over time, these services may be expanded to include other Australian government programs that relate to Indigenous health and education services. Initially, the appropriations identified for administration by the ICC, and which have been 'quarantined' within mainstream agency budgets, amounts to $3 billion. A large portion of this amount is the funding for Community Development Employment Projects.

The CLC experience suggests that mainstream services often fail to meet the needs of Aboriginal people in remote communities in Central Australia. Aboriginal people living in remote communities face many barriers in accessing mainstream services.

The outcomes associated with mainstream service delivery will be improved if there is:

- Indigenous control over service delivery;
- regional delivery of mainstream services; and
- legislative benchmarking in mainstream service provision.

Indigenous control over mainstream service delivery

One way of improving the outcomes provided through mainstream service delivery is to allow for some Indigenous control over service provision. The CGC concludes that 'effective partnerships' are what is needed to 'better direct services towards Indigenous disadvantage' (CGC 2001: 93). An essential feature of effective partnerships is:

> Indigenous control of, or strong influence over, service delivery expenditure and regional and local service delivery arrangements that emphasise community development, inter-agency cooperation and general effectiveness (CGC 2001: 93).

Similarly, the Torres Strait Regional Authority in their submission to this Inquiry argues that an important element of service delivery involves:

> finding the balance between "mainstreaming" and the capacity of elected Torres Strait Islander and Aboriginal people to influence the way services are provided and participate in their delivery (TSRA 2004: 8).

The CLC is strongly of the opinion that if mainstream services are to deliver improved outcomes to Aboriginal people then there must be a high degree of Aboriginal control over service delivery.

Regional delivery of mainstream services

Mainstream services will be more appropriately and efficiently delivered by an Indigenous controlled structure operating at a regional level. The importance of regional service delivery is recognised, in part, by the location of the 22 ICC's in regional and rural areas, rather than attempting to operate from a centralised Canberra or Darwin based model. Too often, in the past, services have been delivered by agencies that have no presence in the remote communities they are attempting to service. Service delivery to remote communities requires expertise that can only be developed through direct association with the communities being serviced. In this sense an elected, regional governance structure made up of Aboriginal people from the communities that the services are directed at, seems the most appropriate model.

The importance of a regional Aboriginal governance structure to advise on matters relating to service delivery are clearly acknowledged by Minister Vanstone in her statements that the existing ATSIC Regional Councils will be replaced by new community and regional structures.

Regional governance structures provide cultural authority and legitimacy, as well as expertise in terms of the needs of Aboriginal people. This expertise is something the ICC simply will not be able to provide. The TSRA, in their submission to this inquiry note that:

> The link between [regional representative] networks and the Indigenous Coordination Centres is fundamental to a regional governance model if Aboriginal and Torres Strait people are to have the capacity and authority to participate with government in the decision-making and resource allocation process.
> Administrative arrangements which separate regional governance from the service delivery of agencies with their own outcomes are likely to be less successful than those which integrate the two (TSRA 2004: 6).

The CLC strongly concurs with these statements, and has developed a regional governance structure (detailed below) which performs both the functions of representative governance and control over regional service delivery.

Benchmarking in Mainstream service provision

Legislative benchmarking of outcomes related to service delivery is another important step towards ensuring that mainstream services better meet the needs of Indigenous Australians.

In its recent report on *Overcoming Indigenous Disadvantage: Key Indicators 2003*, the Productivity Commission provided a significant volume of data demonstrating the level of disadvantaged faced by Aboriginal people. The data is meant to provide baseline information against which to measure progress under various government programs intended to reduce Indigenous disadvantage. What would happen if the governments were legislatively tied to bring about measurable and defined improvements, over defined periods, in the key indicators measured by the Productivity Commission?

This approach, to legislate with respect to specific outcomes, has been adopted in the United States. In the *Indian Health Care Improvement Act 1976* Congress legislated a number of specific outcomes designed to bring about improvements in the health of Native Americans (for a full list of these outcomes see Appendix A). For example, the Act includes provisions to:

> (1)Reduce coronary heart disease deaths to a level of no more than 100 per 100,000.
>
> (2)Reduce the prevalence of overweight individuals to no more than 30 percent.
>
> (3)Reduce the prevalence of amenia to less than 10 percent among children aged 1 through 5.

Three key features of the *Indian Health Care Improvement Act 1976* are that it:

- provides for a 24 year time period to achieve the outcomes (1976 to 2000);
- stated the United States Government's commitment to the outcomes; and
- required a report be submitted to the Congress on an annual basis reporting on progress towards achieving the outcomes.

The Productivity Commission has provided data on the current situation in Australia for many of the items included in these provisions of the Indian health legislation. COAG has endorsed a commitment by the Australian government to deliver services to Indigenous Australians according to set principles, but with no defined outcomes and measures of progress. Could it be

time in Australia to legislatively link the two processes as they have been in the United States for Indian health?

Recommendation 1

The Central Land Council strongly recommends that if mainstream services are to address aspects of Indigenous disadvantage these services must be delivered:

- by an Indigenous controlled structure operating at a regional level; and,
- be linked to legislatively benchmarked outcomes, which are publicly reported on.

Outstation funding- a crisis in mainstream service provision

The outstation movement represents the aspirations of Aboriginal people to live on their country. A key example of the failure of mainstream service providers to meet the needs of remote Aboriginal people is the lack of funding available to outstations (otherwise termed homelands). Many Aboriginal people attempt to live on outstations that have little infrastructure and no essential services. The demise of ATSIC has further exacerbated concerns over the delivery of funding to outstations. Many local government bodies do not service outstations and resource centres, who have been providing some level of servicing to outstations, have been reliant on ATSIC funding. CLC constituents remain extremely concerned about the ongoing funding of outstations and Community Living Areas (CLAs) in Central Australia.

Recommendation 2

The CLC strongly recommends that the Commonwealth and Northern Territory governments provide immediate funding support for outstations and Community Living Areas.

The NT Context

Discussions about Aboriginal self government in Central Australia have been ongoing over the past twenty years.

The fact that the NT is not a State is a crucial factor in Aboriginal governance discussions. Indeed, as a result of the then CLP Government's call for a referendum on statehood in 1998, there was a renewal of discussion on Aboriginal self government in Central Australia. This culminated in the major meeting on Indigenous constitutional issues at Kalkaringi in 1998 (leading to the Kalkaringi Statement), and the formation of the Combined Aboriginal Nations of Central Australia (CANCA). The Kalkaringi Statement sets out the framework for negotiations over a new Constitution, which includes:

- the protection of the ALRA;
- the recognition of Aboriginal law;
- the explicit recognition of human rights;
- requirements for the provision of essential services, including education; and,

- guarantees of political participation for Aboriginal people.

The Kalkaringi Statement also includes strong statements of self-determination and of the important elements of a model of self-governance.

The CLP Government's disregard for Aboriginal interests in developing a new State, and the deliberate utilisation of undemocratic Constitutional development processes, ensured wide-spread Aboriginal opposition to the proposed model for statehood. This opposition greatly contributed to the resounding defeat of this referendum.

The Martin Government is now proposing another referendum on Statehood within the next five years. The referendum, and associated Constitutional development processes provide an opportunity for Aboriginal people to enshrine their rights and interests, including the right to self determination and self government.

Unique factors in the NT

The glaring need for a new Aboriginal governance model which is legitimate, effective and able to fill the gap left by the demise of ATSIC, provides a major opportunity for Aboriginal people in the Northern Territory to design a governance solution which recognises their own unique needs, and the unique circumstances of the Northern Territory.

These unique factors include:

- Land and native title rights cannot be divorced from regional governance or service delivery arrangements. The existence of the *Aboriginal Land Rights (Northern Territory) Act 1976* ("the Aboriginal Land Rights Act"), and almost 50 per cent inalienable Aboriginal freehold land, requires a tailored approach to governance arrangements.
- The large proportion of the Aboriginal population in comparison to the non-Aboriginal population, the remoteness and the extreme levels of disadvantage require a unique solution, and funding arrangements based on needs not population.
- The strength of law and culture, and the widespread use of Aboriginal languages as a first language in remote communities, demands governance solutions which are culturally relevant and legitimate.
- The dysfunctional nature of the Territory's local government scheme, and the fact that most communities are not formally covered by the Local Government Act provides an opportunity to create governance processes which are not constrained by the local government arrangements.

- The institutional and governance arrangements covering Aboriginal lands and peoples have systematically failed to deliver basic citizenship rights, or self determination. A new regional governance model must not replicate existing flawed structures and processes.

It is crucial that arrangements in the Northern Territory are not a by-product of national negotiations on a generic model to replace ATSIC. The unique factors detailed above mean that a specific, Aboriginal initiated regional governance structure that accords with the ALRA, will likely be the only legitimate and viable model in the NT.

Recommendation 3

The CLC urges the committee to recognise that the uniqueness of the Northern Territory situation mean that a specific, Aboriginal initiated regional governance structure that accords with the ALRA, will likely be the only legitimate and viable model in the NT.

The Northern Territory Government's position

The Northern Territory Minister for Community Development has released a number of discussion papers and speeches outlining the current Government's approaches to regional development and regional authorities. The most comprehensive statement is from the Department of Community Development, Sport and Cultural Affairs, *Building Stronger Regions – Stronger Futures Strategy.*

In summary, the strategy includes:

- five regional development boards, three of which would have responsibility for areas in the Central Land Council's region: Southern, Barkly and Katherine. The regional development boards are not governance bodies, and their role is not entirely clear.
- The establishment of regional authorities "which will have the authority, economies of scale and legislative force to carry a full range of functions currently available under the local government legislation."
- amending the Local Government Act to create the NT Regional Authority and Local Government Act.

The "regions" discussed for the regional authorities include the Barkly, Anmatjere including Ti Tree, the West MacDonnells including Papunya, Walungurru, Ikuntji, Mt Leibig and other communities, Alice Springs, the Warlpiri communities and the Tanami, Southern Arrernte, Southern Central including Imanpa, Mutitjulu and Kaltukatjara, and the Plenty and Sandover. None of these are prescriptive and are regarded by the Government as "possibilities". (Department of Community Development, Sport and Cultural Affairs 2003, 4).

The CLC understands that there has been little positive progress towards reforming local government arrangements in the above regions.

The Northern Territory Government has spent many years trying to formalise local government arrangements, under the Local Government Act, in Aboriginal communities. The latest strategy document is also focused on the need to create a more formalised 'shire council' type system across the whole of the Northern Territory. The Central Land Council believes that it would be more appropriate for the Northern Territory Government to focus its efforts on ensuring that local government services are actually delivered to Aboriginal communities, rather than spending resources on designing and re-designing local government structures in Aboriginal communities.

Critique of the NT's model

The Central Land Council has not been persuaded that a Northern Territory local government-based model is the way forward for regional governance for Aboriginal people and their communities in Central Australia. Local government service delivery should be carried out by efficient and effective local governing bodies. These bodies should have a level of functionality and responsibility consistent with their level of funding. It is clear that the level of funding available to many local governing bodies in Central Australia is inadequate, particularly given the essential infrastructure deficiencies in most communities. It is also clear that the governance arrangements of most councils are inadequate, with many failing to comply with government legislation or live up to community expectations. Given the inadequacies of the governance of many councils and their poor funding base, it may be appropriate to provide a more narrow range of functions, rather than pursuing a strategy which would see their functions greatly increase. For some communities, this might assist the local governing bodies to focus their efforts on local government services rather than being seen as responsible for fixing every problem in their particular community.

Local government bodies should not be responsible for a wide range of functions given they do not have adequate funding to provide these services. Moreover, these bodies do not have a legitimate mandate or structures to carry out broader functions.

The Central Land Council agrees that many community councils are too small, and that service delivery is inefficient and in many cases completely inadequate. However, there is no evidence to suggest that creating slightly bigger local government bodies will solve these problems, nor diminish the need for a strong statutory body that can coordinate service delivery across the entire region.

The NTs local government/regional authority model fails to demonstrate how it will:

- improve service delivery;
- realise cost savings;
- develop structures or processes that are culturally legitimate;
- achieve economies of scale, given the small nature of the proposed regions;
- overcome entrenched historical community suspicion of the Local Government Act;
- achieve greater regional coordination and Aboriginal control of service delivery; or
- accommodate more far-reaching aspirations for Aboriginal self-government

The NT Government's model simply does not comply with Principles for Aboriginal regional governance, outlined below.

Key principles in developing an Aboriginal regional governance structure

Developing an Aboriginal Regional governance structure involves careful consideration of a number of issues. Working from these issues the CLC has developed a number of key principles to guide the development of an Aboriginal regional governance structure. The Central Land Council's position is these principles should underpin any new Aboriginal regional governance arrangements in the Northern Territory. These principles are as follows:

- **Aboriginal law and culture**

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.

- **Community driven**

Reforming institutional arrangements and creating new regional governance arrangements can only work if it is a community driven process. This has been demonstrated time and time again as various models of administration imposed on Aboriginal communities, with minimal consultation, have failed and become dysfunctional. Communities need to be adequately resourced and supported in their examination and determination of such complex issues.

- **Community control**

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. This includes matters well beyond the scope of normal local government functions, and should not be confused with a local government reform process. The implementation of such arrangements is likely to be a long term process.

- **Relationship with Traditional Owners and Land Trusts**

The establishment of an Aboriginal regional governance arrangement would not override the existence or legitimacy of traditional interests; any regional governance arrangement would be

subject to any existing processes for consultation and negotiation under legislation such as the *Native Title Act 1993* or the Aboriginal Land Rights Act.

Specifically, regional governance arrangements would need to be based on clear initial agreements between Aboriginal traditional landowners and the new governing body.

- **Informed consent**

Any proposal for a new governance structure should require the informed consent of traditional landowners or native title holders.

- **Power to enter into agreements**

A regional body must have the power to enter into agreements with all tiers of government, and third parties. Amongst other things, this provides for substantial functions and authority (including law making powers) to be transferred from existing government agencies, over time.

- **Direct funding**

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. Pooled funding arrangements are also strongly supported, provided there is transparency about administrative costs.

- **Coordination and control of services**

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.

- **Boundary**

The boundary of any new regional arrangement must be determined by the relevant Aboriginal communities. In some areas the development of regional governance bodies provides an opportunity to define clear community boundaries and execute formal leases for those communities.

- **Statutory regime**

Ideally, the new Aboriginal regional governance arrangements would be provided for by a Commonwealth statutory regime.

These principles were confirmed by the Central Land Council at its Lake Nash Council Meeting on 20-21 July 2004.

Recommendation 4

The Central Land Council's recommends that the key principles articulated in this submission inform any new Aboriginal regional governance arrangements in the Northern Territory.

Relationship to the Aboriginal Land Rights Act

It is the Central Land Council's view that it is important to learn from the experience of the Aboriginal Land Rights Act (ALRA), and to develop a governance model that accords with the

ALRA. The second half of the Aboriginal Land Rights Act picture has long remained blank. That is, there has needed to be an Aboriginal governance structure or process which gives genuine power to Aboriginal people to control their own services (and services include a much broader range of activities than the functions normally undertaken by local government in the Northern Territory), and to determine for themselves the relationship between such a structure and customary law.

The Central Land Council believes that there are four very important lessons regarding the role of the Central Land Council and the Aboriginal Land Rights Act that need to be remembered in the debate about regional governance.

The first is the need for an organisation which can facilitate effective engagement between Central Australian Aboriginal communities and the rest of society. This is probably the most important role of the Central Land Council in relation to those matters for which it is responsible under the Aboriginal Land Rights Act and the Native Title Act, particularly mining and mineral exploration. Any new body with a mandate for funding and service delivery arrangements should work on behalf of the communities to facilitate their effective engagement with the wider society to bring about improvements in living conditions and service delivery

Second, any new governance body should leave as much of the social and political processes as possible within the Central Australian Aboriginal communities themselves, and it should not attempt to codify these processes within a formal corporate governance framework or body. Decision making under the Aboriginal Land Rights Act remains with traditional owners and affected communities, and it is the Central Land Council's role to endorse these decisions and enter into agreements on behalf of the traditional owners (land trusts). The Central Land Council has not attempted to codify how these decisions are made and by whom.

Third, the new governance body must be established as a Commonwealth Statutory Authority. An important strength of the Central Land Council is that it has a legislative base and it is a Commonwealth statutory body. It has clear functions and roles as set out in the Aboriginal Land Rights Act and its Native Title Representative Body (NTRB) status under the Native Title Act. It would be desirable for any new regional governance body to have its own legislation, and there has been a long held view, particularly because of the emphasis of Northern Territory Government's for a governance framework based on local government, that it should be a Commonwealth statutory body.

Fourth, the new governance body needs a secure, direct funding base. The Central Land Council has a secure funding base and the funding mechanisms are set out in the Aboriginal Land Rights Act. It would be desirable for any new regional governance body to have a secure multi-year funding base.

Scope of the regional body

As discussed above, the CLC envisages that the role of an Aboriginal regional statutory body would be significantly broader and more strategic than would normally be expected of a local government body in remote areas of Central Australia. It is highly likely that there will be a continuing role for local government after the establishment of such a body, although this will depend on decisions taken at the community level. Some communities may decide that they no longer need a local government body and are prepared to hand over the limited funding that is currently available to them, and the responsibility for service delivery, to the new regional body. Other communities may decide not to take part in the new arrangements.

The Central Land Council believes that the new Commonwealth statutory authority would need to have the legal authority to enter into contracts and binding agreements with the Northern Territory Government and its departments and agencies; the Commonwealth Government and its departments and agencies; local government bodies within its region; and other service delivery bodies that would provide services in the region. At a minimum, an important function of the Aboriginal regional governance structure would be to integrate and coordinate Commonwealth, Northern Territory and local government decision making and processes; and, over time, to coordinate aspects of service delivery within Central Australia.

Lessons from Canada

Emerging thinking in Canada provides important lessons for Australia, although of course Aboriginal people in Australia do not have the benefit of Constitutional recognition, and associated treaty processes. Policy papers from Canada's Institute on Governance provide an interesting analysis of similar discussions regarding governance structures and jurisdiction.

According to research by John Graham, the NT Government's model of regionalising local government could be termed a 'single-tier amalgamation' (taking two or more governments and merging them into one, eg combining two or more municipal governments into regional governance). Graham comments that:

> Single-tier amalgamation appears to be an increasingly popular option in Canada and abroad. Arguments for this approach include cost savings, better performance in the world economy, higher quality services and more straight forward accountability.

> However, the empirical evidence does not support many of these claims. Moreover, we have found few, if any, examples of voluntary one-tier aggregation."

He asserts that the economic arguments often put forward regarding cost saving and economies of scale which are achieved through amalgamation are "dubious" "Not only is there evidence to suggest that the savings from amalgamation are overstated, but there is also reason to believe that the costs of an amalgamated government might actually go up." (Graham IOG 2003)

Graham's work examines other options for Aboriginal governance arrangements, in particular 'two-tiered aggregation' whereby a number of governments come together to "form a second level 'regional' government, to deal with those issues that are beyond the capacity of any of them to handle individually." (Graham, IOG, 2003)

The CLC favours the non-delegated version of this model, that is, the regional governance structure is established in its own right and its powers can not be taken back by the second tier.

Graham suggests that there is great value in ensuring separation of 'provincial' type powers and regulatory functions, from those of the local governments, indeed he goes on to say "What is needed to realize effective self-government is the creation of a two-tiered, First Nation government – a provincial like tier with provincial like powers and a local tier consisting of a number of governments dedicated to providing local services to their communities." (Graham, IOG, 2003)

While Canadian models obviously cannot be transferred, some of the principles associated with the two-tier approach are consistent with the principles and frameworks emerging in Central Australia. A possible Aboriginal regional governance structure could coordinate service delivery, and assume other functions and regulatory powers over time (providing the provincial-like tier). The current system of local government could remain and provide local government services to communities (providing the local tier).

Lessons from the Torres Strait

The Central Land Council's position is that a new Commonwealth statutory body should be established in Central Australia. A useful starting point for the legislative framework for such a body is the current Torres Strait Regional Authority.

The legislation establishing the TSRA was passed in 1994. The provisions are included as Part 3A of the *Aboriginal and Torres Strait Islander Commission Act*, which the Government proposes to amend to abolish ATSIC. The Central Land Council understands that a proposal for

the TSRA to be established under its own legislation and for improvements in regional governance in the Torres Strait, including changes in the electoral arrangements for the TSRA, was forwarded to the Minister for Indigenous Affairs in 2003. The TSRA is also the Native Title Representative Body for the Torres Strait.

The ATSIC Act, prior to the recent proposed amendments to abolish ATSIC, sets out the powers and functions of the TSRA (see Appendix B).

It is important to note a number of features of the TSRA relevant to discussions about the establishment of the Aboriginal regional governance structure in Central Australia.

Transitional body

According to public statements from a number of the Torres Strait leaders, the Central Land Council understands that the TSRA is seen as a transitional body. It is not regarded as the final step in regional governance for the Torres Strait. Proposals for the reform of the TSRA have been formulated and proposed to the Commonwealth Government (Torres Strait Regional Authority 2003). The TSRA is, however, seen as a important step in the direction of self governance for the Torres Strait since the Torres Strait Islanders can demonstrate their capacity for self government and broaden and deepen their involvement in a range of management and services issues impacting on the region.

Service delivery

The TSRA does not provide services directly (other than Native Title Representative Body services):

> It is a lead agency for ensuring strategic direction in the provision of services with a budget that enables it to fund organisations, including community councils, and to improve the delivery of services through agreements negotiated within its jurisdiction (Torres Strait Regional Authority 2002, 3).

Relationship with local government

The TSRA coexists with local government in the region. It has <u>not</u> replaced the local government functions of the Island Councils and the Torres Shire Council in the region. These services are still delivered by the Island Councils and other government agencies. According to the TSRA, it recognises "the integral part Island Councils play and will continue to play in the Torres Strait (Torres Strait Regional Authority 2003, 7). The Queensland Government proposes to issue a Green Paper outlining options for the future of the Island Council's and the Torres Shire Council at some time in the near future.

A very large component of the TSRA's budget is allocated to the Island Councils and the ICC. The TSRA funding supplements funding these Councils receive from the Queensland Department of Local Government and Planning and other bodies.

> A typical council receives TSRA assistance for CDEP wages and capital/recurrent costs, a contribution to operating costs, assistance with community training, broadcasting and for specific projects, such as sports and recreation, community halls, and the establishment of community enterprise initiatives. In addition the TSRA contributes to the operations of the Island Coordinating Council (TSRA 2002: 10).

TSRA budget

The TSRA is directly funded by the Commonwealth, in the same way that ATSIC was funded, and it has a three year budget cycle. The appropriation for 2004-2005 is $50.963 million. This funding includes a significant component for CDEP, the TSRA's largest program. The funding also includes the Native Title Representative Body funding. The TSRA does not appear to receive other government funding although it has entered into various agreements for program and service delivery with a number of Commonwealth and State Government departments and agencies.

While the funding base of the TSRA is reasonably secure, it is generally speaking only receiving funding that was formerly typical ATSIC-type programs and NTRB funding. It has the legislative power to enter into funding arrangements with other departments and agencies but to date appears not to have done so. According to the TSRA, at least 30 State and Commonwealth agencies operate in the Torres Strait. This suggests that the coordination and planning role of TSRA is faced with a significant challenge.

Many inquiries in the past decade or more have highlighted the inefficiencies and lack of coordination of funding arrangements for Indigenous communities throughout Australia. The TSRA is currently not an agency through which funding other than a defined set of Commonwealth programs is being channelled. That may not be a major issue if it has an effective coordination and planning role, which does not appear to be the case at the present time, particularly with the overlap of responsibilities between itself and the ICC.

Functions of TSRA

The TSRA exercises certain functions under the ATSIC Act, but because it is also a NTRB for the Torres Strait it has additional functionality, in much the same way that the Central Land

Council has functions under both the Aboriginal Land Rights Act and as the NTRB for Central Australia. If the Aboriginal regional governance structure were to be established for Central Australia, it would have a different set of functions due to the role of the Central Land Council and its functions under both the Aboriginal Land Rights Act and the Native Title Act, and also because of the well established network of Aboriginal service organisations in Central Australia, particularly in Alice Springs. Local government organisations, in the form of the Island councils and the Torres Shire Council, seem to have a more important role in service delivery in the Torres Strait than do local governing bodies in the Northern Territory, if the funding allocated by the TSRA, compared to what was allocated by the ATSIC Regional Councils in Central Australia, is any guide.

The TSRA has two functions that are currently a significant role of the Central Land Council. The TSRA has the function:

> to recognise and maintain the special and unique Alian Kastom of Torres Strait Islanders living in the Torres Strait; and
>
> to take such reasonable action as it considers necessary to protect Torres Strait Islander and Aboriginal cultural material and information relating to the Torres Strait area if the material or information is considered sacred or otherwise significant by Torres Strait Islanders or Aboriginal persons.

These types of functions would not need to be provided by a new statutory authority in the CLC region, as they are already key functions of the Central Land Council.

A new model – the Central Australian Aboriginal regional governance structure

Adopting the principles associated with regional governance (discussed above), and drawing on lessons from the Canadian and Torres Strait experience, the CLC proposes the development of a new model of regional governance in Central Australia.

Regional Governance Options for Central Australia

The Central Land Council has sponsored work on identifying options for regional governance in Central Australia for some years. That work identified that a Regional Authority, similar but not identical to the TSRA, was probably the best available option at the time. Since that work there have been two important developments. The first was the change of government in the Northern Territory, and the formalisation of a revised policy approach by that Government to local

government reform and regional authorities. These proposals have been referred to above. The second was the abolition of ATSIC and the effective mainstreaming of funding arrangements for Commonwealth Indigenous-specific programs and services.

The Northern Territory Government's proposals remain just that. No legislation has been introduced and despite some activity progress, at the regional level, is slow. The changes at the Commonwealth level are, however, highly significant. The new administrative arrangements for programs and funding that are now being put in place will, over the next six months, entrench a model of funding and program delivery that will be difficult to unravel, if that is indeed deemed to be desirable and necessary to further regional governance objectives for Central Australia. However, the abolition of ATSIC now means that the Commonwealth departments and agencies (and indeed those in the States and Territories) will have to deal with a complex environment where there is no one representative body to deal with. The establishment of a body with at least the coordination and representative functions of the TSRA could assist these agencies to achieve their outcomes more effectively.

Members of the CLC considered these issues carefully at the Council meeting held at Lake Nash on 20-21 July 2004, and resolved that an Aboriginal regional governance structure should be created for all of the Aboriginal Nations of Central Australia. This would be a powerful body which would:

- *be set up under Commonwealth legislation;*
- *receive direct Commonwealth funding;*
- *have the power to enter into proper agreements with Commonwealth and NT Governments;*
- *work together with the CLC but not interfere with the Land Rights Act or the business of traditional owners and native title holders; and*
- *have the same boundary as the CLC and get representation from the 9 CLC internal regions*

To develop a proposal for the establishment of the Aboriginal regional governance structure in Central Australia, the Central Land Council believes that the TSRA is useful as a working model. In proposing a body along the lines of the TSRA, the purpose is not to suggest that this would be the final model for regional governance; nor is it intended to close off other options.

Recommendation 5.

The CLC recommends that an Aboriginal regional governance structure be established in Central Australia which would:

- be a Commonwealth Statutory Authority;

- receive direct Commonwealth funding;
- have the power to enter into agreements with Commonwealth and Northern Territory governments;
- work alongside the CLC but not interfere with Aboriginal Land Rights or the business of traditional owners and native title holders; and
- have the same boundary as the CLC and get representation from the 9 CLC internal regions.

What would the Aboriginal regional governance structure do?

The purpose and functions of an Aboriginal regional governance structure were also discussed at the Central Land Council meeting at Lake Nash. After detailed discussion, members of the CLC agreed that the Regional Governance structure would:

- *negotiate and allocate funding for services;*
- *coordinate and contract service delivery for remote communities and outstations; and*
- *provide a strong advocacy voice on service delivery issues for all communities and outstations.*

Based on the principles outlined by the Central Land Council, the Aboriginal regional governance structure would be responsible for overall control and coordination of service delivery, and such a body could either directly deliver services and/or contract the delivery of services. The TSRA has coordination and funding functions, and presumably can contract out service delivery to other organisations. The Central Australian Aboriginal regional governance structure will need to have the legal power to deliver services, but may in fact not need to deliver services directly.

In considering this issue, it needs to be remembered that Central Australia is a very large area that is very expensive to service. The Aboriginal regional governance structure will take some time to become established, and there are already existing and long established Aboriginal organisations currently delivering services. There may well be significant opportunities for commercial opportunities for Aboriginal-owned businesses in the delivery of services in the region. The service delivery framework for the new regional authority is more likely to be based on:

- the existing Aboriginal organisations being contracted or funded to deliver services in some areas;
- new Aboriginal organisations (such as any new regional local governing body) which may be established to deliver local government services on a regional or local basis;

- other non-Aboriginal organisations (including Northern Territory departments and agencies) may be contracted to deliver services.

In the Central Land Council's view, it is likely that in the first instance the most appropriate role for the new Aboriginal regional governance structure will be to coordinate and to fund service delivery, and to ensure quality services are provided through various types of contractual arrangements, and as previously discussed, legislative commitments to improvements in living conditions. It would also have a role of assisting Aboriginal communities to achieve equitable and efficient service delivery.

Service delivery in Central Australia is expensive, difficult and littered with failures. The Central Land Council is well aware that simply establishing the Aboriginal regional governance structure will not immediately overcome many of these difficulties itself by delivering services. Many new structures and organisations have been established in Aboriginal communities in the past three decades, and a common pattern has emerged of under-funding, problems arising from too few skilled staff, and a minimal level of legitimacy for many of these organisations in the communities. Further, these organisations are operating in communities with high levels of unemployment, poor educational opportunities, and appalling health outcomes. For the Aboriginal regional governance structure to be effective, it must be a strong organisation with a proper funding base and a high level of support at a community level.

Recommendation 6.

The Central Land Council recommends that initially the Aboriginal regional governance structure perform the following functions:
- negotiate and allocate funding for services;
- coordinate and contract service delivery for remote communities and outstations; and,
- provide a strong advocacy voice on service delivery issues for all communities and outstations.

It is expected these functions will increase over time (refer to recommendation 17).

Recommendation 7.

The Central Land Council recommends that any Aboriginal regional governance structure developed in Central Australia has its powers and functions clearly defined and delineated from those of other organisations, including the Central Land Council and local governing bodies. More specifically, the Central Land Council clearly has certain responsibilities under section 23 of the Land Rights Act for Aboriginal Land in Central Australia, and as a result of its functions as a Native Title Representative Body. These functions would remain functions of the CLC, and therefore would not become responsibilities of the Aboriginal regional governance structure.

Recommendation 8.

The CLC envisages that the Aboriginal regional governance structure would conduct its major service delivery functions by contracting service delivery to other agencies and organisations. However, the CLC recommends that the Central Australian Aboriginal regional governance structure have the legal capacity to deliver services directly to communities.

Should there be one Aboriginal regional governance structure for Central Australia?

The Central Land Council's representation is divided into nine regions that cover all of the Central Land Council region, regardless of land tenure: Central, South West, North West, Tanami, West, Tennant Creek, East Sandover, East Plenty and Anmatyere.

The Central Land Council is based in Alice Springs but has regional offices in 10 widely scattered locations. It has been able to undertake its statutory activities across a vast area, and it could be expected that a Central Australian Aboriginal regional governance structure could similarly undertake its functions across this part of the Northern Territory. That assumes, however, that the Aboriginal regional governance structure does not deliver services itself.

There is no definitive answer as to whether there should be one Aboriginal regional governance structure, or a number of such bodies. Given the problems already identified with many of the small local governing bodies, the Central Land Council believes that there should be one, or only a small number of new bodies. However, the functionality of the Aboriginal regional governance structure will have a critical influence over this issue. If it is to be successful in coordinating funding and service delivery, and in ensuring improvements in service delivery through its legal relationships and contractual agreements with service providers, it needs to be a serious organisation with financial clout. Otherwise, the Aboriginal regional governance structure will be just another, possibly unimportant, bureaucratic player in Aboriginal affairs that is likely to be blamed, as was ATSIC, for all of the shortcomings in Aboriginal policy and service delivery.

There is a question of whether there should be two different regional bodies: one for Alice Springs, and one for the remainder of Central Australia in the Northern Territory. The large base of long established Aboriginal organisations in Alice Springs, and the different challenges faced by Aboriginal people living in town, might suggest that a separate regional body would be appropriate for Alice Springs. Similarly, many of these factors also apply to the town of Tenant Creek. The CLC recognises that the Combined Aboriginal Organisations (CAO) of Alice Springs have made a submission to this Inquiry. The CAO submission, which proposes a separate Regional Authority for Alice Springs, appears to be compatible with the governance structure proposed in this submission by the CLC, however, these matters need further discussion,

Recommendation 9.

The Central Land Council recommends there be one Central Australian Aboriginal regional governance structure, representing all of the Aboriginal nations of Central Australia, and based on the CLC boundary. Further discussion is needed with respect to arrangement for Alice Springs and Tennant Creek.

What should the administrative boundaries of the Aboriginal regional governance structure be?

It makes sense for the boundaries of the Aboriginal regional governance structure to be aligned with that of the Central Land Council. Central Land Council's overall boundaries, the regional structure and regional representation model of the Council have been in place for approximately 15 years. For both cultural and administrative reasons, having the two sets of boundaries the same would be helpful. For many years the CLC submitted that the ATSIC boundaries should be aligned with those of the Land Councils.

Recommendation 10

The Central Land Council believes that the administrative boundaries of the Aboriginal Governance structure should be aligned with the 9 Central Land Council administrative regions.

What is the Aboriginal regional governance structure's relationship to local government?

The TSRA coexists with local government in the Torres Strait. A similar model could be applied to Central Australia. The Central Land Council envisages that, at least initially, the Aboriginal regional governance structure could coexist with local governing bodies in Central Australia, to the extent that communities decide to retain their existing local governing bodies. The Aboriginal regional governance structure could also enter into agreements with these bodies.

Alternatively, the Aboriginal regional governance structure could be designated as a local governing body in its own right. The Aboriginal regional governance structure could assume powers under the Northern Territory's Local Government Act for the prescribed area, whether this is the whole of its region or only parts. This principle could be extended to the powers and role of other departments and agencies. The Aboriginal regional governance structure would have delegated to it a wider variety of legal powers and functions (such as is envisaged in the legislation establishing the TSRA) than simply focussing on local government functions and legal authority.

The Central Land Council believes that the Aboriginal regional governance structure could seek to coordinate and simplify the funding arrangements for Aboriginal communities. Hence it might

be appropriate to assess the funding requirements of local government in Central Australia using the Local Government Grants Commission, but channel this and other funding through the Aboriginal regional governance structure.

Recommendation 11

The Central Land Council envisages that, at least initially, the Aboriginal regional governance structure could coexist with local governing bodies in Central Australia. However, the Central Land Council recommends that the Aboriginal regional governance structure should have the capacity to both receive local government funding, as well as the potential to be designated as a local governing body in its own right.

Funding arrangements

The funding arrangements for the Aboriginal regional governance structure are crucial in defining its role and responsibilities. The TSRA, in their submission to this inquiry also recognise the importance of funding arrangements in the overall operation of Indigenous governance structure. The TSRA note two key points with respect to funding (TSRA 2004: 8):

1. The importance of financial leverage for Torres Strait Islander and Aboriginal people in negotiating partnerships with government and its agencies.
2. Difficulties in establishing relative need between communities against the background of overall disadvantage of Torres Strait Islander and Aboriginal people, requiring more efficient and effective service arrangements to focus and connect resources and avoid overlap and duplication.

Adopting these principles the CLC position is that the Aboriginal regional governance structure should be involved in negotiating funding on behalf of the communities, and allocating this funding. It could, for example:

- negotiate for the funding of the Central Australian Aboriginal communities with the full range of Northern Territory and Commonwealth departments and agencies;
- receive those funds on behalf of the communities; and
- fund the communities itself directly under one, or a small number of, block funding arrangements.

This could assist with simplifying funding and reporting requirements for the communities; and could reduce the time each community and organisation spends on funding applications and reporting on the expenditure outcomes. The complexity and inefficiencies of current funding arrangements have been highlighted repeatedly in the past two decades, and the Aboriginal

regional governance structure could be a mechanism to reduce these complexities and inefficiencies.

Importantly, the provision of direct Commonwealth Funding would allay current concerns about the administrative costs placed by the NT government on Indigenous specific funds. For example, the Learning Lessons Report estimated that a 40 per cent administrative cost was placed on the Commonwealth funding for Indigenous education. Such administrative costs seriously limit the effectiveness of Commonwealth funding in delivering services to Indigenous people in the NT.

An important question would be how to determine how much funding is necessary for the Central Australian communities, and how much funding is available for these communities. If the Aboriginal regional governance structure were to administer the current level of former ATSIC funding, as does the TSRA, then only marginal improvements can be expected in living conditions and service delivery, if at all.

As a statutory body, the Aboriginal regional governance structure would be subject to the *Commonwealth Authorities and Companies (CAC) Act* 1997 and other relevant accountability mechanisms that were built into the legislation that creates the Statutory Authority. Importantly, there will be an appropriate separation of powers between the administrative arm and the elected arm to ensure that funding decisions are made properly. This would ensure that no perceived or actual conflicts of interest could arise with respect to funding decisions or allocations. The organisation would also be subject to a Charter, and the elected representatives and staff would be both subject to codes of conduct.

Recommendation 12

The Central Land Council recommends that the Commonwealth Grants Commission be authorised to assess the funding requirements of the Central Australian communities. This should be done as a major initial inquiry, to establish the baseline of funding for operational purposes and capital investment, and then on a more frequent basis as is done with the States and Territories. Such an inquiry should take into account a needs based assessment of service delivery, rather than a per capita based assessment.

Recommendation 13

The Central Land Council recommends that, as part of the establishment of an Aboriginal regional governance structure, a new funding regime for Aboriginal communities in Central Australia be negotiated with the Commonwealth and Northern Territory Governments.

Recommendation 14

The CLC recommends that the legislative framework for the Aboriginal regional governmnet sets out an appropriate separation of powers between the administrative arm and the elected arm to ensure that funding decisions are made properly.

Relationship with the Central Land Council

The CLC strongly supports the development of an Aboriginal regional governance structure and envisages a close working relationship between the two organisations. The relationship between traditional owners, native title holders, the Central Land Council, and the Aboriginal regional governance structure is a critical issue. The existence of the Aboriginal regional governance structure would not override the existence or legitimacy of traditional interests; the Aboriginal regional governance structure would be subject to any existing processes for consultation and negotiation under legislation such as the Native Title Act or the Aboriginal Land Rights Act.

Traditional owners, and the Land Trusts, for Aboriginal land, or the prescribed body corporate for native title holders or the native title holders themselves, could negotiate, through the Central Land Council with the Aboriginal regional governance structure, authorising it to undertake certain activities on that land. The Aboriginal regional governance structure could be the only body authorised to deliver certain services; or it could be authorised to enter into service delivery arrangements with other organisations.

Recommendation 15

The CLC recommends that as part of the establishment of an Aboriginal regional governance structure an agreement be signed between the Aboriginal regional governance structure and relevant traditional owners/native title holders, which would clarify their relationship and authorise the Aboriginal regional governance structure to undertake certain functions.

Membership of the Aboriginal regional governance structure

The Central Land Council's membership, in broad terms, is determined under section 29 of the Land Rights Act:

> (1) The members of a Land Council shall be Aboriginals living in the area of the Land Council, or whose names are set out in the register maintained by the Land Council in accordance with section 24, chosen by Aboriginals living in the area of the Land Council in accordance with such method or methods of choice, and holding office on such terms and conditions, as is, or are, approved by the Minister from time to time.
>
> (2) A Land Council may, with the approval of the Minister, co-opt Aboriginals living in the area of the Land Council as additional members, but not more than 5 such members may hold office at any one time.

There are 90 Central Land Council members representing 75 communities. These members are elected from each of the 9 Central Land Council regions. There is an Executive of 11 members, being the Chairman and Deputy Chairman and 9 members elected by the delegates from each of the 9 regions.

The Central Land Council's membership is elected with the intention of carrying out their functions under the Land Rights Act and the Native Title Act. The Aboriginal regional governance structure would have a different but complementary role to the Central Land Council in that its primary responsibility is in relation to service delivery and other governance issues.

Given the proposed function of the Aboriginal regional governance structure there is a question of whether it is necessary to have a broad membership such as the Central Land Council, or whether a small membership might be more effective. This appears to be the thinking about the TSRA where there are proposals, as discussed, to reduce the size of the membership from 20 to 6, and more clearly delineate the role of the members and the administration (CEO) of the organisation.

To operate with one Aboriginal regional governance structure in Central Australia, the Central Land Council proposes that the Aboriginal regional governance structure will enter into agreements with the traditional owners and native title owners through the Central Land Council. Assuming that the Central Land Council will continue to consult with traditional owners through its existing mechanisms under both the Land Rights Act and the Native Title Act, there may not need to be a large and broad membership for the Aboriginal regional governance structure. One model of representation is to have a membership based on the 9 Central Land Council regions with perhaps a male and a female member elected from each region.

Recommendation 16

The Central Land Council recommends that a representative structure for an Aboriginal regional governance structure in Central Australia should have membership based on the 9 Central Land Council regions, with perhaps a male and a female member elected from each region.

The potential of an Aboriginal regional governance structure

The Aboriginal regional governance structure outlined in this submission is viewed as a transitional structure, and that over time functions and powers will be transferred from government agencies to the regional structure. The aspirations of Central Land Council members are for a regional governance structure that includes legislative and jurisdictional powers, as

clearly stated in the Kalkaringi statement. Recent developments in regard to drinking water in Canada and the United States provide some interesting insights into how such a structure could operate. There have been proposals in Canada for the introduction of a Safe Water Act that would apply to First Nation reserves (Graham 2003). As the situation currently stands, no such Act now exists. However, the importance of such an Act was highlighted by the Walkerton Inquiry that was established following the poisoning of the water supply of the town of Walkterton in May 2000. While the Inquiry was not specifically concerned with drinking water in First Nation communities, the report did comment as follows:

> The water provided on many First Nations reserves is some of the poorest-quality water in the province [of Ontario]. Residents of Ontario's First Nation reserves are also Ontario residents. I therefore suggest to the First Nations and to the federal government that the water quality standards for reserves should be no lower than those that apply elsewhere in the province and that those standards should be made legally enforceable … (O'Connor, 2002, 17).

American Indian tribes are covered by the Federal *Safe Drinking Water Act* and the *Clean Water Act*, both of which are administered by the Environmental Protection Agency. The regulatory regime is outlined in Liljefors (2001). As Graham commented:

> … a well-designed regulatory regime, as opposed to the contractual approach now being utilized, would have a much wider variety of responses to water problems … regulatory systems are by their nature politically charged. No one likes to be the subject of enforcement activities and appeals to politicians are not infrequent. Regulators need the certainty and force of legislation to do their jobs properly. Finally, legislation will force needed clarity and transparency into the murkiness of unclear roles and accountabilities that now characterize the current situation (Graham 2003, 3).

The Central Land Council would suggest that in the debate on Aboriginal regional governance in Australia such approaches need to be considered. In the Canada, the <u>jurisdiction and legal powers</u> of the Aboriginal governments are being negotiated as part of land claim and treaty settlements. Negotiations are occurring at the federal, provincial and local level for the transfer of certain legal powers to the new Aboriginal governments. In the United States, under the Safe Drinking Water Act the Navajo Nation has obtained delegated authority and the Nation now has its own Navajo Safe Drinking Water Act which is at least as stringent as the federal legislation (Liljefors 2001, 7). A whole range of government activities are undertaken by the Indian Governments, including law making powers.

Under the legislation establishing the TSRA, the Prime Minister may confer a departmental function on the TSRA; and the Minister may confer a function of the Commission (ATSIC) on the TSRA. Departmental function means a function that has previously been performed by a Commonwealth Department. The Minister may also, in writing, approve the performance by the TSRA of a function expressly conferred on the TSRA by a law of a State or an internal Territory. This would suggest that legally it is possible for the TSRA to assume jurisdiction over a range of government programs, both Commonwealth and State. This would appear to be a similar approach to the delegation of authority under the United States Safe Drinking Water Act to the Navajo Nation, except that the Navajo Nation has law making power.

In discussions on regional governance arrangements in recent years, Aboriginal people in Central Australia have expressed a strong desire to take control of a range of issues that impact on their communities. This includes assuming legal power to control what happens in their communities and the types of services delivered. These issues were summarised in the Kalkaringi Statement 1998.

In the process of moving towards the establishment of the Central Australian Aboriginal regional governance structure, the Central Land Council believes it will be important to negotiate the legal powers and jurisdiction of the new governance arrangement. It is the Central Land Council's view that over time some functions and authority will be transferred from existing government agencies (including but not limited to local government) to the Aboriginal regional governance structure.

Accompanying such a transfer would be legislative standards similar to those introduced in the United States for Indian health, except across a broader range of indicators such as those covered by the Productivity Commission report. The Aboriginal regional governance structure could have the legal power and responsibility to meet these standards in some areas of jurisdiction; and it may also have a role in monitoring progress by other agencies covered by the legislative standards. A key part of these processes will of course be ensuring that appropriate funding arrangements are in place to meet the legislative standards.

Recommendation 17

The Central Land Council recommends that the regional governance structure be established such that over time functions and powers can be transferred from government agencies to the regional structure.

ATSIC Amendment Bill

The *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004* abolishes the Aboriginal and Torres Strait Islander Commission (ATSIC) and changes the name of the Act to the *Aboriginal and Torres Strait Islander Act, 2004.*

In particular it abolishes:

- the national board of ATSIC and the Chief Executive Officer, and
- the Regional Councils on the 30th June 2005.

Importantly, it also:

- Transfers the assets and liabilities of ATSIC including Regional Councils to the Commonwealth. Except those transferred to Indigenous Business Australia (IBA)-the housing fund and the Business Development Program, and the Indigenous Land Corporation (ILC)- the Regional Land Fund of ATSIC Regional Councils.
- Makes consequential amendments to Eleven (11) other Acts which include functions under the *Native Title Act,1993;* provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* and notice provisions under the *Environment Protection and Biodiversity Conservation Act 1999.*
- Enhances the role of the Office of Evaluation and Audit.
- Allows for the continued operation of the Torres Strait Regional Authority.

Recommendation 18.

The CLC recommends that further consideration be given to developing an appropriate Commonwealth legislative regime for regional governance structures, either using the framework of the current Act, or by developing entirely new legislation.

Recommendation 19.

The CLC recommends that further consideration be given to the creation of a legitimate national Indigenous representative structure to undertake national policy and advocacy functions, monitor the government's performance on Indigenous issues, and provide the government with advice regarding Indigenous issues.

The CLC rejects any proposal for a 'hand-picked' Indigenous advisory council.

Recommendation 20.

The CLC does not support the passage of the *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004* without substantial amendment as follows:
- allow for a national Indigenous representative structure to provide policy and advocacy advice at the highest levels;
- allow for a Commonwealth legislative regime to provide for regional Indigenous governance structures; and,
- ensure that assets owned by ATSIC on behalf of Indigenous people remain in Indigenous ownership.

Indigenous Land Corporation

The money held in the Regional Land Fund of ATSIC set aside by individual ATSIC Regional Councils for the purchase of land in their region is transferred to the Indigenous Land Corporation (ILC). The ILC must follow any decisions of the Regional Council concerning the purchase and transfer of land from that fund until 30th June 2005. This is subject to any written directions given by the Minister.

Thereafter there appears to be no requirement to use these funds in the region that saved or allocated them in the first place.

There is also a new provision for the ILC to give funds to the Indigenous Business Australia (IBA) to allow it to promote economic development on the land the ILC acquires for Indigenous people and to generally make (Item 130) a grant of an interest in land on such terms and conditions as it determines. The Explanatory Memoranda says this is consistent with the provisions under which ATSIC made grants from the Regional Land Fund.

Recommendation 21.

The CLC recommends that the Bill be amended to ensure that monies in the Regional Land Fund are required to be expended in the particular ATSIC region whose Regional Council made that decision.

Indigenous Business Australia

IBA is given new functions to make housing and business loans and grants " that will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders." These are the housing or home ownership program and business loans that were administered by ATSIC. All assets and liabilities associated with these programs will be transferred from ATSIC to the IBA.

The Minister will be able to give general directions to Indigenous Business Australia in relation to its activities, as was the case with ATSIC.

Recommendation 22.

The CLC recommends that the Bill be amended to ensure that the ILC and the IBA remain as independent statutory authorities, with no increase in Ministerial intervention over their activities.

Interests in Land

An "individual or body who was granted an interest in land by ATSIC or who acquired an interest in land using ATSIC money or an ATSIC guarantee before 1 July 2004" is prohibited from "disposing of such interest without obtaining consent" from the Secretary of the Department, the ILC or IBA as appropriate. (Item 199)

This is of the same affect as existing provisions in the ATSIC Act.

Certain liabilities (Item 200) of ATSIC are taken to *be "interests in land* of the Commonwealth, Indigenous Business Australia and the Indigenous Land Corporation on and after 1 July 2004."

Assets and Liabilities

All assets and liabilities of ATSIC are transferred to the Commonwealth except those transferred to the IBA and ILC concerning their new functions referred to in the above sections. (Items 190 – 191)

Assets are defined as follows:

> ***assets*** means property of every kind and, without limiting the generality
> of the foregoing, includes:
> (a) choses in action; and
> (b) rights, interests and claims of every kind in or to property,
> whether arising under an instrument or otherwise, and
> whether legal or equitable, liquidated or unliquidated, certain or contingent, accrued or accruing.

Recommendation 23.

The CLC recommends that assets owned by ATSIC on behalf of Indigenous people remain in Indigenous ownership. All assets proposed to be held by the Commonwealth must be audited to

determine whether it is appropriate to transfer them directly to Indigenous interests, and which Indigenous organisations could hold such interests.

Office of Evaluation and Audit (Indigenous Programs)

This Office which exists within ATSIC is to re-established within the Department of Finance and Administration.

According to the Explanatory Memorandum:

> "The purpose of the Office is to report to the Minister on evaluations or audits of:
> a) relevant programs administered by Australian Government bodies; and
> b) the activities of any individual or organisation that has received funding under any relevant program.
>
> A relevant program is one that furthers the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders. The Office is to report on evaluations or audits as required by the Minister. The Office also has the power to inform the Minister of significant issues encountered in an evaluation or audit, and to inform the Minister of issues affecting the independence of the Office."

This includes any Indigenous individual or organisation that receives funding or a grant by means of a relevant program which is widely defined. It is in addition to the auditing and financial reporting requirements that exist under Corporations or Associations Act law, grant or funding conditions, the Auditor General and Section 203DF of the Native Title Act.

There are extensive investigative powers allowing for the inspection of relevant documents.

Recommendation 24.

The CLC recommends that the number of review and auditing requirements be simplified and incorporated within one statutory process.

Amendments to other Acts- Schedule 4

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Reference to the Chief Executive Officer and staff of ATSIC in the delegation provisions in section 21B of the *Aboriginal and Torres Strait Heritage Protection Act 1984* are removed which concern the Victorian Aboriginal cultural heritage provisions of the Act.

Aboriginal Councils and Associations Act 1976

The Registrar under this Act is given responsibility to formulate model rules for the conduct of proceedings at meetings of Regional Councils.

Aboriginal Land Rights (Northern Territory) Act 1976

The role of ATSIC in preparing an annual report for the operation of the Aboriginals Benefit Reserve (section 62) under section 64B is transferred to the relevant Department (DIMIA).

The reference to the Chief Executive Officer, staff or a member of ATSIC in the secrecy provisions of section 23E are removed.

Environment Protection and Biodiversity Conservation Act 1999

Section 74(1A) of the *Environment Protection and Biodiversity Conservation Act 1999* is repealed. (Item 22) This removes the requirement for the Minister to inform and invite comments from ATSIC after receiving a proposal to take an action that may significantly affect the environment with respect to certain Indigenous heritage areas.

It is recommended that this Item be amended to include appropriate Indigenous organisations, possibly Native Title Representative Bodies, as receiving notice and having the opportunity to comment in place of ATSIC.

The existing section 74(1A) is in the following terms:

> Inviting comments from ATSIC
>
> (1A) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must:
>
> (a) inform the Aboriginal and Torres Strait Islander Commission; and
>
> (b) invite the Commission to give the Minister comments within 10 business days (measured in Canberra) on whether the proposed action is a controlled action;
>
> if the Minister thinks that section 15B, 15C, 23, 24A, 26, 27A, 27B, 27C or 28 could be a controlling provision for the action because of the Indigenous heritage value of a National Heritage place or Commonwealth Heritage place.
>
> Note 1: Subsections 15B(4) and subsections 15C(7) and (8) protect the National Heritage values of National Heritage places, to the extent that those values are Indigenous heritage values.

Note 2: Sections 23, 24A, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of ***environment*** in section 528.

National Health and Medical Research Council Act 1992

The amendments remove the requirement that ATSIC must nominate a person to be appointed to the Council.

Native Title Act 1993

These are amendments to the NTA dealing with funding and recognition of Native Title Representative Bodies (NTRB).

Withdrawal of recognition of an NTRB and reductions to the size of the area of its responsibilities and funding matters are now dealt with by the Secretary of the Department or their delegate.

The Secretary of the Department will grant or provide funding and deal with breaches of funding conditions.

The Explanatory Memorandum states that:

> "Amendments have been made to Part 11 to allow for the provision of funds from the Commonwealth by the Secretary of the relevant Department to representative bodies. This will remove the restriction of funding being provided through grants."

It is not known at a practical level how this will facilitate the improved operation of NTRB's.

A representative body can still also be "audited by the Office of Evaluation and Audit (Indigenous Programs) under the *Aboriginal and Torres Strait Islander Act 2004"* at the request of the Minister or the Department.

The complaints, review of NTRB decisions and monitoring role of ATSIC with respect to NTRB's will now be done by the Secretary of the Department or their delegate.

Strategic plans of NTRB's will now be prepared in consultation with the Department. (DIMIA)

Recommendation 25.

The CLC recommends that the Native Title complaints, decision review and monitoring role be undertaken by an independent statutory agency, rather than by the department that provides the funding.

Social Security Act 1991

The Secretary of the Department of Employment and Workplace Relations will have responsibility for approving the Community Development Employment Program (CDEP) participant schedules under subsection 1188B(3).

Miscellaneous

Section 193U of the ATSIC Act is repealed which currently provides that local calls costs will apply when trying to contact an office. It is not known whether a similar provision will apply to the new ICC offices. No reason is given for its abolition and no mention is made as to whether it will be replaced.

The current section 193U of the ATSIC Act is as follows:

> Telephone Access to ATSIC Offices
>
> The Commission shall make provision for the development of a service which will enable a person to make a telephone call to the nearest regional office of the Commission, at no greater cost than the cost of a local telephone call.

(Item 153 repeals sections 193U, 194A and 195 removing: the requirement for a telephone service to enable calls to regional offices at the cost of a local call.- Explanatory Memorandum)

The CLC recommends that the equivalent of this provision, ensuring that clients can access the nearest ATSIC office for the cost of a local call, be re-enacted with respect to the Indigenous Co-ordination Centres and other Departments administering programs that affect Indigenous people.

Appendix A

The Congress hereby declares that it is the policy of this Nation, in fulfilment of its special responsibilities and legal obligations to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to affect that policy.
(b) It is the intent of the Congress that the Nation meet the following health status objectives with respect to Indians and urban Indians by the year 2000:

(1)Reduce coronary heart disease deaths to a level of no more than 100 per 100,000.

(2)Reduce the prevalence of overweight individuals to no more than 30 percent.

(3)Reduce the prevalence of amenia to less than 10 percent among children aged 1 through 5.

(4)Reduce the level of cancer deaths to a rate of no more than 130 per 100,000.

(5)Reduce the level of lung cancer deaths to a rate of no more than 42 per 100,000.

(6)Reduce the level of chronic obstructive pulmonary disease related deaths to a rate of no more than 25 per 100,000

(7)Reduce deaths among men caused by alcohol-related motor vehicle crashes to no more than 44.8 per 100,000.

(8)Reduce cirrhosis deaths to no more than 13 per 100,000.

(9)Reduce drug-related deaths to no more than 3 per 100,000.

(10)Reduce pregnancies among girls aged 17 and younger to no more than 50 per 1,000 adolescents.

(11)Reduce suicide among men to no more than 12.8 per 100,000.

(12)Reduce by 15 percent the incidence of injurious suicide attempts among adolescents aged 14 through 17.

(13)Reduce to less than 10 percent the prevalence of mental disorders among children and adolescents.

(14)Reduce the incidence of child abuse or neglect to less than 25.2 per 1,000 children under age 18.

(15)Reduce physical abuse directed at women by male partners to no more than 27 per 1,000 couples.

(16)Increase years of healthy life to at least 65 years.

(17)Reduce deaths caused by unintentional injuries to no more than 66.1 per 100,000.

(18)Reduce deaths caused by motor vehicle crashes to no more than 39.2 per 100,000.

(19)Among children aged 6 months through 5 years, reduce the prevalence of blood lead levels exceeding 15 ug/dl and reduce to zero the prevalence of blood lead levels exceeding 25 ug/dl.

(20)Reduce dental caries (cavities) so that the proportion of children with one or more caries (in permanent or primary teeth) is no more than 45 percent among children aged 6 through 8 and no more than 60 percent among adolescents aged 15.

(21)Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children aged 6 through 8 and no more than 40 percent among adolescents aged 15.

(22) Reduce to no more than 20 percent the proportion of individuals aged 65 and older who have lost all of their natural teeth.

(23) Increase to at least 45 percent the proportion of individuals aged 35 to 44 who have never lost a permanent tooth due to dental caries or periodontal disease.

(24) Reduce destructive periodontal disease to a prevalence of no more than 15 percent among individuals aged 35 to 44.

(25)Increase to at least 50 percent the proportion of children who have received protective sealants on the occlusal (chewing) surfaces of permanent molar teeth.

(26)Reduce the prevalence of gingivitis among individuals aged 35 to 44 to no more than 50 percent.

(27)Reduce the infant mortality rate to no more than 8.5 per 1,000 live births.

(28)Reduce the foetal death rate (20 or more weeks of gestation) to no more than 4 per 1,000 live births plus foetal deaths.

(29)Reduce the maternal mortality rate to no more than 3.3 per 100,000 live births.

(30)Reduce the incidence of fetal alcohol syndrome to no more than 2 per 1,000 live births.

(31)Reduce stroke deaths to no more than 20 per 100,000.

(32)Reverse the increase in end-stage renal disease (requiring maintenance dialysis or transplantation) to attain an incidence of no more than 13 per 100,000.

(33)Reduce breast cancer deaths to no more than 20.6 per 100,000 women.

(34)Reduce deaths from cancer of the uterine cervix to no more than 1.3 per 100,000 women.

(35)Reduce colorectal cancer deaths to no more than 13.2 per 100,000.

(36)Reduce to no more than 11 percent the proportion of individuals who experience a limitation in major activity due to chronic conditions.

(37)Reduce significant hearing impairment to a prevalence of no more than 82 per 1,000.

(38)Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

(39)Reduce diabetes-related deaths to no more than 48 per 100,000.

(40)Reduce diabetes to an incidence of no more than 2.5 per 1,000 and a prevalence of no more than 62 per 1,000.

(41)Reduce the most severe complications of diabetes as follows:

(A) End-stage renal disease, 1.9 per 1,000.
(B) Blindness, 1.4 per 1,000.
(C) Lower extremity amputation, 4.9 per 1,000
(D) Perinatal mortality, 2 percent.
(E) Major congenital malformations, 4 percent.

(42)Confine annual incidence of diagnosed AIDS cases to no more than 1,000 cases.

(43)Confine the prevalence of HIV infection to no more than 100 per 100,000.

(44)Reduce gonorrhea to an incidence of no more than 225 cases per 100,000.

(45)Reduce chlamydia trachomatis infections, as measured by a decrease in the incidence of nongonococcal urethritis to no more than 170 cases per 100,000.

(46)Reduce primary and secondary syphilis to an incidence of no more than 10 cases per 100,000.

(47)Reduce the incidence of pelvic inflammatory disease, as measured by a reduction in hospitalization for pelvic inflammatory disease to no more than 250 per 100,000 women aged 15 through 44.

(48)Reduce viral hepatitis B infection to no more than 40 per 100,000 cases.

(49)Reduce Indigenous cases of vaccine-preventable diseases as follows:
(A) Diphtheria among individuals aged 25 and younger, 0.
(B) Tetanus among individuals aged 25 and younger, 0.
(C) Polio (wild-type virus), 0.
(D) Measles, 0.
(E) Rubella, 0.
(F) Congenital Rubella Syndrome, 0.
(G) Mumps, 500.
(H) Pertussis, 1,000.

(50) Reduce epidemic-related pneumonia and influenza deaths among individuals aged 65 and older to no more than 7.3 per 100,000.

(51)Reduce the number of new carriers of viral hepatitis B among Alaska Natives to no more than 1 case.

(52)Reduce tuberculosis to an incidence of no more than 5 cases per 100,000.

(53)Reduce bacterial meningitis to no more than 8 cases per 100,000.

(54)Reduce infectious diarrhea by at least 25 percent among children.

(55)Reduce acute middle ear infections among children aged 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.

(56)Reduce cigarette smoking to a prevalence of no more than 20 percent.

(57)Reduce smokeless tobacco use by youth to a prevalence of no more than 10 percent.

(58)Increase to at least 65 percent the proportion of parents and caregivers who use feeding practices that prevent baby bottle tooth decay.

(59)Increase to at least 75 percent the proportion of mothers who breast feed their babies in the early postpartum period, and to at least 50 percent the proportion who continue breast feeding until their babies are 5 to 6 months old.

(60)Increase to at least 90 percent the proportion of pregnant women who receive prenatal care in the first trimester of pregnancy.

(61)Increase to at least 70 percent the proportion of individuals who have received, as a minimum within the appropriate interval, all of the screening and immunization services and at least one of the counseling services appropriate for their age and gender as recommended by the United States Preventive Services Task Force.

(c)It is the intent of the Congress that the Nation increase the proportion of all degrees in the health professions and allied and associated health profession fields awarded to Indians to 0.6 percent.

(d)The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report on the progress made in each area of the Service toward meeting each of the objectives described in subsection (b).

Appendix B

142A Functions of TSRA

Functions

(1) The TSRA has the following functions:

(a) to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders living in the Torres Strait area;

(b) to formulate and implement programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;

(c) to monitor the effectiveness of programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area, including programs conducted by other bodies;

(d) to develop policy proposals to meet national, State and regional needs and priorities of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;

(e) to assist, advise and co-operate with Torres Strait Islander and Aboriginal communities, organisations, individuals at national State, Territory and regional levels;

(f) to advise the Minister on:

(i) matters relating to Torres Strait Islander affairs, and Aboriginal affairs, in the Torres Strait area, including the administration of legislation;

(ii) the co-ordination of the activities of other Commonwealth bodies that affect Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area;

(g) when required by the Minister, to provide information or advice to bodies to the Minister on any matter specified by the Minister;

(h) to take such reasonable action as it considers necessary to protect Torres Strait Islander and Aboriginal cultural material and information relating to the Torres Strait area if the material or information is considered sacred or otherwise significant by Torres Strait Islanders or Aboriginal persons;

(i) at the request of, or with the agreement of, the Australian Bureau of Statistics, but not otherwise, to collect and publish statistical information relating to Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;

(j) such other functions as are conferred on the TSRA by this Act or any other Act;

(k) such other functions as are expressly conferred on the TSRA by a law of a State or of an internal Territory and in respect of which there is in force written approval by the Minister under section 142B

(l) to undertake such research as is necessary to enable the TSRA to perform any of its functions;

(m) to do anything else that is incidental or conducive to the performance of any of the preceding functions;

142AA Conferring functions on TSRA

(1) *For the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area;*

(a) the Prime Minister may confer a departmental function on the TSRA;

(b) *the Minister may confer a function of the Commission on the TSRA.*

(2) The power under subsection (1) must be exercised by notice in the Gazette.

(3) *In this section:* ***departmental function*** *means a function that has previously been performed by a Department of State of the Commonwealth, but does not include a function of the Commission.*

142B Minister may approve performance of functions under State or Territory Laws

The Minister may, in writing, approve the performance by the TSRA of a function expressly conferred on the TSRA by a law of a State or an internal Territory.

142C Powers of TSRA

(1) *The TSRA has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.*

(2) *The powers of the TSRA include, but are not limited to, the following powers:*

(b) to accept gifts, grants, bequests and devises made to it;

(c) to act as trustee of money and other property vested in it on trust;

(d) *to negotiate and cooperate with other Commonwealth bodies and with State, Territory and local government bodies;*

(e) *to enter into an agreement for making a grant or loan under section 142GA to the State of Queensland or an authority of that State (including a local government body);*

(f) *to enter into an agreement (other than an agreement referred to in paragraph (d) with a State or Territory.*

(3) Despite anything in this Act, any money or other property held by the TSRA on trust must be dealt with in accordance with the powers and duties of the TSRA as a trustee.

(4) The powers of the TSRA may be exercised in or out of Australia.

142E Directions by Minister

(1) TSRA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.

Appendix C

Commonwealth Grants Commission Terms of Reference for Jervis Bay Territory Inquiry

1. Pursuant to section 16B of the Commonwealth Grants Commission Act 1973, I ask the Commission, by July 2002 at the latest, to inquire into and report on the following in respect of the 1999-2000 financial year:

(i) the State and local government type services and grants that were provided by the Commonwealth, ACT, NSW and local government authorities to Jervis Bay Territory residents;

(ii) the level of expenditure that was required to provide the services reported on in 1(i);

(iii) estimates of the State and local government type revenues (including taxes, fees, fines and charges) that were raised in the Jervis Bay Territory and from Jervis Bay Territory residents; and

(iv) the infrastructure and other assets that were associated with the provision of State and local government type services, their age profile, state of repair, and other details which would assist in quantifying the cost of maintaining or replacing these assets.

2. The Commission will make recommendations on:

(i) the expenditure that would have been required to provide:

(a) State, and

(b) Local government-type services, to Jervis Bay Territory residents at Australian standards (adjusted for the special characteristics of the Jervis Bay Territory) in 1999-2000;

(ii) the services that were being provided at a level above Australian standard, and those below Australian standard;

(iii) the capacity for raising revenues from Jervis Bay Territory residents at Australian standards in 1999-2000;

(iv) the funding in 1999-2000 that would have been required by the NSW Government to:

- bring the provision of the services identified in (ii) as 'below standard' up to the Australian standard levels
- maintain the provision of the services identified in (ii) as 'standard' or 'above standard' at these levels
- less the revenue that can be raised from Jervis Bay Territory residents at Australian or NSW standards; and

(v) the capital expenditure that would be required to ensure that the condition of assets identified in 1(iv) was at Australian standard levels.

3. The Commission will further recommend a mechanism for updating the funding levels recommended in 2(iv) to ensure appropriate levels of funding could be provided in future years, and in particular, make a recommendation on the funding that would be required for the Commonwealth to fund NSW to provide services at levels described in 2(iv) for the 2002-03 financial year.

References

Ah Kit J, 2003. Building stronger regions – stronger futures, speech to Local Government Association of the Northern Territory, Alice Springs, 14 May.

Commonwealth Grants Commission (CGC), 2001. Report on Indigenous Funding, CanPrint Communications, Canberra.

Department of Aboriginal and Torres Strait Islander Policy, 2003. *Making Choices about Community Governance*, Queensland Government, Brisbane.

Department of Community Development, Sport and Cultural Affairs 2003. *Building Stronger Regions – Stronger Futures*, Northern Territory Government, Darwin.

Graham J, 2003. *Safe Water for First Nations: Charting a Course of Reform*, Institute on Governance Policy Brief, Ottawa.

Graham J, 2003 *Aggregation and First Nation Governance: Literature Review and Conclusions*, Institute on Governance Policy Brief, Ottawa.

Liljefors K, 2001. *Regulatory Regimes for Drinking Water on Tribal Lands in the USA: A Description*, Institute on Governance, Ottawa.

Dr O'Connor 2002. *Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water*, Queen's Printer for Ontario.

Queensland Government 2003. *Meeting the Challenges of Community Governance: a White Paper on New Laws for Aboriginal Community Governance*, Brisbane.

Torres Strait Regional Authority, 2002. *Capacity Building in Indigenous Communities: Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs.*

Torres Strait Regional Authority, 2003. *A Proposal to Improve Regional Governance in Torres Strait – Proposal TSRA Bill, Submission to the Minister for Immigration, Multicultural and Indigenous Affairs,* July (available at www.tsra.gov.au).

Torres Strait Regional Authority, 2004.*Submission to the Senate Select Committee on the Administration of Indigenous Affairs,* August (available at www.aph.gov.au).