

NETWORKED GOVERNANCE: ISSUES OF PROCESS, POLICY AND POWER IN A WEST ARNHEM LAND REGION INITIATIVE¹

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I Introduction

Forms of regionalism within Indigenous Australian societies have been well documented. It can be seen in regional systems of economic exchange, in regional ceremony and ritual networks, circuits of mobility, and in the patterns of extended relationships between groups that give rise to regional systems of governance and collective identity. The past thirty years have also witnessed a flourishing of incorporated organisations representing the regional interests of multiple groups and communities.

The processes of so-called ‘traditional’ Indigenous governance and decision-making have long been moulded by non-Indigenous legal institutions and policy frameworks. This includes the contemporary representative structures that Indigenous people have established or engaged with. The processes involved in the creation and abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) are a case in point. But where one political or representative pathway is blocked, Indigenous Australians will find another. In the gap left by the Australian Government’s abolition of ATSIC and its regional councils in 2004, many Indigenous groups and their leaders are exploring alternative options for regionalised representation and decision making.

At the same time, there is a new wave of policy and program regionalism

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being implemented by governments at all levels. It is evident in the push to regionalise and ‘mainstream’ what were previously Indigenous-specific programs, in the establishment of Indigenous Coordination Centres that focus on regions and their constituent communities, in the implementation of ‘regional engagement strategies’, ‘regional partnership agreements’, ‘regional development’ agenda, and in the regional amalgamation of local government councils.

Against this wider backdrop, the paper examines one particular initiative in West Central Arnhem Land in the Northern Territory (NT) where a group of Indigenous leaders are working through their community organisations, and alongside Community Development Officers (CDOs) from the Department of Local Government, Housing and Sport (DLGHS), to establish a regional form of local government — called a Regional Authority — under the Northern Territory *Local Government Act 1978*.

The development of the West Central Arnhem Regional Authority (WCARA) was commenced under the NT Government’s *Building Stronger Regions, Stronger Futures* (BSRSF) policy, launched in May 2003. The process has engaged influential stakeholders including the NT and Australian Governments, senior bureaucrats, a range of Indigenous representative organisations and leaders, and non-government organisations. Over that period, significant headway has been made in designing an innovative model of regionalised governance and building the institutional and decision-making capacity needed for such a regional undertaking. In doing so, the Indigenous (*Bininj*) proponents of the initiative from West Arnhem Land have had to grapple with very different sets of values, expectations and rationales, including those of *Bininj* groups and organisations themselves, and those underlying the NT and Australian governments’ policy and legal frameworks. In 2006, they now face the major challenge of significant revision by the NT Government to its BSRSF policy under which the West Arnhem initiative has been auspiced to date.

Whilst we have a number of accounts of the operation of regional and community organisations, and countless reviews of their effectiveness, we have very few accounts of the *process of how* Indigenous people and those working with them have actually designed new regional governing arrangements.² And far

² See, eg, descriptions of Indigenous processes at work in the development of new governance arrangements by Manuhua Barcham, ‘Regional Governance Structures in Indigenous Australia: Western Australian Examples’ (CIGAD Working Paper Series No 1, Centre for Indigenous Governance & Development, Massey University, 2006); Bill Ivory, ‘Indigenous Governance and Leadership: A Case Study from the Thamarrurr (Port Keats) Region in the Northern Territory’ (ICGP Occasional Paper No 8, Centre for Aboriginal Economic Policy Research, The Australian National University, 2005), and unpublished information from 2006 ICGP Field Manual & Reporting Format, Indigenous Community Governance Project, Centre for Aboriginal Economic Policy Research & Reconciliation Australia, The Australian National University; Robert Lee and Veronica Birrell, ‘Nyirranggulung-Mardrulk-Ngadberra: A Long Road Behind and a Long Road Ahead’ (Paper presented at the Building Effective Indigenous Governance Conference, Jabiru, 4–7 November 2003).

fewer accounts of how those Indigenous processes are influenced by the wider government policy environment.

Many difficult questions and issues (of process, policy and power) are involved in such an undertaking. For example: What constitutes a 'region' for the contemporary purposes of Indigenous governance? How are 'new' determinations of 'region' being linked to traditional forms of Indigenous regionalism? How are 'regions' being linked to the complex concept of 'community' and their diversity of local rights and interest? What kind of governance models are being designed to accommodate these complexities? And are there particular principles and institutions guiding Indigenous efforts? And finally, but not the least, are the substantial changes currently being implemented by governments enabling or disabling Indigenous efforts to develop governance arrangements for a regional voice?

The WCARA initiative provides us with a view into the process by which *Bininj* and government parties have been addressing such questions as they attempt to create a new form of regionalised local government. In doing so, they have asserted very different institutional rules, rationales, value sets and expectations. The paper examines the WCARA process and outcomes to date within the context of the wider cultural geography and governance environment within which it has been occurring. The governance model being designed by *Bininj* is characterised as a form of 'networked governance'; a sophisticated resolution to the competing discourses and imperatives at work in the process.

The paper draws out what seem to be influential principles being used by *Bininj* to design a workable and legitimate form of local government at a regional level. These principles may be more broadly relevant for other Indigenous efforts to build governance arrangements at larger scales of population, organisational and cultural complexity. In conclusion, the paper highlights some likely future challenges for both *Bininj* and government policy when their discourses about regionalised governance coincide or diverge.³

II The Research Method

In canvassing the considerations and actions of both *Bininj* and government parties involved in the process, I have been fortunate in being able to undertake what is sometimes called 'multi-sited' ethnographic research. This arose out of a unique opportunity, between 2003 and mid-2006, to provide part-time research advice to the Northern Territory Department of Local Government, Housing and

³ I would like to especially thank Leanne Evans, Garth Nettheim, Stephanie Garling, Janet Hunt, Mark Moran and Neil Westbury, for their critical feedback on various drafts of this paper. Their comments have been insightful and assisted in making the complexities set out here slightly easier to describe.

Sports (DLGHS) on policy issues of Indigenous governance, community and regional development, and the reform of local government.⁴

In the course of that research contract I was asked by two Community Development Officers (CDOs) from the Department to work with them on a regional governance initiative they had been undertaking with *Bininj* organisations and leaders from West Arnhem Land.⁵ As a result of that, I was subsequently invited by the WCARA Interim Council to participate in their various meetings and workshops held in West Arnhem Land, Darwin and Katherine.⁶ Some *Bininj* members of the Interim Council are also relatives of families with whom I worked over 25 years ago when employed by the Northern Land Council to map land tenure systems in West Arnhem Land. On my return to Canberra in mid-2006, the Interim Council proposed that I continue my engagement with them, and that the WCARA process become part of wider national case-study research being conducted under the Indigenous Community Governance Project (ICGP). This has been agreed to by the ICGP partners.

During early 2005, the DLGHS established a WCARA Project Management Group of senior officers from NT and Australian Government agencies, to facilitate the coordination of resources and program input needed to support the WCARA initiative. That Project Management Group reported back on issues to the WCARA Interim Council, and vice versa. As a policy researcher advisor to DLGHS, I was invited to participate in the meetings of that Management Group, and also in discussions with various NGOs and consultants involved in the process at different stages.

Given my professional experience (albeit very erratic) over thirty years with Indigenous issues in West Arnhem Land, my long involvement in evaluating NT and Australian government policy frameworks, and my recent concentrated engagement in providing policy and governance research advice to DLGHS and

⁴ That work was undertaken through a three-year research contract between the Centre for Aboriginal Economic Policy Research at the Australian National University and what was then called the Department of Community Development, Sports, Culture and Arts (now the DLGHS). During that time I was based in Darwin and able to work alongside DLGHS officers on a variety of policy and research projects in the Darwin office as well as regional offices throughout the NT. I would like to take this opportunity to wholeheartedly thank the management and staff of the Department who provided me with ongoing professional support, frank comment, and engaged in robust debate with me over many policy and planning issues. Needless to say, the analysis presented in this paper is the author's and does not reflect the official position or opinions of DLGHS or any of its officers.

⁵ I would especially like to thank the two CDOs, Leanne Evans and Harry Appo, for the opportunity to work alongside them over the last three years. They are a professional team with considerable knowledge and practical expertise in community development built up over many years working on the ground with Indigenous groups, leaders and organisations.

⁶ The opportunity to work with the *Bininj* members of the WCARA Interim Council has been especially rewarding. I would like to thank them all for their ongoing hospitality and openness, and for the chance to contribute to a challenging process.

the WCARA Interim Council, there may well be a ‘familiarity effect’ to my observations that bias certain of my conclusions. To ameliorate this, I attempt here to fairly present the diversity of views involved and to highlight their underlying rationales. On the plus side, as a consequence of my participation at these different levels I have been able to see the current WCARA process more ‘holistically’, from the vantage point of the several parties involved, and to observe how their often diverging objectives and discourses about regionalisation have influenced decisions and outcomes.

III What is a ‘Region’?

‘Region’ is a classificatory concept, variously defined in dictionaries to mean: a large, usually continuous segment of a surface or space; an area; a specified district or territory; an area of interest or activity; a district, locality, neighbourhood, tract, zone, or territory; and a particular area used for, or associated with, a specific individual or group activity.⁷ There are diverging views as to what a ‘region’ represents and how it should be defined for planning, economic, governance and policy purposes.⁸

Some regions are *administrative* creations with notional boundaries, such as created for the administration of law and justice, education, health, and social security functions of governments. Some are *devolved jurisdictional* regions, such as state, territory, and local government regions, which have clearly demarcated gazetted boundaries. Some are *functional* regions, which display an interdependent coherence of parts when defined against certain criteria; for example, networks of towns and their smaller dependent communities, the people and area covered by flows of certain goods and services, mobility flows in geographic areas. Some are *culturally-based* regions; for example, arising from an internal consistency of religious, social, economic, property and other rights and interests.

These types of regions usually overlap and interact with each other. It is precisely this enmeshing that activates the involvement of various stakeholders, with their different expectations and interests, whenever a major initiative is proposed for a particular population and area of land. The contemporary development of Indigenous governance at a regional level is a case in point.

An issue that reveals fundamental differences in the Indigenous and non-Indigenous modes of discourse is the question of *what* constitutes a ‘region’ for the purposes of Indigenous governance arrangements. For governments and their departments this is often an issue of seeking a population size that is sufficiently

⁷ Arthur Delbridge et al (eds), *Macquarie Dictionary* (3rd revised ed, 2003); Della Thompson (ed), *The Concise Oxford Dictionary of Current English* (9th ed, 1995).

⁸ See, John Taylor, *Social Indicators of Aboriginal Governance: Insights From the Thamarrurr Region, Northern Territory* (2004).

large enough to promote the desired economies of scale and more effective financial administration and service delivery. The geographic coverage of this service population is invariably given a formal boundary, and made the focus of program funding and policy strategies. For Indigenous Territorians *what* is a region is, first and foremost, a question about *who* is the collective ‘self’, that is, it is a matter of cultural geography.

In Australia, there has been a heated debate about both the *who* and the *what* of Indigenous regions and communities, with suggestions ranging from individuals, families, communities, through to clan, tribes and nations, and incorporated organisations. Indigenous people continue to experiment with different social, political and geographic levels of aggregation as the basis for their representative and service arrangements. One of these levels is regional and decidedly collective in nature.

IV Are There Indigenous Regions?

There is substantial anthropological documentation of the dimensions and reproduction of regionalism within Indigenous Australian societies. It is evident in regional ceremonial blocs and networks of sites and dreaming tracks (where regions may cover states and transect the nation); in regional trade routes and patterns of economic exchange; networks of mobility; and in the connections between groups of people that give form to regional patterns of collective identity, governance and land-ownership. In the research case studies⁹ of the ICGP there is a diversity of types of regions. They are generated out of cultural, social, economic and political ties, and often have specific historical foundations underlying their contemporary importance to Indigenous people.

There arguably also exist Indigenous ‘jurisdictions’, that is, juridical and social spaces in which Indigenous laws and practices operate locally and are elaborated across regions.¹⁰ Some Indigenous jurisdictions have been given limited recognition under Australian legislation, for example, through native title and land rights determinations. As a result there are now areas of land that have gazetted boundaries, with land owners’ rights represented by trusts, prescribed bodies

⁹ See, Janet Hunt and Diane Smith, ‘Building Indigenous Community Governance in Australia: Preliminary Research Findings’ (CAEPR Working Paper No 31, Centre for Aboriginal Economic Policy Research, The Australian National University, 2006), and ‘Indigenous Community Governance Project; Year Two Research Findings’ (CAEPR Working Paper No. 36, Centre for Aboriginal Economic Policy Research, The Australian National University, 2006) for an overview of the ICGP cases studies and research conclusions.

¹⁰ See, Marcia Langton, ‘Ancient Jurisdictions, Aboriginal Polities and Sovereignty’ (Paper presented at the Indigenous Governance Conference, Canberra, 3–5 April 2002) 1; Henry Reynolds, ‘Sovereignty’, in Nicolas Peterson and Will Sanders (eds), *Citizenship and Indigenous Australians: Changing Conceptions and Possibilities* (1998) 208.

corporate and incorporated associations.

The boundaries of ‘traditional’ Indigenous regions are not cadastral in the standard sense. They may occasionally be visible in geographic and ecological form, but they may also be socially constructed and largely invisible (for example, as naming institutions and marriage systems).¹¹ These Indigenous regional systems are subject to negotiation, construction, fission and fusion.¹² In other words, there is a cultural geography, as well as a political economy to Indigenous regions that can be unpacked in terms of their foundations in relationships, alliances, rights and responsibilities.

The cultural geography of Indigenous regionalism is guided by two underlying principles: subsidiarity and relational autonomy.¹³ A fundamental tenet of Indigenous sociality and ‘grouphood’ is the necessary tension between autonomy and relatedness. Alongside their deeply valued assertion of small-scale local group identity and individual autonomy, there is an equally compelling momentum to recognise the collective interests of larger-scale groupings and landscapes.

These social trajectories are symbiotic, comprising as they do the twin elements of a single social system. The Indigenous desire to reproduce enduring webs of connection serves to bring smaller groups together into larger collective alliances over larger areas of land, for common purposes. These regional aggregations sometimes endure over generations. Sometimes, the social pull towards local autonomy means they are short-term and opportunistic. This creates a concertina effect, where individuals and groups gravitate between smaller and larger scales of social and geographic aggregations. Today, both these ends of the scale of Indigenous sociality take on organisational expression at local, community and regional levels of incorporation.

Subsidiarity is a principle that helps facilitate a workable form of relational autonomy. It is the agreed assignment of roles and responsibilities within a social or political system which aims to provide the constituent parts with more effective control over their own spheres of action, at the same time as connecting them for particular purposes. It is apparent in the operation of federal system of Australian government, in the European Economic Union, and has been documented in some

¹¹ See, William Arthur and Frances Morphy (eds), *Macquarie Atlas of Indigenous Australia* (2005).

¹² For discussion of these different processes see, Howard Morphy, ‘The Reeves Report and the Idea of Region’ in Jon C. Altman, Frances Morphy and Tim Rowse (eds), *Land Rights at Risk? Evaluations of the Reeves Report* (1999); Nicolas Peterson (ed), *Tribes and Boundaries in Australia* (1976); Diane Smith and Julie Finlayson (eds), *Fighting Over Country: Anthropological Perspectives* (1997); and Nancy M. Williams, *The Yolngu and Their Land: A System of Land Tenure and the Fight for its Recognition* (1986).

¹³ For more detail on these two concepts see, Diane Smith, ‘Jurisdictional Devolution: Towards an Effective Model for Indigenous Community Self-Determination’ (CAEPR Discussion Paper No 233, Centre for Aboriginal Economic Policy Research, The Australian National University, 2002).

Indigenous societies as well.¹⁴

Indigenous Australian societies practiced a form of subsidiarity where they recognised ‘the virtues of united strength that preserved a high level of local self-determination amongst member groups’.¹⁵ Instead of assuming that governance arrangements had to be centralised, bounded and unitary, the Indigenous principle of subsidiarity enables federalised systems of governance that accommodate inter-dependent layers, including the possibility of both centred and decentred social formations. This constitutes a form of ‘networked governance’. It is generated out of the interconnectedness of locally autonomous groups (and categories) of people, and via the negotiated allocation of roles, rights and responsibilities across those parts.

V *Bininj* Regionalism and Governance in West Arnhem Land

Bininj traditional systems of governance in West Arnhem Land similarly enable different kinds of regionalism. An important mechanism in that process is the system of *kunmokurrkurr*: a polysemic classificatory device that lies at the heart of *Bininj* culture and land ownership in West Arnhem Land. A *kunmokurrkurr* ‘name’ (eg, *Bunidj*, *Allurdju*, *Kamulkbarrn*, *Murndarn*) identifies and links one or more particular lineages who collectively assert shared rights to particular areas of land over time. Lineages display a patrilineal descent bias, but cognatic connections are also usual and subject to negotiation. The *kunmokurrkurr* name also has, as a defining focus, particular dreaming sites (*djang*), resource sites, ceremony and camping grounds associated with an area of land.

The name of a *kunmokurrkurr* is not the name of a people’s language or dialect. Rather, a number of differently named *kunmokurrkurr* groups are said to ‘share one language’ (eg, ‘we are all *Amurrak*’ [language], ‘all us *kunmokurrkurr* are *Kunwinjku*’ [language]). There are also groups of *kunmokurrkurr* that have the ‘same name’ but different country (eg, there are several named ‘*Bunidj*’ *kunmokurrkurr* in West Arnhem Land, but having different countries and different language). In such a case, language is used as a further elaborating feature to distinguish between them (eg, ‘we are *Bunidj Kunwinjku*’, ‘we are *Bunidj Amurrak*’).

‘Same name’ groups (whether they be *kunmokurrkurr* or language variants), are sometimes described as being in a ‘company’ relationship. ‘Company’ groups can also be generated by common association with a particular ecological niche. For example, in the past there was a named riverine association

¹⁴ Ibid.

¹⁵ Iris Marion Young, ‘Hybrid Democracy: Iroquois Federalism and the Postcolonial Project’ in Duncan Ivison, Paul Patton and Will Sanders (eds), *Political Theory and the Rights of Indigenous Peoples* (2000) 237, 241.

that was comprised of several differently named *kunmokurrkurr* whose countries lay stretched along both sides of the Coopers Creek.

In other words, sets of *kunmokurrkurr* have formed closer unions at the supra-*kunmokurrkurr* level, thereby bringing their countries into geographic alliance as well. Enduring ties between certain groups of *kunmokurrkurr* are reinforced by shared histories and participation in regional ceremony, and there are interwoven networks of authority attached to these different layers and unions. The traditional pattern of governance was one of connubia of kin and *kunmokurrkurr* forming more and less informal unions for specific shared purposes, accompanied by a reservation of the independence of the individual groups forming the union.

Connections between these layered identities could be opportunistically called upon by individuals and groups in order to activate rights and interests (as well as be used to exclude others). In other words, they are a key mechanism for generating the collective ‘self’ in *Bininj* systems of governance, including during times of intense colonial contact. In 1983, I observed (with Sue Kesteven) that:

... given the nature of historical contact in the region, local Aboriginal populations have been in the business of reconciling devastating impacts and resolving issues to do with land tenure and transmission of knowledge and status for some time. Contemporary Aboriginal politics, and especially the nature and politics of land ownership in West Arnhem Land, must be understood in terms of Aboriginal history in the region. It is highly dubious then to regard the West Arnhem Land region as an area of pristine traditional culture, or to retain the notion that the Aboriginal populations within it were closed, immobile or uninterested in change. Indeed, local Aboriginal groups have historically shown a distinct ability to incorporate certain new social and cultural elements — even in the face of other drastic intrusions.¹⁶

Contemporary *Bininj* governance in West Arnhem Land can similarly be described as a process of adjustment, incorporation, re-identification and elaboration, with new variants of separation and alliance, reinforced on a needs basis. Organisations, groups and leaders in West Arnhem Land are using the same mechanisms of *kunmokurrkurr*, law, language and historical association to re-imagine their contemporary governance needs.

VI Policy and Statutory Regionalism in the Northern Territory

This *Bininj* re-imagining is occurring within the context of major changes within the wider ‘governance environment’, where the Australian and Territory Governments are actively promulgating their own forms of policy and program

¹⁶ Diane Smith and Sue Kesteven, *Contemporary Land-Tenure in Western Arnhem Land: An Investigation of Traditional Ownership*, Resource Development and Royalties, Report to the Australian Institute of Aboriginal Studies and the Northern Land Council (1984).

regionalism.

In the Northern Territory, old and new types of regionalism sit uneasily with each other. One of the relatively older forms is the statutory regionalism of land councils set up by the Australian Government under the *Aboriginal Land Rights Act 1976* (NT) (ALRA) to represent the rights and interest of traditional owners. During the past three decades, the four NT land councils have carried out an internal process of regionalisation of their offices and representative arrangements, and responded to various government reviews and Indigenous action that have aimed to establish alternative forms of regional representation for traditional landowners.¹⁷

There has been a tense relationship between the regional representation of land councils and community government councils established under the *Local Government Act 1978* (NT) which operate on Aboriginal freehold land. When it was enacted, the latter legislation was received with much scepticism by land councils who feared community councils would undermine their power base and the rights of traditional owners. Unlike local governments in all other States, community government councils in the NT do not have functions of development planning or building regulation. The NT Government retains these except on Aboriginal land where traditional owners have the powers. Given the fact that approximately 80 per cent of local governing bodies in the Territory are situated on Aboriginal inalienable freehold land, the establishment of community government councils, and now the regionalisation of those councils, is fundamentally an issue of incorporating Aboriginal lands into local government service-delivery areas. This is being done, however, in the shadow of ALRA and the operation of traditional systems of Indigenous law.

The operation of land council regionalism sat more easily with the creation of ATSIC's regional representative structure. In the Territory, ATSIC strongly supported the Indigenous creation of structures for regional autonomy. Together with the land councils, ATSIC facilitated the 1998 Kalkaringi Indigenous Constitutional Convention that became a forum for the assertion of Indigenous concerns about governance and rights. After that forum, ATSIC commissioned several reports and convened workshops exploring alternative options for regionalised governance.¹⁸ The Miwatj Regional Council in East Arnhem Land developed proposals for its transformation into a regional 'Provisional Government' to represent Yolngu, and a group of Indigenous leaders in the Centre

¹⁷ See, John Reeves, *Building on Land Rights for the Next Generation: Report of the Review of the Aboriginal Land Rights (Northern Territory) Act 1976* (1998); and Jon C. Altman, Frances Morphy and Tim Rowse (eds), above n 12.

¹⁸ See, in particular, Aboriginal and Torres Strait Islander Commission (ATSIC), *Regional Autonomy Discussion Paper* (1999), *Generating Greater Regional Autonomy* (2000); Tony Binalany and Banambi Wunungmurra, 'Miwatj Regional Government: Towards Stronger Indigenous Regional Governance' (Paper presented at the Building Effective Indigenous Governance Conference, Jabiru, 4–7 November 2003).

began lobbying for the creation of a Combined Aboriginal Nations of Central Australia (CANCA) that would have a direct line of pooled funding from the Commonwealth.

The Australian Government's abolition of ATSIC in 2004 left a major representative vacuum in the Territory as elsewhere. Since then, some regional council members have sought alternative power niches; rebuilding their leadership through other community and regional organisations. With its abolition of ATSIC, the Australian Government also pursued alternative, and less formalised, Indigenous voices to engage with at the regional level.

While one form of statutory regionalism was being demolished, the NT Government had been developing a policy framework for regionalised local government — the *Building Stronger Regions, Stronger Futures* (BSRSF) strategy — which was subsequently inserted into the representative vacuum left by ATSIC.

This particular policy regionalism followed wider Australian trends towards larger-scale amalgamations of local government, and in fact had its antecedents in the previous NT government's *Reform and Development Agenda*. Launched in May 2003, the rationale underlying the BSRSF policy was the parlous state of community government councils; close to 50 per cent had been assessed by DLGHS as being either 'highly dysfunctional' or 'at risk' in respect to their financial management, administration, service-delivery and governance.¹⁹ In launching the policy, the NT Government called upon Indigenous people and other stakeholders to 'abandon the myth that the discrete community can be regarded as a viable unit in terms of service delivery'.²⁰ It argued that regionalised forms of 'effective and legitimate frameworks for governance are the foundations of any regional development strategy that will be sustainable over time'.

The stated policy intention of the BSRSF was that Regional Authorities would:

- Have jurisdiction and powers as regionalised forms of local government under the *Local Government Act 1978* (NT);
- Be established by 'voluntary agreement' between councils and require a 'substantial majority of residents in favour';
- Be able to undertake 'regional decision-making to determine priorities, establish delivery policies and allocate resources';
- Have 'a range of electoral systems ... as it is clear that not one applies to every situation';
- 'Provide for decision-making structures that meet the needs of the communities to be governed and, where applicable will incorporate

¹⁹ See also, comments by John Ah Kit MP, Minister for Community Development, Sports, and Cultural Affairs (NT Government, May 2003) when launching the *Building Stronger Regions — Stronger Futures Strategy*.

²⁰ Ibid 6.

strong relationships with cultural decision-making arrangements and particularly traditional owners’.

The policy emphasis was on flexibility, local initiative, and the facilitation of culturally-based representative structures and electoral arrangements. Implementation has been through a dual strategy of compliance assessment and community development supported by field-based teams of officers from DLGHS. A review of the *Local Government Act 1978* (NT) was proposed by the NT Government in order to provide a better statutory foundation for regionalised local government. That review has been put on hold several times.

Three Regional Authorities have been established to date. All are very different in their geographical area, population size and culturally-based governance models, and all have experienced common problems in their early establishment period.²¹ The West Central Arnhem Regional Authority (WCARA) has been the next regionalisation initiative closest to establishment and, up until mid-October 2006, its development has been carried out entirely under the BSRSF policy framework.

At the same time, the Australian Government has been actively implementing its own policy and program regionalisation, in tandem with mainstreaming Indigenous service delivery. In the NT this has been especially evident in the steady enforcement of CDEP regionalism by DEWR. In relation to regional organisational structures, the Australian Government has stated that it ‘does not want to impose structures, but work with arrangements that are devised locally or regionally and accepted by a majority of Indigenous people.’ It acknowledges that ‘this is likely to produce a wide variety of representative models, which is entirely appropriate given the diversity of Indigenous circumstances.’²²

Yet much of current Australian Government policy *implementation* (as opposed to its policy *goals*) privileges individuals and particular families over duly elected representative organisations (be they community or regionally based). Indeed, structures of governance and representation devised by Indigenous people to reflect their cultural institutions and values have been publicly disavowed by various Australian Government Indigenous Affairs Ministers. They have lashed out at clan-based councils in remote Aboriginal communities, labeling them as ‘communist collectives’ and ‘gatekeepers’, and accused homeland groups and their representative organisations of perpetuating ‘cultural museums’ that

²¹ Diane Smith, ‘From Gove to Governance: Reshaping Indigenous Governance in the Northern Territory’ (CAEPR Discussion Paper No 265, Centre for Aboriginal Economic Policy Research, The Australian National University, 2004).

²² Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), *2004–05 Annual Report* (2005) 235.

supposedly hinder economic development.²³

In 2005, a convergence of policy interests was achieved when the NT and Australian Governments negotiated an innovative Overarching Agreement on Indigenous Affairs. The Bilateral Schedule to that Agreement set out shared goals for the two tiers of government, including: ‘strengthening regional governance and community capacity’ through the establishment of regionalised forms of local government, known as Regional Authorities. The Agreement states that both governments will work together to ensure:

- ‘Effective and legitimate representation’;
- That ‘the establishment of Regional Authorities [is] voluntary [and] based on extensive and effective consultation to ensure constitutions reflect local aspirations and have cultural legitimacy’;
- That ‘amalgamation of community councils into Regional Authorities effectively addresses current problems of scale, improves service delivery, reduces staff turnover and ensures greater coordination and continuity of interest in community economic and social development’.

Indigenous efforts in the NT to establish a regional political voice in the post-ATSIC environment have been carried out in the context of an extremely proactive policy discourse by governments, which has its own rationales, strategies and goals.

VII The *Bininj* Proponents of Regionalisation

The five main proponents of the WCARA initiative are Indigenous (*Bininj*) representative organisations:

1. Kunbarllanjja Community Government Council;
2. Waruwi Community Incorporated;
3. Minjilang Community Incorporated;
4. Demed Association Incorporated;
5. Jibulwanagu Outstation Resource Association Aboriginal Corp.

The Kunbarllanjja Council (located in the settlement of Gunbalanya) is Community Government Council under the *Local Government Act 1978* (NT). It was incorporated in 1976 to service a community population that is now estimated to be between 1500-1600 persons. Waruwi and Minjilang are incorporated

²³ See comments by Federal Indigenous Affairs Minister, Mal Brough, Thursday 24 August, The Australian; Amanda Vanstone MP, ‘Title’ speech by the Hon. Minister Amanda Vanstone at the Australian National University, 9 December 2005; DIMIA, *Ibid* Part 2.

Community Association Councils under NT incorporation legislation, but regarded by the NT Grants Commission as delivering local government-type services for the purposes of receiving funding. Minjilang's population is approximately 300 and Waruwi's is approximately 400.

Demed is an outstation resource organisation, located at Gunbalanya that services approximately 11 outstations highly dispersed around the hinterland of the community. Jibulwanagu is also an outstation resource organisation, located at Minjilang and services some 30 island and mainland outstations on Cobourg Peninsula. Gunbalanya, Minjilang and Waruwi are major 'hub' service-delivery centres for the many small outstation groups in their surrounding orbits.

The proposed establishment of a regionalised local government will require that Kunbarllanjja Council will dissolve entirely as a local government organisation. Its functions will be transferred to WCARA. Waruwi and Minjilang Association Councils will lose their local-government equivalent status, but may choose to continue operating as incorporated organisations for other service functions. However, their local government functions and funding will also transfer across to WCARA.

This will involve an extremely complex set of organisational and governance transitions, including new elections for a new structure and set of councillors, and the need to identify and manage the transfer of related financial and capital assets, service-delivery functions, and administrative systems. There will also be a rationalisation and/or relocation of some staffing positions. Negotiating these transitions with the organisations involved, and securing the funding to do so, has been a major part of the work of the WCARA Interim Council and Community Development Officers to date.

The need to ensure ongoing communication with community members has been an enormous challenge. There are individuals who have imprecise or inadequate information, and some oppose the initiative and therefore complain about the lack of consultation. A variety of ways have been used to overcome the challenges of remoteness, disinterest, and local politics. Newsletters, reports, BRACS adverts, community meetings, information open days, logo competitions and a range of other strategies have been used to consult widely and inform community residents about decisions being made by the Interim Council. Under the current legislation, the proposal will only be passed if the NT Minister of Local Government is convinced a majority of residents in the region agree.

Overall, the *Bininj* Councillors have been more active proponents of regionalisation than their Council CEOs. There has been a high turnover of CEOs in some of the communities, and the positions of management will likely be rationalised under the new arrangement. Some CEOs have also had to adapt to having *Bininj* Councillors taking control and making decisions. On occasions this has caused tensions and miscommunication, especially when certain government agencies prefer to deal primarily with CEOs rather than elected *Bininj* representatives.

VIII The *Bininj* Impetus for Regionalisation

Given the enormity of the task, the motivations of the *Bininj* people involved have been critical. The community councillors and nominated members on the WCARA Interim Council have referred to several goals and expectations underlying their commitment to regionalisation.

The launch of the BSRSF provided a policy space in which *Bininj* leaders and local organisations could explore a new, albeit conditional form of regional representation. The outstations serviced by the two Resource Centres are extremely remote. Communication across the region is difficult, service costs are high, and there are substantial gaps in funding, housing and infrastructure, and organisational capacity is low. One factor frequently mentioned has been the opportunity to secure greater power and control for *Bininj* people over the things that matter to them, and to create a strong *Bininj* voice that can influence government funding and service delivery to the region: ‘We will get to say what we want in our communities, we will set the priorities’; ‘We have control over this project’; ‘We will create policies and strategies that achieve more local employment and better services’; ‘We will have a much stronger voice speaking as one to government ...’.

Early arguments by the NT Government when launching the BSRSF policy focussed on the financial and cost-sharing advantages of regionalisation. This has created expectations amongst Interim Council Members that they will be provided increased access to, and control over, resources. They also expect to have increased quantum of local government funds under the per capita funding formulae that would see an increase in their ‘local government’ service population as a result of the inclusion of previously excluded outstation residents.

Interim Council members have visited Katherine for discussions with the Nyirunggulung Regional Authority, and have had ongoing discussions with Indigenous members of the Thamarrurr and Tiwi Island Authorities. These have alerted them to the difficulties experienced in setting up regional administrative systems and service-delivery functions, and the likelihood that they will initially face increased costs of regionalisation. Economies of scale appear to take several years to realise, and then are only achieved with concerted planning.

Another important driving force behind *Bininj* agency has been the desire to create a regional organisation that would better reflect *Bininj* cultural values and institutions: ‘We will have a Council that respects and works with our culture’. Accordingly, Interim Council members have consistently put substantial effort into building the institution of governance for WCARA. They have worked over a long period of time to customise a constitution to reflect their representative priorities and processes, drafted a Preamble to the constitution setting out a *Bininj* vision and bases for the new governance arrangements, and have been steadily formulating a set of policies that take cultural factors into account (both as

challenges to enforcement, and as supports for their future roles).

Finally, another underlying motivation appears to stem from the experience of being 'isolated councillors'. As one Community Councillor put it:

As small councils we feel isolated from each other. We are all working on our own. It is about us in the region coming together and sharing resources and ideas. Darwin is too far way ... Through WCARA we can draw on the strengths of the region ... by coming together we can help each other.

There is a complex suite of motivations and expectations then that are fuelling *Bininj* engagement and commitment to the regional initiative. They encounter the policy goals and expectations of governments; sometimes coinciding, sometimes at odds with each other.

IX The Work of Regionalisation

The development of WCARA has been innovative in several ways. The initiative has required community development, legal, policy, funding, administrative and business support from DLGHS; program and funding advice from the Australian Government's Office of Indigenous Policy Coordination; administrative backup from community council CEOs and staff; and specialist support and workshops from community development officers and the Local Government Association of the NT.

The process has been extremely complex to manage. The diversity of *Bininj* parties involved, the range of other stakeholder interests, the remoteness of residents, the paucity of community infrastructure, and the earlier history of contentious mining negotiations in the region have all emphasised the need for ongoing consultation and negotiation.

A male/female team of community development officers from DLGHS undertook an intensive process of information dissemination and consultation over a two year period. They visited every community, outstation, spoke to councillors, staff, other community organisations, senior community and family leaders, in male and female groups, and facilitated dozens of community meetings to discuss issues and options. They have worked closely with the organisations and their *Bininj* leaders to facilitate each step, and develop implementation strategies.²⁴

Initial discussions about the idea commenced in June 2003 between a larger group of representatives from Coomalie, Pine Creek, Jabiru, Minjilang, Waruwi and Kunbarllanjja Councils. Subsequently, leaders from West Arnhem Land decided to proceed with a smaller group of community councils and other

²⁴ See, Leanne Evans, Harry Appo and Diane Smith, 'Community Development Practices and Principles in the Development of the West Central Arnhem Regional Authority' (Unpublished Discussion Paper, 2006).

organisations from West Arnhem Land itself. A representative Steering Committee was nominated by Council members in December 2003 and had its first meeting in August 2004 (held thereafter every 8 weeks on average). In July 2005, a Memorandum of Understanding was signed between the participating organisations, authorising an Interim Council of representatives nominated from the five organisations, to proceed with developing a Regional Authority.

In early 2005, in recognition of the substantial input required from governments, DLGHS established an 'across-government' Working Group to facilitate program and grant funding coordination. This was an important step, providing a forum in which CDOs and managers from several government departments could discuss ways to practically implement 'whole-of-government' policy rhetoric. The DLGHS also provided a detailed Business Case in the second half of 2005, outlining potential financial, resource and service benefits and challenges associated with regionalisation.

Given the complex organisational and governance transitions involved, in late 2005 DLGHS commissioned consultants to prepare a Transitional Plan for the establishment phase of the Authority, and a Management Plan for its first 3–5 years of operation. These were developed in consultation with the organisations, Interim Council and DLGHS. Since then, the transition process has been delayed as a result of considerable difficulties in securing an experienced professional to work as a Transitional Manager to establish the administrative, financial and management systems for the new structure. The problem of finding professional staff has also been experienced by the three established Regional Authorities.

Funding the process has been problematic. The costs of *Bininj* travel for meetings, and CDO support for the initiative was initially provided by DLGHS. Under the Bilateral Agreement, the Australian Government committed significant funds which enabled consultancy reports to be commissioned and further meetings of the Interim Council to be held. In addition, the Local Government Association of the NT and the Community Councils themselves have contributed to specific costs. However, funding has been uncertain and insufficient to the overall task at hand. On the other hand, it is probably the most well-resourced regionalisation process in the NT to date.

Interim Council members have undertaken a major workload of leadership, advocacy, consultation, meetings and decision making. Their efforts have been supported by a highly committed team of Community Development Officers who have facilitated an ongoing process of governance training and development with them. An important consequence has been that Interim Council meetings are now run by *Bininj* members, with Council CEOs and government officers present in an advisory capacity.

In many ways, the process has involved not only building the capacity of *Bininj* leaders and organisations to engage in the process, but also building the capacity of governments and their departments to deliver on coordination and the promise of their policies.

X The Cultural Geography of the WCARA Region

An essential part of the early work of regionalisation was the determination of the ‘region’ itself. The West Central Arnhem ‘region’ constructed by *Bininj* leaders for the purposes of local government, encompasses Warruwi, Minjilang, and Gunbalanya communities and their representative councils, a National Park designated under NT legislation (Cobourg Peninsula), and two outstation resource organisations and their respective residents. The ‘region’ covers approximately 32 200 km² with an estimated total population of 2300–2400 people dispersed across central ‘hub’ communities and decentralised outstations (See Map 1).

There is a ‘cultural geography’ to the construction of the WCARA region. Decisions about ‘who’ was to be included, and ‘who’ was to be excluded determined the external boundary; not the other way around. Interpretation by *Bininj* leaders of the extent of ‘closeness’ of cultural ties between the groups and participating organisations, were the primary criteria for creating the proposed regional boundary. In other words, the WCARA boundary is, first and foremost, a negotiated interpretation of ‘who’ is the regional *Bininj* ‘self’.

Map 1. The proposed WCARA region, 2006 .



Initially, *Bininj* discussions with the NT Government anticipated a larger set of parties and possible region. But *Bininj* leaders said they quickly ‘pulled

away and formed [their] own group where people were more comfortable'. Part of that pulling away meant that Jabiru, Coomalie and Pine Creek were not included as they were seen to be essentially 'Balanda places'. Though some residents of Maningrida were recognised as having kin links with particular groups in West Arnhem, it was also seen as coming under the separate service dominion of its own community council and Bawananga Corporation. The possible future inclusion of Maningrida has been left open for further discussion.

'Families' are what Foucault called 'a fundamental instrument in the government of a population'.²⁵ This is the case in traditional systems of governance in West Arnhem Land, but the family formations are extended and have porous social boundaries. Identification of the extended families and groups who should form part of the social region referred back to traditional governance systems of *kunmokurrkurr*, ceremonial affiliations, unions arising from 'company' and connubia of kin, and shared histories. Frequent reference is now made by *Bininj* leaders to the cultural foundation of WCARA as 'one big family': 'We need to stick together and look after each other'; 'It [WCARA] has brought families together in the region'; 'We have had to work hard and we have become one big family'.

The *Bininj* concept of 'one family' denotes a core realm of individual and kin-group identity. The metaphor is being used in the WCARA process to invoke the values of mutual support and loyalty seen to be at the heart of 'family', and imbue the regional governance arrangement with the cultural legitimacy derived from that concept. The reference to 'one family' also reflects the fact that Interim Council members feel a growing sense of shared commitment and unity amongst themselves.

The construction of this cultural legitimacy is not without internal contestation. There are specific families and individuals who appear to oppose the initiative, though this waxes and wanes. Interestingly, the same concept of 'one family' and its benchmark of kin closeness are used by Interim Council members to interpret the reasons why some particular people oppose the initiative. That is, are they really part of the 'one family'? Are they really traditional owners? etc. In recognition of such tensions, members of the Interim Council have consistently emphasised that the new regional boundary is a 'line just for whitefellas', 'It's not for land-owning boundary, just for service delivery'.

A critical issue for rationalised local government is the inalienable freehold status of the land under the *Aboriginal Land Rights Act 1976* (NT). Members of the WCARA Interim Council are themselves traditional owners (13 out of the 15 members) and have argued that a regionalised form of local government should not impinge on their legal and culturally-based land ownership. They are keen to

²⁵ Michel Foucault, 'Governmentality' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault* (1991) 87, 98.

ensure their decisions do not undermine those primary rights and interest, or exacerbate *Bininj* tensions related to those. For that explicit reason, they decided there should not be fixed (mapped) internal boundaries for the electoral wards — those have deliberately been kept invisible.

What constitutes a region for Indigenous governance then is not a simple geographic or service-delivery solution. Important cultural factors have informed *Bininj* determination of how the collective ‘self’ should be constructed for regionalised local government.

Given the *Bininj* desire for both localism and connectedness, the current resolution will likely be subject to ongoing discussion. That will certainly be the case given the NT Government’s recent announcement in late 2006 of substantial changes to its policy framework for local government.

XI The Proposed Representative Arrangements

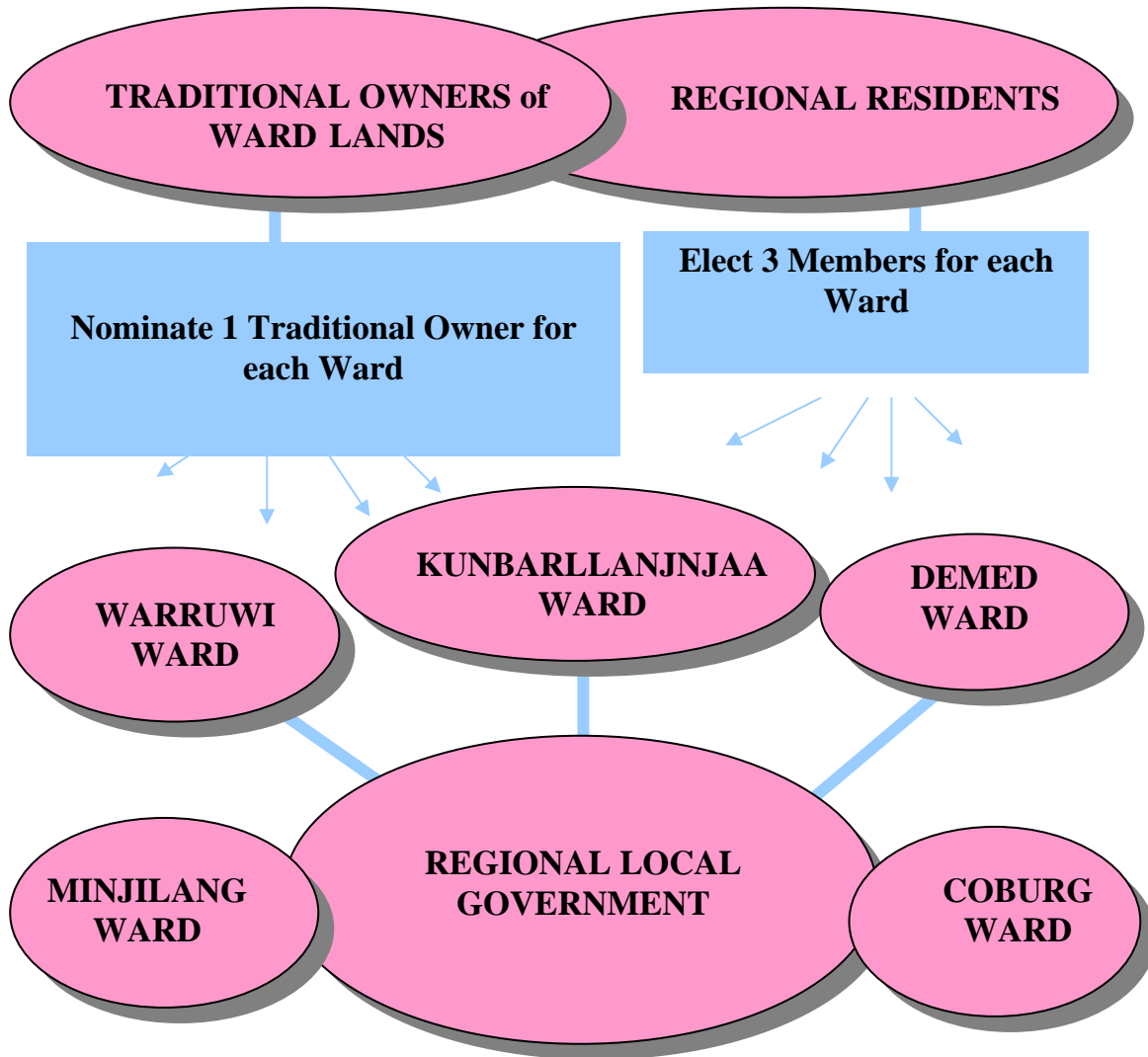
The Interim Council has proposed that the Authority will have five wards for the purposes of elections: Kunbarllanjnja, Coburg-Jibulwanagu, Minjilang, Warruwi, and Demed. Each ward will have four members, resulting in 20 members of the Authority (see Diagram 1).

Three of the members from each ward will be elected through a standard voting process (using mobile polling booths for outstation residents and postal voting allowed). At least one of the four members from each ward must be a traditional owner. The traditional owner members of WCARA will be selected through a *Bininj* decision-making process involving owners of the lands covered by the ward. Persons are eligible for nomination as Council members, and eligible to vote if they are enrolled on an electoral roll for the ward (to be created by the Electoral Commission), and have been residing in the region continuously for a period of at least two years.

The representatives will elect a Chair, and the Chair and Deputy Chair cannot be from the same ward. A quorum is a majority of members, and a meeting of the Authority must not take place unless at least one person from each ward is in attendance (ie, at least one out of the four members of each ward). An Executive Committee will consist of five members (one from each of the five wards) chosen by the full WCARA Council.

The WCARA model is a form of networked governance. It comprises inter-dependent layers, including both centralised and decentred structures. There are points of interconnection and complementarity across community and organisational layers, though not necessarily of the same kinds. There are identified areas of autonomy at the local level, alongside centralised functions vested in an umbrella organisation. The network has been based on a negotiated division of roles, rights and responsibilities across the parts.

Diagram 1. Proposed WCARA Regional Representative Structure for 2006



For example, the model consists of:

- Community, ward, representative and organisational layers;
- A main office at Kunbarllanjnja with rationalised central staff;
- Local service managers based in each community, operating out of a community-based WCARA office;
- Centralised financial, accounting and administrative functions, providing community budget allocations;
- Some regional programs (eg, CDEP), alongside locally specific programs in the communities;

- The use of service agreements between some parts of the model, eg, between the central WCARA office and outstation organisations; and
- Areas of both local and regional enterprise autonomy.

XII Some *Bininj* Design Principles for Networked Governance

Development of this model of networked governance has relied upon some distinctly *Bininj* values and design principles. The first of these is the principle of cultural geography that underlies the negotiation of a newly imagined collective ‘self’ for regionalised local government.

The second is the *Bininj* principle of governance as collective power and control. One Council member expressed the view that their own governance system is better described as ‘self-governance’ and ‘self-control’, not as ‘governance’ — ‘We got our own self-control, our own laws. *Bininj* always had that’. There are important nuances being alluded to in this distinction. The *Bininj* emphasis is on the word ‘self’ as denoting the collective ‘relational self’, the ‘one big family’. It is not a reference to the individual ‘self’. Decisions and discussion by the Interim Council about how to design future governance arrangements consistently reinforce the bases of *Bininj* collective power and decision-making authority.

The third and fourth design principles are those of ‘relational autonomy’ and ‘subsidiarity’. There is an inclination by commentators to see Indigenous representative legitimacy and self-governance as most appropriately based in small-scale local groups. This certainly reflects an Indigenous preference for local autonomy and small-scale residence. But there is also a structural and social propensity to generate larger-scale forms of representation and alliance. In other words, there is a decidedly ‘two-way’ trajectory for contemporary Indigenous governance arrangements that needs to accommodate the Indigenous desire for a balance between residential decentralisation and local autonomy, alongside political centralisation and regional alliances.

A balance between these twin trajectories is realised in networked governance which creates layers or aggregations of people and land with corresponding layers of roles, responsibilities and obligations. The WCARA regional model is a form of networked governance, designed to simultaneously address and balance issues of local autonomy and regional scale. A potential disadvantage of large-scale jurisdictions is that they tend to obscure the linkages between authority and responsibility, and are prone to accusations of losing touch with component layers at the lower scale. Smaller jurisdictions, on the other hand, shorten the number of connections between levels of accountability, and therefore link accountability more directly to responsibility and consequences.²⁶

²⁶ Smith, above n 13.

A critical advantage of networked governance therefore lies in its flexibility, its tolerance of diversity of identities, and the benefits of inter-dependency. In other words, it can facilitate a workable form of governance subsidiarity across different geographic and social scales. To do so, however, the model requires that the connections of accountability and responsibility across all the levels are very clearly spelt out, agreed to, and operationalised.

A fifth design principle is relationship building. Governance structures are relational models — when establishing new representative arrangements, *Bininj* first seek to work out, and through, relationships. This includes matters of leadership and power (who are the right people to speak), of membership (who are the right people you are working for), and decision-making (who can make decisions and how people will be held accountable for their decisions). The relationships that seem to be given recognition in this model of networked governance are ‘communities of identity’ that are dispersed and inter-connected. The challenge of the model, at an organisational level, is how to sustain a networked structure in the face of sets of relationships that are inherently fluid and negotiable?

Part of the Indigenous answer to the sustainability of larger-scale governance arrangements lies in a sixth principle favoured by *Bininj*: that of designing cultural legitimacy — for representative structures and governance processes, and building organisational institutions that support that legitimacy.

The Interim Council has engaged in an ongoing effort to build the institutions for regional governance. They have not resorted to ‘off-the-shelf’ policies, constitutions, structures, codes of conduct, meeting procedures etc. Rather, they have referred to the corpus of *Bininj* institutions, values, and behaviours as the foundation from which they then consider what might be the best rules and procedures for WCARA: ‘We are developing our own rules that include our culture’. ‘In our own culture we have our own rules that are very strong and we are bringing this into WCARA’.

They have couched this process within a hard-headed consideration of how to make their organisational rules and policies not just culturally legitimate, but also workable and enforceable. Their stated goal, set out succinctly in the Preamble to their draft Constitution, is to engineer a ‘joined up’ approach to their governance (what could also be called a goal of ‘cultural match’):

[We are] using tradition to strengthen the legitimacy of the Regional Authority, and using the Regional Authority to strengthen traditional systems of governance. Through this vision and commitment we seek to maintain observance and respect for traditional values, and to join the responsibilities and structures of traditional authority with those of local government, to achieve a high quality of life and a wide range of opportunities and choices.

These design principles may be more broadly relevant to other Indigenous groups and leaders seeking to develop larger-scale governance arrangements.

Governments aiming to facilitate the development of legitimate and effective Indigenous governance might also usefully consider whether their policy frameworks give adequate space and support to these design principles.

XIII Future Challenges for Regionalised Governance

The WCARA initiative is complex and innovative, and has generated major challenges for its *Bininj* and government proponents – challenges of process, policy and relative power that have revealed different underlying rationales, goals and expectations. There is much to learn from the process to date.

A key constraint has been the lack of resources to facilitate the process, including: human, institutional, financial, information and communication, management and administrative, technical and service delivery. It is unrealistic on the part of governments to think that a regional governing structure will emerge fully formed, let alone with full service-delivery and governance capacity. Intensive facilitation of transitions is required and governance mentoring and development is needed through the complex transition phases involved.

As the WCARA process to date demonstrates, these are areas where government departments can provide invaluable support to Indigenous governance initiatives. One particularly effective strategy which made a considerable difference on the ground, was the community development approach adopted by DLGHS. A team of CDOs have maintained relationships over a three-year period with *Bininj* leaders and organisations, and with management and staff of key organisations. There is now a level of trust that enables frank discussion and joint planning to overcome problems as they arise.

But there are also significant gaps in governments' own governance capacity. In particular, there are still no regionalised funding mechanisms and no sustained streamlining of program grants across departments that are directly linked to supporting regional governance initiatives. DLGHS itself has been under-funded and under-resourced by the NT Government to implement the BSRSF policy agenda. As a consequence, Indigenous proponents and their advisors resort to the usual 'hunting' for stop-start buckets of program grants which are poorly oriented to the actual need at hand.

'Whole-of-government' approaches to regional governance initiatives need to be supported by whole-of-government regional funding mechanisms. At this point in time, the reality on the ground in West Arnhem Land remains one of erratic collaboration across government departments and jurisdictions. The implementation of regionalised programs such as CDEP by DEWR is a case in point, causing confusing for Interim Council members who are wary of taking on another major regional initiative at the same time as regionalising their local government.

Governance is not static. Every society has a right to develop its institutions

and organisations in a manner it regards as internally legitimate; and to do so according to its own informed choice. It is unlikely that matters of representation and cultural legitimacy will be resolved early in the process of designing new organisational arrangements. It is important that people have the policy and legal space to be able to review how well their designs are working, and have the power to refine arrangements when they are found to be insufficient to the task, or lose credibility.

On the *Bininj* side, considerable progress has been made in the midst of occasionally daunting obstacles. The identification of *who* constitutes the *regional 'self'* in a networked governance model requires vigorous internal debate and negotiation. This has been a fundamental issue for *Bininj* in the WCARA process. At the regional level, the cultural geography underlying the inclusion and exclusion of groups and communities is more open-ended, and so are the possible representative issues that might come under dispute.

There are always likely to be limits and checks upon regional governance arrangements as a result of the opportunistic 'pulling away' of individuals and groups wanting to reassert their local autonomy. But for the same reasons, there will also always be checks on small-scale localism (eg, as a result of the limits of demographic growth, as well as the decreased availability of services and resources). This tension will present ongoing challenges to any new regional body. It suggests that no single 'self' will suffice by itself as *the* unit of governance, but that networked governance is particularly well-suited to layered multiple 'selves'. The model may well enable people to build regions at the same time as building their local communities. Indeed, higher-order regional levels of authority are likely not to be sustainable unless local and community governance arrangements are in reasonable order.

However, to be workable and sustainable, models of networked governance need flexibility in building up the identified aggregations of responsibility and accountability. The model also needs clarity in the allocation of roles and responsibilities across its layers. Lack of clarity will generate contestation, undermine organisational legitimacy, and lead people to withdraw their support away from centralised levels. Imposing solutions from the top, or attempting too prematurely to 'fix' Indigenous experiments into legal constraints and conditions, may well diminish the effectiveness of regional models.

In order for representation and accountability arrangements to enable Indigenous constituents to put their faith in governance at a greater geographic and social scale, the arrangements have to be seen to be legitimate, and they have to work. This requires the main proponents to provide regular information down to members and constituents about their decisions, actions and plans. There is a huge workload attached to this expectation. Misunderstanding and misinformation happen easily. Poor communication back to members quickly undermines regional credibility, and leads to poor participation and contested representations.

Finally, *Bininj* people involved in the WCARA process now face perhaps

their biggest challenge in the form of the newly announced NT Government policy framework for regionalised local government. On 11 October 2006, the Minister for Local Government, Elliot McAdam, announced a far-reaching structural reform program for local government in rural and remote areas of the Northern Territory. Since this paper was first drafted, key policy changes have been implemented by the NT Government via DLGHS which have effectively superseded the BSRSF Policy.²⁷

Since the beginning of 2007, the new framework (called ‘New Local Government’) has been actively developed and implemented based on establishing a smaller number of municipal and ‘regional shires’ (not regional authorities as they were called under the BSRSF). These shires will be much larger regions than were anticipated under the previous policy, on the asserted basis of ‘research undertaken on the sustainability of local government in other jurisdictions that shows that a shire of less than 5000 people would struggle to be sustainable in the longer term’.

Importantly, the NT Government ‘will be providing the framework for this structural change’. Accordingly, the Government has itself developed a single governance structure (of wards, a cap on the overall number of elected shire representatives, and local community management boards), a model constitution, a standardised electoral process, that will be used for all the new regional shires. This ‘one-size-suits all’ model will be entrenched in new local government legislation.

A form of networked governance appears to be involved, with formalised organisational links between community and regional levels of decision-making and accountability. The new regional shires will be required to identify and prioritise the delivery of a set of ‘core local government services’; which will become mandatory by being enshrined in the amended local government legislation. What constitutes ‘core’ and ‘non-core’ services for local government has immediately raised the vexed, and long unresolved issue of cost-shifting generally by state, territory and Australian governments in Indigenous Affairs.

The target date for implementation of this reform agenda is 1 July 2008. The NT Government has established a Local Government Advisory Board to provide advice directly to the Minister on the implementation of the new framework. The Board has an independent chair (Mr Patrick Dodson) and is made up of appointed members from regional areas, the local government sector and industry stakeholders. The policy also calls for Transitional Committees of local government representatives and other stakeholders to be established in each of the major regions, to oversight the process on the ground.

The new ‘framework’ appears to effectively supersede the BSRSF policy. It is unclear what the implications are for the Bilateral Agreement on Regional

²⁷ Elliot McAdam MP, ‘Local Government Blueprint for the Future Announced’ (Press release, 11 October 2006), & transcript of speech located at www.dcdsca.nt.gov.au

Authorities which supported the BSRSF policy goals of voluntary amalgamation and culturally-informed governance solutions. Aspects of the new policy seem to have been informed by the design experimentation undertaken in the WCARA process to date. Nevertheless, the new policy runs the risk of being viewed by Indigenous Territorians as an exercise in bad faith by the NT Government and its departmental officers. The policy has been formulated without consultation with the Indigenous parties most directly involved and will be implemented within a year.

For the WCARA initiative and the Bininj people involved, the consequences have been momentous. Over two meetings held in early 2007, the WCARA Interim Council has been transformed in a Transitional Committee reporting to DLGHS and the new Advisory Board. The region is now referred to as the West Arnhem Shire; not WCARA. Members of the WCARA Interim Council were told that they were required to expand their regional boundary to include the township of Jabiru and the community of Maningrida. In other words, they now have both Bininj and Balanda representatives of local government involved. They will no longer have their own local government constitution, but share the common constitution that will be written into the revised legislation.

Under their new Transitional Committee process, having additional representatives from key organisations in the two new communities, elected members and their CEOs are considering options for their new shire structure, the allocation of representation within an expanded region, the number and arrangement of wards (which will be required to have internal cadastral boundaries), and other major issues arising from the new policy approach. It is currently unclear to what extent they can retain culturally-based approaches to decision-making and governance.

Current national and international research strongly supports the link between culturally legitimate governance structures, practical capacity, and improved organisational performance. The new NT framework imposes enforced amalgamation, proscribes regional boundaries, and a single solution to governance arrangements for regionalised local government. In many ways this constitutes a significant reversal of existing NT Government policy. On the other hand, there may be some Indigenous leaders and groups who will respond favourably to the possibility of even larger-scale representative domains.

After their initial disillusionment with the changes, the WCARA Interim Council has reshaped itself into the WAS Transitional Committee and remains engaged in negotiating their own agenda in the new policy environment. As one senior Bininj representative said: "Government is calling the tune now, but this is too important for us to just walk away. We have to stick with this, think about our families and communities, and try to get the best outcomes."

If the fast-tracking of regionalised local government in the NT is to be pursued, then it will require sustained community-development support, practical coordination across governments, and the provision of resources for carrying out

governance development at all levels (from community to regional). If the necessary resources and support are not made available regionalisation will likely fail, just as current community councils are failing.

Effective, legitimate governance is intimately linked with the idea of a people or polity having a right and ability to determine its own future priorities and design its own instruments of governance. The WCARA process has shown that governments and departments can play a valuable role working with Indigenous groups to facilitate regionalised local government that is both effective and culturally legitimate, especially when done within a participatory community development framework. It remains to be seen whether the new NT policy framework is a retreat by government to imposed 'western-style' solutions and a 'one-size-fits-all' model that treats cultural issues as too time consuming and problematic. If that is the case, the policy may end up substantially undermining the development of sound legitimate Indigenous governance at the regional level.

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