



# *Making* **A DIFFERENCE**



Governance and Accountability of  
Indigenous Councils

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

OCTOBER 2002

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Indigenous Councils

Zoe Ellerman

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CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

**CMC Vision:**

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

**CMC Mission:**

To combat crime and improve public sector integrity.

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# Preface

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Aboriginal and Torres Strait Island councils in Queensland play a pivotal role in the health and well being of their communities. Clearly, they warrant support and encouragement. Good governance is essential if Indigenous communities are to tackle social problems, such as poor health, low life expectancy and low educational outcomes, effectively.

The many difficulties encountered by Aboriginal and Torres Strait Island councils since their establishment in Queensland have frequently been documented. Most recently, the importance of addressing governance issues in Indigenous communities was highlighted by the Cape York Justice Study conducted by the Honourable G. E. (Tony) Fitzgerald AC QC.

The Crime and Misconduct Commission has published this paper on the governance and accountability of Indigenous councils to contribute to the debate that must occur to ensure good governance for Indigenous Queenslanders.

This report, prepared by CMC Research Officer Zoe Ellerman, would not be possible without the help of many other people, especially:

- staff of the Department of Aboriginal and Torres Strait Islander Policy — in particular, Mr Max Barrie and Dr Michele Ivanitz
- Ms Sally Goold, CMC Commissioner
- Dr Paul Mazerolle, CMC Research and Prevention Director
- Dr Mark Lynch, CMC Research and Prevention Deputy Director
- Mr Mark Pathe and Ms Rebecca Lowndes, CMC Research and Prevention Officers
- Mr Daniel Abednego and Ms Lynette Booth, CMC Indigenous Liaison Officers

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# Abbreviations

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ACC	Aboriginal Coordinating Council
ATSIC	Aboriginal and Torres Strait Islander Commission
CEO	Chief Executive Officer
CJC	Criminal Justice Commission (now the CMC)
CMC	Crime and Misconduct Commission
CSAs	Community Services Acts
DATSIP	Department of Aboriginal and Torres Strait Islander Policy
DOGIT	Deed of Grant in Trust
ICC	Island Coordinating Council
LGA	Local Government Act
LGAQ	Local Government Association of Queensland
QPS	Queensland Police Service

## **Legislation referred to in this publication**

*Aboriginal Councils and Associations Act 1976* (Cwlth)

*Community Services (Aborigines) Act 1984* (Qld)

*Community Services (Torres Strait) Act 1984* (Qld)

*Local Government (Aboriginal Lands) Act 1978* (Qld)

*Local Government Act 1993* (Qld)



# Chapter 1: Background

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## Introduction

The problems facing Indigenous communities, particularly those in remote areas, are increasingly attracting media and government attention. In Queensland, the recent Cape York Justice Study, headed by the Honourable Tony Fitzgerald AC QC, was established by the Queensland Government in recognition of the serious problems facing Cape York Indigenous communities.<sup>1</sup> While the study focused on problems of alcohol, substance abuse, violence and other breaches of the law, the study team also found it necessary to consider issues of community governance and accountability. The report states:

Little progress will be made toward the recovery of Indigenous communities while conflict and inefficiencies remain embedded in dated, inappropriate structures for local and regional governance. Genuine reforms cannot be sustained unless supported by frameworks for community governance that facilitate the realisation of individual and collective self-determination.<sup>2</sup>

This paper draws attention to the fact that extraordinarily high demands are made of Indigenous councils even though they have a limited capacity to meet those demands. It is therefore no surprise that many Indigenous councils have been found wanting in terms of accountability and other governance issues. However, as this paper documents, various administrative bodies have consistently proved to be better at identifying problems than facilitating solutions. As well, the relatively short corporate memory of administrative bodies means that they tend to ‘reinvent the wheel’, rather than learn from previous reviews and implement strategies that have a real prospect of success.

An important objective of the paper is therefore to highlight the fact that little is likely to be achieved by further exercises in pointing to problems — instead we need to use what we already know from past reviews as the basis for the more difficult task of enhancing the capacity of Indigenous councils to provide good governance. With this in mind, this paper is primarily intended for those involved in working with Indigenous communities in relation to governance issues.

This chapter provides:

- a discussion of the key terms ‘governance’, ‘good governance’ and ‘corporate governance’
- a review of the history and administration of Indigenous councils in Queensland
- a survey of the key Queensland Government agencies relevant to issues of governance and accountability in Indigenous councils.

Chapter 2 provides:

- an overview of the various reviews of Indigenous councils in Queensland since their inception, and
- an outline of the responses of the Queensland Government to the issues identified.

Chapter 3 identifies key issues warranting further consideration:

- cultural appropriateness
- representation and legitimacy
- transparency requirements and Indigenous approaches to information, and
- ‘accountability’.

Chapter 4 concludes the paper by identifying strategies to strengthen good governance of Indigenous communities in Queensland.

## Governance, good governance and corporate governance

‘Governance’ is the exercise of power or authority — political, administrative, economic or any other kind — to manage resources and affairs. ‘Good governance’ is the competent management of resources and affairs in a way that is open, transparent, accountable, equitable and responsive to people’s needs. The elements of good governance are interdependent; a failing in one area may lead to poor governance that impedes development.<sup>3</sup>

‘Corporate governance’ is one aspect of governance in the broader sense. It refers to systems and structures designed to provide accountable, transparent, participatory and ethical administration and operation of organisations. Where aspects of corporate governance within an organisation are

neglected, the organisation's ability to provide good governance may be correspondingly limited.

## History of the establishment of Indigenous councils in Queensland

After colonisation and the assertion of state sovereignty over Indigenous lands, there was a significant period of overbearing government and missionary management of Indigenous societies within Queensland. During this period many Indigenous people were dispossessed of their traditional lands and relocated to reserves and missions throughout the State. A large number of the former reserves and missions within Queensland now have state-sanctioned self-management at the level of local government. It is important to keep in mind that this change has happened only recently.

Across Queensland there are fifteen Aboriginal councils<sup>4</sup> and seventeen Torres Strait Island councils<sup>5</sup> established to deliver local government services pursuant to the *Community Services (Aborigines) Act 1984* (Qld) and the *Community Services (Torres Strait) Act 1984* (Qld) respectively (the CSAs). These councils are sometimes collectively referred to as 'community councils' or 'DOGIT councils'. The name 'DOGIT' derives from a form of land tenure underpinning the council on establishment — that is, a deed of grant in trust. These deeds were granted over the former reserve lands to make up the council areas and this title was held in trust by the councils for the benefit of the Indigenous inhabitants.<sup>6</sup> In addition to the CSAs, the associated subordinate legislation (including the regulations<sup>7</sup> and the Aboriginal and Island Council Accounting Standards<sup>8</sup>) contains important provisions regarding DOGIT councils.

In addition to DOGIT councils established under the CSAs, there are three other Indigenous councils: the Aurukun Shire Council, the Torres Shire Council and the Mornington Shire Council. The Aurukun and Mornington Shire Councils were established by the *Local Government (Aboriginal Lands) Act 1978* (Qld). The Torres Shire Council came into existence later, in 1991, as an elected council. Like the DOGIT councils, on inception these councils held various forms of land title defining the shire council area held in trust for its Indigenous constituents. Under the *Local Government Act 1993* (Qld) (the LGA), the Indigenous shire councils provide local government services to their shire council areas, although they are subject to some special provisions not generally applicable to local governments under the LGA.

Many Indigenous councils are also associated with a number of subsidiary companies and/or other organisations that are controlled by the council and/or are established to service the council. To further complicate matters, in other former reserve communities throughout the State, such as at Coen, Laura, Cooktown, Mossman Gorge, Kuranda and Stradbroke Island, where community governance is not exercised by Indigenous councils established under State legislation, there exist a range of community organisations that may function as de facto local governments. These organisations are sometimes incorporated as Aboriginal associations under the *Aboriginal Councils and Associations Act 1976* (Cwlth), are otherwise incorporated, or may be unincorporated committees or action groups.

## Functions of Indigenous councils

DOGIT councils are charged, pursuant to the CSAs, with responsibility for carrying out the functions of local government in their council area — in accordance with the customs and practices of the Aboriginal people or Islanders concerned.<sup>9</sup> DOGIT councils have powers to make by-laws on a very broad range of matters including, for example, the 'moral safety' of a council area.<sup>10</sup> In addition to local government jurisdiction, the legislation confers powers in relation to matters such as appointing community police and convening community courts. Similarly, the responsibilities of the Indigenous shire councils pursuant to the LGA extend to matters such as employing community police.

The responsibilities of Indigenous councils far exceed what might be envisaged as those of an ordinary local authority. Indigenous councils are charged with responsibility for mainstream local government issues such as roads, sanitation and planning matters. However, they also have responsibilities such as providing and managing housing for their constituents, managing commercial enterprises such as local canteens, stores, service stations, agricultural and other businesses, and employing community police.

## Key external stakeholders

### Department of Aboriginal and Torres Strait Islander Policy

The Department of Aboriginal and Torres Strait Islander Policy (DATSIP) is the lead agency of Queensland Government for Indigenous affairs and

has administrative responsibility for DOGIT councils (previously these roles were undertaken by the Department of Community Services and Ethnic Affairs, then the Department of Family Services and Aboriginal and Islander Affairs, and then the Department of Families, Youth and Community Care).

DATSIP's administrative responsibility extends to the two peak representative bodies for DOGIT councils: the Island Coordinating Council (ICC) and the Aboriginal Coordinating Council (ACC). These coordinating councils share information and knowledge across the DOGIT councils and also advise government and others about matters affecting the progress, development and well-being of Indigenous people and DOGIT councils.<sup>11</sup>

### **Local Government**

The Department of Local Government and Planning has responsibility for the administration of three Indigenous shire councils under the LGA, along with all other local governments established under this Act.

The Local Government Association of Queensland (LGAQ) is the peak body representing local government in its dealing with government and others. The Aurukun, Mornington and Torres Shire Councils are members of the LGAQ. DOGIT councils are able to become members (if they wish) and councils in Cherbourg, Hopevale, Doomadgee, Kowanyama, Saibai Island, Woorabinda, Wujal Wujal and Yarrabah have taken up membership. The ACC and ICC are also members.<sup>12</sup>

### **Queensland Audit Office**

The Auditor-General of Queensland is responsible for financial compliance audits of all Queensland public-sector entities, including DOGIT councils and Indigenous shire councils.<sup>13</sup> The results of the audits are reported to Parliament,<sup>14</sup> and certified financial statements and reports arising out of the audits are given to councils for tabling at the next council meeting.<sup>15</sup> The financial compliance audits are one of the few (although somewhat controversial) existing measures of Indigenous council performance.

### **Department of the Premier and Cabinet**

The Department of the Premier and Cabinet has become increasingly involved in a wide range of issues affecting Indigenous communities in Queensland. Particular attention has been given to Cape York communities and a Cape York Coordination Unit has recently been established within the Department.

### **Queensland Police Service**

The Queensland Police Service (QPS) is responsible for most of the investigations that have resulted from allegations of fraud and misappropriation made against Indigenous councils. The Fraud Squad is based in Brisbane and generally takes responsibility for dealing with serious fraud matters or those otherwise having a high priority.<sup>16</sup>

### **Funding agencies**

Indigenous councils are usually the main channel for funding to their communities, so a wide range of funding agencies must also be considered important stakeholders. Most funding to Indigenous councils is in the form of grants made by Commonwealth and State Government agencies.

Indigenous councils receive a substantial proportion of State Government funds through the State Government Financial Aid Program, which is administered by DATSIP. This financial assistance is provided in recognition of the lesser ability of Indigenous councils to raise money by levying a general rate on privately owned land in the same way as mainstream local government.<sup>17</sup>

Other principal state funding sources for each of the councils include the Department of Public Works and Housing, the Department of Health, the Department of Local Government and Planning and the Department of Families.

Commonwealth funds are primarily provided by the Aboriginal and Torres Strait Islander Commission (ATSIC). The Commonwealth Grants Commission and other Commonwealth agencies also provide significant funding to some councils.

Other sources of revenue for Indigenous councils may include profitable council-controlled enterprises. In particular, many councils have raised significant funds through the sale of alcohol at a council-run canteen.<sup>18</sup>

## **Summary**

Knowledge of the historical and administrative context in which Indigenous councils operate is vital for an understanding of the challenges that Indigenous councils have faced since their inception, the responses made and the new ways in which councils and government may proceed.

# Chapter 2: Challenges and responses

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## Community Services Acts

Enactment of the CSAs was a significant shift in policy. Its aim was to bring those Indigenous communities to which the legislation applied into line with the rest of the State by granting democratically elected DOGIT councils local government powers. Some potential problems were identified before the enactment of the CSAs, drawing on the lessons already learnt from the pre-existing Aurukun and Mornington shire councils. For example, possible problems with under-training of local people and difficulties in attracting suitable personnel were raised, as were queries about the potential financial accountability of the proposed DOGIT councils.<sup>19</sup> It was also thought that the size of DOGIT councils might not provide adequate representation for all the major groupings within former reserve communities.<sup>20</sup>

While the CSAs contained provisions that paralleled the LGA, there were also significant departures, particularly in relation to financial accountability, and these created tension between DOGIT councils and the Government. For example, the CSAs allowed a greater degree of State Government control and intervention in the operation of the DOGIT councils (for example, by requiring Ministerial approval of budgets) than applied to other local governments.

As a result of these and other issues, there have been a large number of reviews since the creation of Indigenous councils, particularly in relation to the operation and effectiveness of DOGIT councils. The issues identified in the reviews and the responses offered by Government are reviewed in this section. It should be noted that the problems relating to governance and accountability that have been identified since the creation of Indigenous councils are variable across councils and across time.

## Transition period

During the period of transition that followed the enactment of the CSAs, the young DOGIT councils were given significant support, training and resources by the Department of Family Services and

Aboriginal and Islander Affairs. This included the provision of training workshops, secondment of staff for consultation and training, and provision of staff to visit to provide assistance on demand.<sup>21</sup> However, financial compliance audits revealed no discernible improvement in the quality of financial management.

In March 1989 the Government responded, at the direction of the then Premier and Treasurer, by establishing an Interdepartmental Task Force to investigate and make recommendations about the poor financial administration of councils.<sup>22</sup> A brief investigation was conducted by the Interdepartmental Task Force. Their recommendations included that:<sup>23</sup>

- 1 An independent organisation conduct a further training needs analysis for elected members and administrative staff of DOGIT councils. Based on this assessment, training and related resource materials should be developed for council clerks/CEOs and councillors.
- 2 A network be developed among council clerks/CEOs to help them share knowledge and to promote greater recognition of the importance of the position.
- 3 The legislation be amended to provide for a minimum standard of entry for council clerks/CEOs.

These recommendations gave early recognition to two key issues for Indigenous councils: the importance of the role of the council clerk/CEO and the need for appropriate training.

## Parliamentary Committee of Public Accounts

In 1990, the Auditor-General in his report relating to the annual financial and compliance audits of the DOGIT councils noted:

... the overall standard of the Councils' administrative and financial functions gives cause for some concern with the need for audit to issue qualified opinions each year, for a substantial proportion of the accounts involved.

The position in relation to the various qualifications issued over the years is that their content belies the real extent of the many and varied problems encountered by audit ...<sup>24</sup>

Because of these and other comments made by the Auditor-General about the lack of improvement in the financial accountability of DOGIT councils over the transition period, the Parliamentary Committee of Public Accounts resolved in May 1990 to examine and inquire into the financial administration of DOGIT councils. In October 1990, the Parliamentary Committee of Public Accounts published its first report dealing with the Committee's findings and recommendations concerning the regulatory framework of the financial administration of the councils.<sup>25</sup> In February 1991, the Committee published its second report dealing with effectiveness of councils, support for councils and training.

The Committee was critical of the administration of the transition process, which it described as characterised by 'lack of preparation and planning, undue haste and ad hoc reactions to unfavourable audit reports'.<sup>26</sup> In this respect the Committee noted:

... the administration of the program increasingly became audit report driven, with success measured by the annual percentage of unqualified audits and resources allocated accordingly. The inherent inconsistency of this approach is amplified by the fact that much of the work in preparing many Councils' books for audit was (and is) being done by Departmental staff.<sup>27</sup>

The Committee noted that there appeared to have been a failure to understand the magnitude of the transformation that the CSAs required of the councils in financial administration functions and responsibilities.<sup>28</sup> It also observed that Aboriginal councils and individual councillors often 'lead an extremely fraught and in many cases demoralised existence'.<sup>29</sup>

The Committee's first report recommended that inappropriate restrictions that had been imposed on the autonomy and independence of DOGIT councils by the CSAs, and that had not applied to other local governments, should be removed.<sup>30</sup> It also recommended that consideration be given to implementing legislation to deal with conflicts of interest, because such conflicts often made council decision-making problematic within communities.<sup>31</sup>

As a result of these recommendations, and to improve accountability by providing for a greater degree of self-management, the Queensland Government amended the legislation in 1990 to

remove some of the overly paternalistic reach of Government into the budgeting and financial management of Councils.<sup>32</sup> For example, provisions requiring that the councils' budgets be approved by the Minister were removed and replaced, to ensure that budgetary responsibility rested with councils themselves.<sup>33</sup> The problem of conflicts of interest was not dealt with through these legislative amendments.

The Committee's second report identified problems caused by the complexity of the bureaucratic and administrative system, including the multiplicity of agencies and programs under which councils operated, and the difficulty of recruiting appropriate council staff.<sup>34</sup> The Committee identified three things that it saw as determining the success or otherwise of the financial accountability of DOGIT councils:

- 1 The effectiveness of the council structure and processes in the financial accountability process, as distinct from the ability of councils to meet the technical requirements of audit imposed from outside.
- 2 The need for enhanced Aboriginal and Islander controlled support for councils, especially in carrying out the technical aspects of financial accountability.
- 3 The need for culturally attuned training for financial administration skills development within communities.<sup>35</sup>

The Committee's view was that the most fundamental issue relating to the effectiveness of DOGIT councils was that their structure and processes for financial accountability were imposed from outside, were culturally inappropriate, and limited the councils' ability to be accountable representative bodies. The Committee recommended that the Government negotiate with DOGIT communities to develop more appropriate structures and constitutions for representative councils in each community.<sup>36</sup>

## Legislation Review Committee

In August 1990, the Queensland Cabinet approved the establishment of a Legislation Review Committee, composed of five Indigenous members, to review the legislative regime applying to Indigenous councils. The Committee was tasked with recommending a new legislative framework consistent with government policy for Aboriginal and Torres Strait Islander communities to control and manage their own destinies.<sup>37</sup>



This Committee made a number of recommendations, including that new legislation be enacted to allow communities to develop their own appropriate governing structures and decision-making processes. It was recommended that community plans be developed by Indigenous communities and involve the negotiation of agreements with government, setting out the rights and responsibilities of both parties. These community plans were said to be vital to implementation of new legislation.<sup>38</sup>

The review reinforced those previous to it in finding that training provided to Indigenous councils was inadequate. It recommended that resources ought to be provided to ACC and ICC, or other Indigenous organisations, to enable them to provide the support services and training required.<sup>39</sup> Specific recommendations were also made about the financial and administrative provisions applying to DOGIT councils. These included that the role of council clerk/CEO and basic eligibility requirements for employment in that position should be set out in the legislation. Additionally, it was recommended that measures designed to ‘enhance internal accountability’ should be introduced, such as requiring councils to prepare annual reports that incorporate audit results.<sup>40</sup>

## Financial Accountability Improvement Program

A new approach resulted from the criticisms of training provided to Indigenous councils made by each of the reviews conducted, the continuing negative audit results and the increasing reliance on departmental support by DOGIT councils. The change was a shift away from the strategy employed from the mid 1980s to the early 1990s whereby departmental personnel provided on-site support and training to councils. Instead, structured training modules were to be developed for formal accreditation and direct assistance from departmental personnel was only to be provided upon request.<sup>41</sup>

The major strategy approved by Government from early 1994 — which is currently being reassessed — was to resource those councils who most needed to recruit key finance personnel and to engage professional support and training, either directly or through the ACC or the ICC.<sup>42</sup> Thus, since 1994, DATSIP and its immediate predecessor have administered a Financial Accountability Improvement Program funded in the order of \$1–2 million per year. The program has established a

Financial Accountability Steering Committee and employed thirteen Financial Management Advisers/Community Services Officers across the State to help the DOGIT councils meet financial accountability requirements.<sup>43</sup> This program has also seen the Department provide funds to the ACC and the ICC to establish an internal audit service for councils and employ officers to assist councils in the management of council enterprises.<sup>44</sup> More recently, DATSIP has provided direct funding from this program to councils so that they can procure internal audit and other accounting services.<sup>45</sup>

## Alternative Governing Structures Program

The central recommendations of the Parliamentary Committee of Public Accounts and the Legislation Review Committee relating to the development of alternative governing structures have not been implemented by the Queensland Government insofar as new legislation has not been enacted to provide for these structures. However, the recommendations did result in a program, called the Alternative Governing Structures Program, being funded (administered by DATSIP). The program was intended to provide funds to enable Indigenous communities to plan and develop alternative governing structures or processes for the community to make decisions about its affairs.<sup>46</sup> The program was based on principles emphasising:

- governing structures and processes developed by Indigenous people themselves
- program flexibility with no predetermined outcomes or processes
- support for participating communities throughout planning processes
- maximising of community participation
- promotion of the program and provision of assistance in the form of resource kits and assistance with community-based planning activities.<sup>47</sup>

After a supporting research project and a pilot program in Aurukun from 1993, the Alternative Governing Structures Program was implemented statewide from mid-1995 and operated until mid-1998. However, the program appears to have had only limited success, resulting in the development of very few alternative governing structures. Michael Limerick’s analysis suggests that the limited impact of the program may have been caused by the

following interrelated factors:

- the lack of interest shown in developing alternative governing structures by DOGIT communities themselves
- the issue of governing structures being perhaps too esoteric or remote from everyday concerns facing Indigenous communities
- the apparent lack of awareness of governance issues in Indigenous communities, including the common problem in DOGIT communities of few people having an understanding of the current council structures or the alternative models of government that Indigenous communities could consider
- the limited expert assistance provided to communities in their efforts to develop alternative governing structures.<sup>48</sup>

It is notable that, despite several reviews highlighting culturally inappropriate structures and processes as being problematic for Indigenous councils, the only concerted effort to facilitate the development of more appropriate governing structures within communities proved to be ineffective.

## The Six Councils Report

During the development of the Alternative Governing Structures Program, the Criminal Justice Commission (now the Crime and Misconduct Commission, or CMC) investigated allegations about six DOGIT councils. The investigations culminated in a report published in 1994, entitled *Report on an Investigation Into Complaints Against Six Aboriginal and Island Councils (the Six Councils Report)*.<sup>49</sup> The Six Councils Report found that most of the allegations investigated by the Commission involved conflicts of interest. It also found that many problems were due to the lack of adequate minute-taking and poor general record-keeping, resulting in an absence of accountability mechanisms for the community and others. In respect of each of these issues, the CJC noted that there were no compelling reasons why minimum requirements, such as those in the LGA, should not apply to DOGIT councils. The report also noted the lack of effective sanctions for councils for failure to comply with requirements (even though offence provisions exist in the CSAs, allowing prosecution for breaches).

The Six Councils Report made the following recommendations:

- 1 That the Director-General of the departmental predecessor to DATSIP was to take immediate steps (including, if necessary, prosecution proceedings) to ensure that each council complied with its duty under the CSAs to produce a Financial and Administration Procedures Manual.
- 2 That the CSAs be amended to require that councils:
  - hold regular meetings, to be open to the public except in particular circumstances
  - keep minutes of council meetings, which must be signed by responsible officers named in the legislation and adopted at the next council meeting
  - make copies of minutes of council meetings available for public inspection.
- 3 That the CSAs be amended to deal with conflicts of interest by providing that:
  - councils must keep a register of all pecuniary interest declarations by councillors
  - council employees must declare in writing to the council clerk/CEO any pecuniary interest that they have in any matter or contract before the council
  - councillors who are found guilty of failing to declare a pecuniary interest are excluded from office in terms similar to the provisions of the LGA.<sup>50</sup>

All three recommendations were implemented to some degree. With respect to recommendation 1, DATSIP developed a comprehensive model manual on administration and financial procedures for councils. By the time the CJC's recommendations were published, amendments had been made to the CSAs requiring councillors to disclose pecuniary interests at meetings. Recommendations 2 and 3 were otherwise implemented, at least in part, by amendments incorporated into the 1998 reprint of the *Community Services (Aborigines) Regulation* and the *Community Services (Torres Strait) Regulation*. It should be noted, however, that amendments implementing recommendation 3, requiring that councillors' declarations of pecuniary interests at council meetings be recorded in a register, did not extend to council employees.

## Queensland Public Accounts Committee and the Commonwealth Joint Committee of Public Accounts

In 1997, the Queensland Public Accounts Committee and the Commonwealth Joint Committee of Public Accounts conducted a joint review of the financial reporting requirements for Indigenous councils. The review was prompted by the Auditor-General continuing to report shortcomings in the financial administration of DOGIT councils from 1994 to 1996. Like those considering the matter previously, the Committees noted that the issues are 'complicated because the local government model fails to take account of the traditional values and cultures of indigenous communities'.<sup>51</sup>

The joint inquiry observed that the lack of coordinated assistance to Indigenous councils by government departments and programs across State and Commonwealth jurisdictions contributes to accountability difficulties. The Committees identified inadequacies in reporting processes, including reliance on financial compliance auditing, by which government seeks to ensure accountability. The Committees were also critical of the assistance provided to councils by both levels of government. They stressed the need for training to be directed at 'upskilling the entire community population so that they become increasingly aware, as responsible persons, of what it means to be a responsible community resident'.<sup>52</sup>

The Committees' recommendations can be generally described as falling within three categories:

- 1 *Rationalising of accountability requirements.* The Committees recommended improving coordination across government, for example by standardising application and acquittal processes across all funds provided to councils.
- 2 *Improving financial systems and timeliness.* The Committees suggested that more emphasis should be placed by funding agencies on the real benefits being obtained 'on the ground', and that this might not be achieved through current financial compliance reporting but perhaps through outcome or performance reporting.<sup>53</sup>
- 3 *Assisting councils.* Recommendations were made about improving the coordination of training and its delivery to councils.<sup>54</sup> The importance of providing incentives for good performance was discussed, as were some possibilities for penalising poor performance other than simply appointing a grants controller or administrator.<sup>55</sup>

To date, there has been no systematic implementation of these recommendations.<sup>56</sup>

## Reviews of ACC and DATSIP

In 1999, the Queensland Government funded a further review of the Community Services (Aborigines) Act, which was conducted by the ACC. The ACC held a series of consultations with Aboriginal councils and provided a report on the review to the Minister for Aboriginal and Torres Strait Islander Policy in June 2001. The review focused on the need for removal of any remaining vestiges of the protectionist regimes from the CSAs and the bringing into line of Aboriginal DOGIT councils with those councils delivering local government services pursuant to the LGA.<sup>57</sup>

DATSIP considered the report of the ACC review as part of its own ongoing review of the CSAs and associated regulations. DATSIP indicated that the review of the CSAs would be likely to produce a new Bill by early 2001. However, this timetable was affected by the publication of the Cape York Justice Study and its recommendations relating to community governance.<sup>58</sup> As part of the DATSIP review, new accounting standards, endorsed by the Auditor-General, have been made.<sup>59</sup> These include further guidelines on issues such as loan processes, regulation of personal loans, granting of travel allowances, declaration of pecuniary interest, conflict of interest, asset management and internal audit.

## Crime and Misconduct Commission complaints data

Official misconduct in Indigenous councils has warranted the CMC's attention in the past and continues to be an issue. Between 1991–92 and 2000–01 there was an upward trend in the number of complaints to the CMC concerning DOGIT councils. The content of the allegations often related, at least in part, to financial administration and management.

It should be noted, however, that few complaints made to the CMC regarding official misconduct in Indigenous councils have proceeded to investigation, and over the period 1999–2000 to 2000–01 none of the complaints investigated by the CMC were substantiated.<sup>60</sup> Poor record-keeping practices often add to the difficulties of substantiating allegations that are investigated.



## Queensland Audit Office

The Auditor-General's most recent review of the financial performance of the DOGIT councils in 1999–2000 indicates a decline in the performance of the councils generally (although before this period there had been an improvement in audit results over four years). The number of councils receiving qualified audit opinions increased for the second year running, and the number of councils for which no audit opinion could be reached also increased. The Auditor-General concludes: 'This decline in the level of performance indicates that the strategies employed in recent years to improve financial reporting and accountability may require review.'<sup>61</sup>

Not surprisingly, the Auditor-General's observations arising from the audits are consistent with the types of allegations received by the CMC.

The Auditor-General noted that the most significant issues were the following:

- Corporate governance — failures to hold the required number of council meetings; failures to maintain or approve proper minutes of council meetings; lack of appropriate presentation and review of financial information at council meetings; non-compliance with prescribed budgetary requirements.
- Grants and cash management — use of grant funding for non-approved purposes; inadequate cash-management practices.
- Debtors — inadequate and ineffective debtor systems; high value of council debts owed by current and former councillors.
- Enterprises — 43 per cent of DOGIT council enterprises had net losses and some had inadequate financial controls.
- Operation of agency arrangements, for example Australia Post, Commonwealth Bank — cash losses and internal control deficiencies.
- Other internal control deficiencies — internal control deficiencies relating to receipting and banking functions, payroll, leave accruals, expenditure, bank reconciliations and property, plant and equipment stocktakes.<sup>62</sup>

The Auditor-General's comments indicate that there are recurring financial administration and accountability difficulties for a number of Indigenous councils.

## Cape York Justice Study

The November 2001 report of the Cape York Justice Study, led by Tony Fitzgerald, focused primarily on issues of breaches of the law, alcohol and substance abuse, and violence in Cape York Indigenous communities. The report also highlighted issues related to community governance, with particular reference to accountability. It clearly echoed previous reports and commentators in identifying the main issues impacting on governance of Indigenous communities by Indigenous councils.

The study found that councils lack legitimacy as representative bodies. It argued that legitimacy, representativeness and accountability are interconnected — that current councils lack legitimacy as representative bodies and that poor governance is the result. The study focused on the need to negotiate an appropriate 'definition of what accountability means' for Indigenous communities in Cape York, as the current regime entails:

an inherent dysfunction between family-based social norms, family loyalties and community networks and mainstream local authority governance arrangements that manifest themselves through inappropriate and unintended decisions, funding allocations, and representation perceived to be focused in a partisan rather than impartial whole of community manner.<sup>63</sup>

The study found that accountability should be assessed more broadly than is currently provided by financial compliance audits conducted by the Queensland Audit Office. It argued that comprehensive community-planning exercises are necessary to develop new governing structures and set long-term goals.

The study was critical of the breadth of responsibilities shouldered by Indigenous councils. They are said to have 59 areas of functional responsibility, compared with 34 for mainstream local governments. The study also identified a tendency toward the concentration of resources and responsibilities. It noted that statutory bodies such as Indigenous councils become the conduit for all assets that enter the community, so that membership of these organisations results in control over the bulk of community assets.

In relation to the capacity of Indigenous councils to govern effectively, the study identified issues of staffing (such as lack of suitable council clerk/CEOs and qualified accountants, and the general variable level of staff skills), lack of access to professional

support services, shortfalls in funding (it stated that current levels of funding do not meet the Government's independently commissioned formula for calculating the cost of delivering basic government services), and training needs (in particular, it identified the lack of training for elected councillors).

Accordingly, in relation to governance, the study recommended that:

- Government work to achieve better coordination of delivery of services to communities — including streamlining the reporting requirements.
- The training and mentoring that is provided to Indigenous councils in relation to financial administration and management be improved.

- Legislative reform be considered to allow communities to adopt governance arrangements that are more 'truly representative' of the many diverse clans and groups in the communities, and 'consistent with customary law and traditional authority structures'.<sup>64</sup>
- Performance auditing be conducted to provide a more accurate picture of councils' accountability.

The Queensland Government's response to the Cape York Justice Study included the announcement of a further review of the system of Indigenous community governance in Queensland. The review is to develop a Green Paper for Cabinet consideration and prepare a report with recommendations for improvement of the system currently provided under the CSAs by March 2003.<sup>65</sup>

# Chapter 3: Discussion

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## Some key themes

Governance issues for Indigenous communities are complex and there is no ‘one size fits all’ solution. There are, however, a number of key themes that consistently emerge from the various reviews that have been conducted in the past. These include cultural appropriateness and the related aspects of representation and legitimacy, transparency and accountability.

### Cultural appropriateness

The cultural inappropriateness of Indigenous council structures and decision-making processes has consistently been identified as a factor contributing to problems in governance. Despite the regularity with which this is highlighted in reviews and investigations, the Government’s most concerted effort to enable Indigenous communities to develop more culturally appropriate structures and decision-making processes (the Alternative Governing Structures Program) achieved less than was expected.

Issues relating to cultural appropriateness that either assist or hinder good governance require closer consideration before further reforms of Indigenous governance structures are made. For example, the discussion of training issues provided in a number of the review reports raises doubts that the majority of training delivered to date has been culturally appropriate. There is a clear need for development and delivery of training to take into account appropriate content and communication, learning styles and language.<sup>66</sup> Cultural appropriateness in this sense is clearly vital to the effectiveness of training.

However, more complex considerations arise from the calls for cultural appropriateness in respect of other recurring issues, such as:

- representation and legitimacy
- transparency requirements and Indigenous approaches to information, and
- concepts of accountability.

### Representation and legitimacy

Reviews have consistently identified that Indigenous council structures in Queensland are ‘culturally inappropriate’ in that they provide inadequate representation and therefore lack legitimacy. The Cape York Justice Study proposed reform to allow communities to develop by agreement ‘truly representative’ structures that are ‘more consistent with customary law and traditional authority structures’, which should lead to more ordered self-managed and self-regulated communities.<sup>67</sup> International empirical research provides support for such arguments. The Harvard Project on American Indian Economic Development in the United States demonstrated that good governance of communities in Native American nations depends on several factors, one of which is that effective governing institutions must have legitimacy and ‘cultural match’. That is, governing institutions must match contemporary Indigenous notions of how authority should be organised and exercised and ‘work with indigenous law and practice’.<sup>68</sup>

The Cape York Justice Study, in examining issues of representation and legitimacy, identified the difficulties created by the concentration of power and resources in councils. Such concentration was said to add to ‘divisiveness and factionalism in ways that can, on one hand, hamstring decision making and, on the other, produce a select group of decision makers who may lack broad community support’. The exclusion of women from formal community governance structures was particularly emphasised.<sup>69</sup>

The pattern of complaints of official misconduct received by the CMC relating to particular Indigenous communities in Queensland can sometimes illustrate the highly factionalised nature of communities and the tendency toward concentration of responsibilities and resources amongst certain factions at certain times. This would appear to be particularly the case on former reserve communities.

However, calls for reforms to create governance arrangements that are ‘truly representative’, ‘culturally appropriate’ or ‘consistent with customary law and traditional authority’ must be carefully

considered if they are not to become simplistic and unhelpful. Communities for which Indigenous councils exist in Queensland are large artificial groupings of peoples relocated from different parts of the State. As a consequence of these ‘unnatural’ origins, many of these Indigenous communities continually struggle to reconcile tensions deriving from the forced co-existence of a complex web of diverse social and cultural values, beliefs and relationships.<sup>70</sup> In these circumstances, what constitutes ‘law and custom’ or ‘tradition’ may be highly disputed.<sup>71</sup>

It has been noted that in Indigenous communities, legitimacy in regard to representativeness may be dependent on context and be fluid from one issue to the next. That is, rights within governance domains are ‘typically based more on having (or asserting) particular interests and qualifications — membership of a particular family or descent line, land ownership, seniority, knowledge, ritual authority, and so forth’.<sup>72</sup> Legitimacy in relation to representativeness is not based on the philosophies underlying universal suffrage or the principles of equity supposedly underlying service delivery.<sup>73</sup> Consequently, it may be difficult, if not impossible, to incorporate all the divergent interests in many Indigenous communities into a governance structure without that structure becoming large and unwieldy.<sup>74</sup>

Representativeness and legitimacy may be improved by firmly embedding principles of equity and fairness in service delivery into governance structures and processes. It may be in this way that decision-making difficulties created by family-based social norms and family loyalties, which were noted in the Cape York Justice Study, can be most effectively countered. Drawing on principles derived from the general Australian political and administrative domain may be a vital part of an entirely ‘culturally appropriate’ response to the particular circumstances, composition and history of Indigenous communities in Queensland.

### **Transparency requirements and Indigenous approaches to information**

The CMC has previously observed that, in some Indigenous communities where there is little or no information about council proceedings available, rumours of corruption and nepotism are unchecked and grow quickly.<sup>75</sup> In one such circumstance before the Commission, at least one member of the council involved attempted to use ‘culture and tradition’ or ‘way of life’ to justify the lack of openness with which

council administration and decision-making had been carried out.<sup>76</sup>

Key aspects of good governance are transparency and the free flow of information. However, in Aboriginal societies information is not necessarily public and freely available to all. Cultural values can markedly affect the transparency and availability of information in Indigenous organisations. Ritual information and other ‘private’ forms of information in Indigenous societies tend to be highly regulated and controlled according to factors such as age, kinship, descent categories, locality and gender. Information control may arise in ‘traditional’ Aboriginal cultures because in an oral society information is inseparable from its author. Thus authorship takes on a privileged status whereby a complex system of information constraints operates. There may be differences among rights to know something, to hear something and to speak of it. Violation of these rules may amount to theft. ‘Even in mundane matters, it may be wrong to speak of (or for) someone else’s country, dreaming, or personal business unless given explicit licence to do so.’<sup>77</sup> While it cannot be assumed that the same principles of information control are applied to administrative information in councils, Indigenous approaches to information may sometimes be at odds with the values of openness and transparency that are vital to good governance.

### **‘Accountability’**

The very meaning of ‘accountability’ and the suitability of financial compliance auditing for assessing the effectiveness and accountability of Indigenous councils in Queensland have been called into question throughout the history of the councils.<sup>78</sup> At times it appears that Indigenous and ‘mainstream’ domains are characterised by entirely incompatible principles.

Although financial compliance auditing does not provide a complete picture of an organisation’s accountability, there appears to be a relationship between Indigenous councils receiving poor audit results and also being the subject of complaints to the CMC. Financial compliance audit results themselves sometimes appear to be of little consequence in Indigenous communities. Information about the results is not widely distributed and appears to be poorly understood.

It is important to acknowledge that Indigenous values regarding reciprocity and kinship obligations may contribute to problems arising in areas such as

conflict of interest, loans and funeral expenses, and that this may affect financial compliance audit results. There are other issues, however, such as the use of official resources for personal purposes, that seem more likely to arise as a result of straightforward self-interest rather than from any particular Indigenous cultural values.

The CMC's complaints data reveal that the greatest proportion of complaints made against DOGIT councils are made by members of their constituent communities. While this may sometimes be the result of politics and factionalism, it tends to indicate that council constituents are also dissatisfied with their council's standards of governance and accountability.

Further, the receipt of complaints by the CMC often appears to follow visits by the Commission's Indigenous Liaison Officers to communities to give presentations about the Commission and its role. This suggests that matters falling within the CMC's jurisdiction are ordinarily under reported.

Finally, it has been noted that allegations of official misconduct often appear to revolve around the behaviour or activities of one councillor or council employee, which suggests that cultural issues in respect of the interpretation of accountability are not the major factor in relation to issues of official misconduct as reported to the Commission.

# Chapter 4: Where to from here?

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Each of the aspects of ‘cultural appropriateness’ discussed — representation and legitimacy, transparency and Indigenous approaches to information, and accountability — illustrates that, at least in certain respects, there must be doubt about the repeated claim that governance problems besetting Indigenous councils can be solved by implementing ‘culturally appropriate’ structures and processes. It is more likely that effective changes to governance structures or processes will derive from a creative mix of principles drawn from both Indigenous and non-Indigenous domains, and will not always be ‘consistent with customary law and traditional authority structures’.

In considering this point, it is important to remember that the various elements of good governance are inextricably interconnected. Case studies undertaken for the review of the *Aboriginal Councils and Associations Act 1976* (Cwlth) in the mid-1990s suggested that Indigenous organisations with broadly representative structures, and procedures to maximise equity in service delivery, participation in decision-making, and accountability to their constituencies in achieving their objectives, had also achieved at least reasonable fiscal accountability. Conversely, those organisations with deficient or minimal mechanisms to ensure such principles were more likely to demonstrate poor financial accountability. That is, organisations that are accountable to their members or constituencies are more likely to be both effective in what they undertake and financially accountable for what they do.<sup>79</sup>

For the foreseeable future, Government will continue to have an important role to play in fostering good governance in Indigenous communities. Thus it is important that findings from the various reviews and reports relating to Indigenous governance in Queensland are taken into account. There are also useful guidelines about the best way forward to be gleaned from international development research, particularly the Harvard Project on American Indian Economic Development. Some changes could be made effectively and swiftly by Government; others may require a more fundamental rethinking of Government policy. A well-coordinated multi-agency,

multi-strategy approach — clearly ‘spelt out’ in terms of a strategic vision — is needed if Indigenous councils are to be assisted rather than hindered by Government interventions.

## Funding for strategic vision

The Cape York Justice Study was highly critical of existing funding arrangements by which Government provides funds to community councils. The report identified such arrangements as being complex and highly fragmented. It stated that competing and conflicting priorities at community level result from multiple uncoordinated and spasmodic contacts with Government officials who are pursuing particular initiatives decided by Government rather than working according to priorities agreed with particular communities.<sup>80</sup>

There is little doubt that current funding arrangements hamper the ability of councils to undertake proper planning, adopt a strategic vision, and engage in community-building processes. Yet both the Legislation Review Committee report and the Cape York Justice Study identified community planning as essential to good governance. International empirical research also clearly shows that successful governance requires a well-developed and coherent strategic vision.<sup>81</sup>

As areas of corporate governance have been identified in various reviews and reports as being problematic for some Indigenous councils, community planning could also include planning in respect of corporate governance. From the CMC perspective, it is desirable that community plans take account of the need for governing organisations to have a corporate governance plan or integrity regime. Such a plan or regime could be developed with reference to the following:

- fostering commitment and determining responsibility within councils for development, implementation and maintenance of the corporate governance plan or integrity development regime
- developing strategic plans
- developing a code of conduct, and policies and



procedures (especially in regard to difficult or high-risk areas such as allocation of housing and use of council resources)

- developing improved accountability structures, including structures that allow for an appropriate degree of separation of duties and powers between councillors and council employees
- developing clear reporting and disciplinary processes to overcome existing deficiencies
- creating a safe reporting environment so that intimidation and cultural obligations do not prevent action
- implementing a risk-assessment process
- developing awareness and competencies for councillors and staff
- developing awareness for the community.

Such corporate governance plans or integrity regimes have recently become a focus for a wide variety of non-Indigenous organisations. While the basic features and principles of developing such plans or regimes would remain largely the same, they would clearly need to be developed and adapted to suit the needs of particular Indigenous communities. The implementation of corporate governance plans or integrity regimes, codes of conduct, policies and procedures, and so on, will help provide clearly defined standards developed by the governing organisations themselves. They have the potential to acknowledge particular local circumstances, meet language requirements and have the right degree of complexity for the circumstances of small community-based organisations.

## **The need for participation and information-sharing**

Research carried out in the field of international development clearly demonstrates that participation is a key element of good governance and concomitant development. The Cape York Justice Study highlighted the need for greater community participation in governance and decision-making.<sup>82</sup> There are clear indicators, including the response that the Alternative Governing Structures Program received in Indigenous communities, and information obtained through complaints and investigations, that in many ways participation in governance by Indigenous communities in Queensland could be improved. The promotion of greater levels of community participation in governance would undoubtedly assist in respect of each of the issues

discussed above — representation and legitimacy, transparency and accountability.

Although there are legislative protections ensuring some basic level of participation — for example, council meetings are required to be open and records of council decisions must be made available — members of the community must be made aware of where and how to get information relevant to governance of their community. Increasing participation might be achieved through dissemination of information, consultation and negotiation as well as direct participation in decision-making. Government, or community governance structures themselves, could adopt a communications strategy, and increase participation through the creative use of liaison officers, radio advertisements, forums or newsletters. Councils should devise such strategies in consultation with community members to ensure that the most effective dissemination will result.

The development of guidelines setting minimum standards of participation, established by government and/or by Indigenous communities, appears useful. Through such mechanisms, provision could also be made for greater or guaranteed representation of marginalised groups, such as women.

## **The need for enforcement and recognition of success**

The low likelihood of disclosure of, or punishment for, breaching accountability requirements is widely known to be a factor that may contribute to poor governance and corruption.<sup>83</sup> In Queensland, in local government generally and in Indigenous councils in particular, the reality is that there have been few effective sanctions applied for inappropriate, unethical or criminal behaviour.

The CSAs themselves provide misdirected and unenforceable penalty provisions, which to date have never been used. The Queensland Police Service has successfully prosecuted a limited number of criminal offences relating to Indigenous councillors and council employees. Only a small proportion of allegations of unlawful behaviour of councillors or council employees are investigated, often because the complaints are not amenable to productive investigation. The difficulty of obtaining prosecutions relative to the number of complaints made against Indigenous councils often arises from the poor record-keeping of the council involved, and the

logistics of conducting investigations, particularly in remote areas. Complaints of unlawful behaviour relating to governance in Indigenous communities may also be deemed a low priority by regional or local police, who depend on and are attempting to foster cooperative relationships with the council and the community. As well, the need to prioritise investigations of more prevalent and constant crimes against the person, over the very difficult-to-prosecute fraud and dishonesty-type offences, contributes to the low investigation rate.

Both the Cape York Justice Study and the review of the Queensland Public Accounts Committee and the Commonwealth Joint Committee of Public Accounts gave some consideration to proposals for a system of incentives for good performance and penalties for poor performance or maladministration. The proposals were essentially limited to linking funding and reporting arrangements to councils' performance. As has been noted, the danger of these proposals is that innocent members of communities might be made to suffer.

Punishment for unlawful behaviour relating to governance, be it in relation to the Indigenous or the non-Indigenous arena, must involve both community condemnation and timely and appropriate imposition of penalties. Community awareness-raising and legislative changes are therefore required. Hand in hand with such measures, however, acknowledgement and reward for good performance would also be very useful. Integral to the Harvard Project on American Indian Economic Development is the identification, celebration and sharing of outstanding examples of governance through an awards scheme. Queensland's Indigenous communities could likewise benefit from such a scheme. The ICC and ACC could also play an important role in disseminating information to community leaders and senior council employees about what worked well and what did not.

## Staff and training

The crucial importance of councils being able to attract and retain well-qualified, competent council clerks/CEOs has been highlighted many times. It may be that Government needs to offer greater assistance in terms of recruiting and training (for council clerks/CEOs and all other levels of council staff), as these problems should not be insurmountable.

The deficiencies in the training provided have been repeatedly identified and significant resources are in

fact already devoted to training. As part of a broad 'training' agenda, pre-election community-wide strategies are needed to raise awareness of the importance of council. These initiatives require a specific focus on providing information useful to prospective candidates, in order to attract people who have a clear understanding of the role and responsibilities of being a councillor. Follow-up induction training for those elected is crucial. DATSIP has identified and is targeting some of these gaps subsequent to the Cape York Justice Study and is assuming greater direct responsibility for training, rather than devolving a significant proportion of this responsibility to the ACC and the ICC.

## Assessment of governing structures

The continuing criticisms of financial compliance auditing as providing an incomplete or inaccurate assessment of council performance could be usefully countered by measures increasing internal accountability of the councils to their communities. Increasing internal accountability will in turn depend on increasing representation, transparency, openness and participation.

If performance indicators are to be established so that councils may be assessed other than by financial compliance audit results, measures ought to include whether the policies and programs of Indigenous governing organisations encourage participation of the community in the governing process. For example, measures could consider:

- whether there are processes in place that allow for participation or consultation
- the level of engagement of communities in governing processes
- the level of awareness of staff and councillors of the importance of participation, and
- the level of gender sensitivity in the participation process.

Other important factors to assess include:

- to what extent the grievances and complaints of community members are given heed by the governing body
- examples of demonstrated accountability by that body, and
- indicators of strategic vision.



## Concluding remarks

The various reviews conducted and reports provided over the life of Indigenous councils in Queensland identify a challenging array of problems to be confronted. Many of the issues identified are similar to those being dealt with by local government and community organisations more broadly, while others are specific to Indigenous communities.

The strategies to be implemented in relation to promoting good governance in Indigenous communities in Queensland are crucial, in that good governance is likely to be a prerequisite for progress to be achieved in other important areas such as health, safety and development. This reality provides pressing policy, ethical and financial incentives for developing a coordinated approach to all aspects of governance and accountability involving community members, organisations and government alike.

As the elements of good governance are inextricably interlinked, strategies to improve governance will not make an impact if they are one-dimensional or formulated by one agency without regard for the perspectives and initiatives of others. This has too often been the case in the past. A well-coordinated multi-agency, multi-dimensional strategy — which

the communities and governing organisations themselves are able to support and in which they have confidence — is vital.

There must be a shift in focus beyond the identification of problems and repeated calls for the same solutions — including the generalised call for ‘culturally appropriate’ solutions. Indigenous communities in Queensland must create good governance by drawing on both Indigenous tradition and culture, and principles derived from the general Australian political and administrative domain.

What is required of government is active engagement within each community to identify steps to assist good governance, including the promotion of greater awareness and involvement across the community in relation to governance issues, and the increased involvement of women. There are many positive examples of governance occurring in Indigenous communities throughout Queensland in the face of adverse circumstances. These need to be publicly celebrated and acknowledged, both to balance the negative accounts of Indigenous community governance that often receive media attention, and also to facilitate information flow and learning — both within communities and between them.

# Endnotes

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## Background

- 1 T. Fitzgerald, *Cape York Justice Study*, vols 1, 2 & 3, November 2001.
- 2 Ibid., vol. 1, p. 36.
- 3 See Reconciliation Australia, *The Importance of Indigenous Governance and Its Relationship to Social and Economic Development*, April 2002, <http://www.reconciliationaustralia.org>; Institute on Governance, *Understanding Governance in Strong Aboriginal Communities, Phase One: Principles and Best Practice From the Literature*, 12 October 1999, <http://www.iog.ca/publications>; World Bank, *Assessing Aid: What Works, What Doesn't, and Why*, Oxford University Press, New York, 1998, pp. 33–35.
- 4 Doomadgee, Lockhart River, Napranum, Palm Island, Umagico, Cherbourg, Hope Vale, Kowanyama, Pormpuraaw, Woorabinda, Wujal Wujal, Injinoo, Mapoon, New Mapoon and Yarrabah.
- 5 Boigu, Darnley, Dauan, Hammond, Mabuig, Murray, Saibai, Stephen, Badu, Bamaga, Coconut, Kubin, Seisia, St Pauls, Sue, Yam and Yorke.
- 6 DOGITs were granted pursuant to the *Land Act 1962* (Qld). Some of these tenures have now been converted to freehold title pursuant to the *Aboriginal Land Act 1991* (Qld).
- 7 Community Services (Aborigines) Regulation 1998 and Community Services (Torres Strait) Regulation 1998.
- 8 Issued pursuant to s. 27B of the Community Services (Aborigines) Act and s. 25B of the Community Services (Torres Strait) Act. Note that the Aboriginal Council Accounting Standards and Island Council Accounting Standards issued by the Minister pursuant to the Regulations commencing 1 July 1991 were not legally enforceable. The standards were still considered a useful guide to the standards for accounting to which councils should adhere in order to ensure proper financial management (see, for example, Queensland Audit Office, *Audit Report No. 3 2000–2001: Auditor-General's Report to Parliament, Results of Audits Performed for 1999–2000 Generally Completed as at 31 May 2001*, 2001, p. 55). New standards, the Community Services (Aboriginal Council) Accounting Standard 2002 and the Community Services (Island Council) Accounting Standard 2002, were made by the Minister as subordinate legislation on 16 May 2002 and notified in the Gazette on 7 June 2002.
- 9 s. 25 of the Community Services (Aborigines) Act and s. 23 of the Community Services (Torres Strait) Act.
- 10 s. 25(2) of the Community Services (Aborigines) Act and s. 23(2) of the Community Services (Torres Strait) Act.
- 11 s. 46 of the Community Services (Torres Strait) Act and s. 48 of the Community Services (Aborigines) Act.
- 12 LGAQ, *Agenda and Proceedings, 2001 Annual Conference LGAQ*, September 2001, p. 83.
- 13 *Financial Administration and Audit Act 1977* (Qld).
- 14 s. 99 of the Financial Administration and Audit Act. See also ss. 32C and 32D of the Community Services (Aborigines) Act and ss. 30C and 30D of the Community Services (Torres Strait) Act re DOGIT councils.
- 15 s. 32E of the Community Services (Aborigines) Act and s. 30E of the Community Services (Torres Strait) Act.
- 16 As noted, pursuant to the CSAs, DOGIT councils are responsible for the employment of community police. The function of community police is to maintain peace and good order within the council area and their powers and duties are largely conferred by council by-laws. There is currently a trial scheme under way whereby Indigenous police officers are employed by the QPS rather than by DOGIT councils.
- 17 Fitzgerald, op. cit. (note 1), vol. 2, p. 258.
- 18 Ibid., vol. 1, pp. 13, 30.

## Challenges and responses

- 19 F. Brennan, *Land Rights Queensland Style*, UQP, Brisbane, 1992, pp. 49–50.
- 20 Ibid., p. 49.

- 21 Department of the Auditor-General, *Supplementary Report of the Auditor-General to the Legislative Assembly on Audits: In Respect of the Financial Year Ended 30 June 1989*, 1990, pp. 11–12; Parliamentary Committee of Public Accounts, *Financial Administration of Aboriginal and Island Councils, Report 2: Effectiveness of Councils, Support for Councils, Training*, February 1991, pp. 25–26.
- 22 Parliamentary Committee of Public Accounts, *Financial Administration of Aboriginal and Island Councils, Report 2: Effectiveness of Councils, Support for Councils, Training*, February 1991, p. 26.
- 23 Ibid., pp. 27–28.
- 24 Department of the Auditor-General, *Supplementary Report of the Auditor-General to the Legislative Assembly on Audits: In Respect of the Financial Year Ended 30 June 1989*, 1990, p. 12.
- 25 Parliamentary Committee of Public Accounts, *Financial Administration of Aboriginal and Island Councils, Report 1: Regulatory Framework*, October 1990.
- 26 Parliamentary Committee of Public Accounts, Report 2, op. cit. (note 22), p. 30.
- 27 Ibid.
- 28 Ibid., p. 30.
- 29 Ibid., p. 31.
- 30 Parliamentary Committee of Public Accounts, Report 1, op. cit. (note 25), pp. 6–10.
- 31 Ibid., p. 9.
- 32 See Legislative Assembly, *Second Reading, Community Service (Aborigines) Act Amendment Bill, Queensland Parliamentary Debates 1990–91*, vol. 317, pp. 5026, 5770–98.
- 33 Section 29 of the Community Services (Aborigines) Act and s. 27 of the Community Services (Torres Strait) Act were amended by the *Community Service (Aborigines) Act Amendment Act 1990* No. 104 and the *Community Services (Torres Strait) Amendment Act 1990* No. 105.
- 34 Parliamentary Committee of Public Accounts, Report 2, op. cit. (note 22), pp. 35, 37, 40, 44, 46.
- 35 Ibid.
- 36 Ibid., p. 5.
- 37 Queensland Legislative Review Committee, *Inquiry into the Legislation Relating to the Management of Aboriginal and Island Communities in Queensland: Final Report*, November 1991, p. iii.
- 38 Ibid., p. 11. (The Committee cited and followed Recommendation 204 of the report of the Royal Commission on Aboriginal Deaths in Custody, 1998.)
- 39 Ibid., pp. 4, 10, 43.
- 40 Ibid., p. 39.
- 41 Department of Family and Aboriginal and Islander Affairs, *Annual Report, 1989–1990*, p. 23; Department of Family and Aboriginal and Islander Affairs, *Annual Report, 1991–1992*, p. 16.
- 42 Department of Family and Aboriginal and Islander Affairs, *Annual Report, 1993–1994*, p. 14; Department of Families, Youth and Community Care, *Annual Report, 1996–1997*, p. 16.
- 43 Department of Family Services and Aboriginal and Torres Strait Islander Affairs, *Annual Report, 1994–1995*, p. 12; Department of Families, Youth and Community Care, *Annual Report, 1996–1997*, p. 16; Department of Family Services and Aboriginal and Torres Strait Islander Affairs, *Annual Report, 2000–2001*, p. 22.
- 44 See general summary in CJC, *Report on an Investigation Into Complaints Against Six Aboriginal and Island Councils*, June 1994.
- 45 Max Barrie, Manager, Community Governance Branch, DATSIP, personal communication.
- 46 M. Limerick, ‘Indigenous Community Governance in Queensland 1984–2000’, *Indigenous Law Bulletin*, 2001, vol. 5(5):4–10; Office of Aboriginal and Torres Strait Islander Affairs, ‘Alternative Governing Structure Program: Program Description and Funding Guidelines’, *Australian Indigenous Law Reporter*, 1996, 1: 675.
- 47 Office of Aboriginal and Torres Strait Islander Affairs, ‘Alternative Governing Structure Program: Program Description and Funding Guidelines’, *Australian Indigenous Law Reporter*, 1996, 1: 675.
- 48 Limerick, op. cit. (note 46).
- 49 CJC, op. cit. (note 44), pp. 20–27.
- 50 Ibid., p. 405.
- 51 Public Accounts Committee and Joint Committee of Public Accounts, *Aboriginal Councils and Torres Strait Island Councils: Review of Financial Reporting Requirements*, Report No. 42, November 1997, p. 11.
- 52 Ibid., p. 48.
- 53 Ibid., p. 33.
- 54 Ibid., pp. 45–48, 50–54.
- 55 Ibid., pp. 50–51.
- 56 See Fitzgerald, op. cit. (note 1), p. 263.
- 57 DATSIP, *Annual Report 2000–2001*, p. 22.
- 58 Fitzgerald, op. cit. (note 1); DATSIP, *Annual Report 2000–2001*, p. 22.
- 59 Issued pursuant to s. 27B of the Community Services (Aborigines) Act and s. 25B of the Community Services (Torres Strait) Act. The Community Services (Aboriginal Council) Accounting Standard 2002 and the Community Services (Island Council) Accounting Standard 2002 were made by the Minister as subordinate legislation on 16 May 2002 and notified in the Gazette on 7 June 2002.
- 60 During the same period, a small number of staff of Indigenous councils were investigated and prosecuted by the QPS after matters had been referred by the CMC.
- 61 Queensland Audit Office, *Audit Report No. 3 2000–2001: Auditor-General’s Report to Parliament, Results of Audits*

*Performed for 1999–2000 Generally Completed as at 31 May 2001*, 2001, pp. 44–45, 49.

62 Ibid., pp. 35–41.

63 Fitzgerald, op. cit. (note 1), vol. 1, p. 74; see also vol. 1, pp. 36–37.

64 Ibid., vol. 1, p. 74 and vol. 2, p. 253.

65 DATSIP, *Green Paper on Review of Indigenous Community Governance: Project Specification*, August 2002, pp. 1–8.

## Discussion

66 See the reviews of the Parliamentary Committee of Public Accounts, the Legislative Review Committee, and the Queensland Public Accounts Committee and the Commonwealth Joint Committee of Public Accounts discussed above.

67 Fitzgerald, op. cit. (note 1), vol. 1, p. 74.

68 S. Cornell, *Governance and Economic Development: Harvard Project on American Indian Economic Development*, paper presented at the Indigenous Governance conference, Canberra, 5 April 2002. See also S. Cornell and J. Kalt, *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations*, Harvard Project on American Indian Development, John F. Kennedy School of Government, Harvard University, March 1992.

69 Fitzgerald, op. cit. (note 1), p. 37.

70 D. E. Smith, 'Representative Politics and the New Wave of Native Title Organisations', in J. Finlayson and D. Smith (eds), *Native Title: Emerging Issues for Research, Policy and Practice*, Research Monograph No. 10, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 1995, p. 68.

71 See C. Mantziaris and D. Martin, *Native Title Corporations: A legal and anthropological analysis*, Federation Press, Sydney, 2000, pp. 44–87.

72 D. F. Martin and J. D. Finlayson, *Linking Accountability and Self-determination in Aboriginal Organisations*, Discussion Paper No. 116, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 1996, pp. 5–6.

73 Ibid., p. 7.

74 The *Native Title Act 1993* (Cwlth) requires native title representative bodies, the organisations established to provide native title services to Indigenous people throughout the country, to have satisfactorily representative structures and processes (see, for example, ss. 203BA and 203AI, and see also the previous requirement contained in s. 202 that the organisations be 'broadly representative'). The difficulties and complexities of establishing and maintaining such representative structures pursuant to the Native Title Act are likely to be instructive in respect of any attempt to restructure governance organisations in Indigenous communities to be 'truly representative'.

75 CJC, op. cit. (note 44), pp. 393–94, 396.

76 Ibid., p. 393.

77 E. Michaels, 'Constraints on Knowledge in an Economy of Oral Information', *Current Anthropology*, vol. 26, no. 4 (1985), pp. 505–10; E. Michaels, *Aboriginal Invention of Television in Central Australia 1982–1986*, Australian Institute of Aboriginal Studies, Canberra, 1986, pp. 2–4; see also B. Sansom, *The Camp at Wallaby Cross*, Australian Institute of Aboriginal Studies, Canberra, 1980, p. 20; P. R. A. Gray, 'Do the Walls Have Ears? Indigenous Title and the Courts in Australia', *Australian Indigenous Law Reporter*, 2000 (5):1–17.

## Where to from here?

78 See M. Ivanitz, 'Challenges to Indigenous Service Delivery', in G. Davis and P. Weller (eds), *Are You Being Served? State, Citizens and Governance*, Allen and Unwin, Sydney, 2001, pp. 140, 142, 148; Martin and Finlayson, op. cit. (note 72), p. 10.

79 Martin and Finlayson, op. cit. (note 72), pp. 12–13.

80 Fitzgerald, op. cit. (note 1), vol. 1, p. 31.

81 Cornell, op. cit. (note 68).

82 Fitzgerald, op. cit. (note 1), vol. 1, p. 31.

83 Institute on Governance, *Understanding Governance in Strong Aboriginal Communities, Phase One: Principles and Best Practice From the Literature*, 12 October 1999, <http://www.iog.ca/publications>, p. 23.