



Legislative Assembly of the Northern Territory
Standing Committee on Legal and Constitutional Affairs

Discussion Paper No. 1

Northern Territory Indigenous Affairs

An Examination of Structural Relationships in
Indigenous Affairs and Indigenous Governance within
the Northern Territory

JUNE 2002

Presented and Ordered to
be Printed by the
Legislative Assembly of
the Northern Territory on
22 August 2002.



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An Examination of Structural Relationships in Indigenous Affairs and Indigenous Governance within the Northern Territory

JUNE 2002

A paper issued for public comment

by the

Standing Committee on Legal and Constitutional Affairs

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1. EXECUTIVE SUMMARY

- A. The purpose of this Discussion Paper is to initiate public discussion throughout all parts of the Northern Territory on the matter of the appropriate relationships that should exist between the Indigenous people/communities of the Northern Territory, the Northern Territory Government and the wider Territory community on matters of Indigenous governance.
- B. The Paper looks at the question as how those relationships could be manifested by examining both existing and possible new relationships between the Northern Territory community and its Government on the one hand, and the Indigenous people/communities and their organisations in the Northern Territory on the other, with a view to considering how to make those relationships operate in the fairest, most practical and as harmonious a way as possible:
- (1) under the present constitutional arrangements applying in the Northern Territory: and
 - (2) how those arrangements might have influence upon a future grant of Statehood to the Northern Territory; including
 - (3) the question whether the Northern Territory Government should enter into a 'Framework Agreement' or 'Agreements' with the representatives of those Indigenous people/communities.
- C. The Paper raises a number of matters which relate to the structural issues of Indigenous governance, including as it might be expressed in any Framework Agreement or Agreements that might be negotiated, within the context of the Northern Territory as self-governing or as a new State.
- D. The Paper also identifies matters that impact on Indigenous communities and the community as a whole that should or could be included in any Framework Agreement or Agreements that encompass possible new structures, arrangements and relationships. Although not an exhaustive list, these matters might include the following
- Indigenous culture, language and religion;
 - Aboriginal customary law, its recognition and enforcement;
 - Aboriginal land and land under claim under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth;
 - Access to Indigenous communities;
 - Accountability and review;
 - Conservation and Indigenous heritage issues;
 - Cross-cultural issues;
 - Financial viability and economic development;
 - Indigenous access to and control of resources;
 - Indigenous autonomy, self-management and self determination;
 - Indigenous community essential services and infrastructure;

- Indigenous health and education;
- Indigenous housing;
- Justice and application of law issues;
- Legal and constitutional protection of Indigenous rights;
- Native title issues under the *Native Title Act* 1993 of the Commonwealth;
- Political representation of Indigenous people and rights to participate in the affairs of the wider Territory community;
- Recognition and enforcement of the basic human rights of peoples, including as particularly applicable to Indigenous people and minorities;
- Reconciliation;
- Relationships with the institutions of Northern Territory Government;
- Sacred sites;
- Service delivery to Indigenous communities.

E. In examining the appropriate relationships, the Paper provides a number of objectives that the Committee would need to take into account in respect of this inquiry:

- To provide an opportunity for reflection and public discussion on the existing legislative, political, administrative, financial and judicial structures and arrangements within the Northern Territory;
- To provide the opportunity for the Northern Territory community to express views on alternative structures that may be available within a Northern Territory legislative and constitutional framework.
- To make recommendations that will assist the Northern Territory Government, Indigenous communities and organisations in negotiating and implementing new relationships, particularly with regard to processes for implementing appropriate frameworks of regional or local autonomy, financing and economic development and representative processes, within the overall constitutional position of the Northern Territory (including as a new State).
- To identify the legal and constitutional constraints within which any such Framework Agreement or agreements must operate, including those constraints arising from the Commonwealth Constitution and the Australian federal system.
- To develop and make recommendations that will assist Indigenous communities and organisations in the Northern Territory to develop the capacity to manage appropriate and effective legislative, political, administrative, financial and judicial structures and arrangements within the overall framework of the Northern Territory.

F. In this Discussion Paper, the Standing Committee does not enter into a detailed examination of the issues. Rather, it sets out some of the issues it wants to

explore and poses some questions, to give greater focus to the public hearings and to submissions made to the Committee.

- G. The Standing Committee stresses that, in accordance with the parameters of its Terms of Reference, this Discussion Paper, and the Inquiry by the Committee to which it relates, are only concerned with structural issues of Indigenous governance, including as it might be expressed in any Framework Agreement or Agreements that might be negotiated, within the context of the Northern Territory as self-governing or as a new State.

The Committee is not proposing to consider options that might retract or unduly limit existing rights of the democratic participation by any one section of the Northern Territory community in the government of the whole Territory, in favour of any other section of that community. That is, the Committee will not be considering proposals to dismantle Self-Government and the democratic rights under it, except as substituted in proposals for a new State.

All options that are to be considered by the Committee must meet the minimum basic standards set by international human rights law in terms of the rights of all peoples to participate democratically in the business of government, and must not be racially discriminatory in terms of those standards.

- H. This Discussion Paper is still an options paper and the views expressed herein do not necessarily represent the final views of the Committee. The paper is issued to invite further comment and submission before the Committee makes its report to the Legislative Assembly.

2. INTRODUCTION

2.1. *Terms of Reference*

On 20 August 1998, the Legislative Assembly of the Northern Territory, by resolution established the Standing Committee of Legal and Constitutional Affairs to inquire, report and make recommendations upon such constitutional and legal matters as may be referred to it by:

- (i) the Attorney-General; or
- (ii) resolution of the Assembly.

The Legislative Assembly reconstituted the Standing Committee on 16 October 2001.

On 25 October 2001, the Legislative Assembly resolved to enhance the Standing Committee's role and function in providing the following additional Terms of Reference:

1. The Committee shall inquire, consider, make recommendations and report to the Assembly from time to time on:
 - (a) any matter concerned with legal or constitutional issues, including law reform, parliamentary reform, administrative law, legislative review and inter-governmental relations;
 - (b) the legal or constitutional relationship between the Northern Territory and the Commonwealth;
 - (c) any proposed changes to that legal or constitutional relationship, including the admission of the Northern Territory as a new state of the Commonwealth; or
 - (d) any proposed changes to the Commonwealth Constitution that may affect the Northern Territory and/or its residents;
2. With the approval of the Attorney-General, any other matter concerning the relationship between the Northern Territory and the Commonwealth and/or the states in the Australian federation;
3. Meet with any other state or Commonwealth parliamentary committees to inquire into matters of mutual concern;
4. The Committee shall report to the Assembly as soon as possible after 30 June each year on its activities during the preceding financial year.

The additional terms of reference addresses three specific elements:

- A general reference power in respect of legal or constitutional issues, including law reform, parliamentary reform, administrative law, legislative review and inter-governmental relations.
- A general reference power on matters concerning the Northern Territory's ongoing constitutional development that may also be tied to a future grant of Statehood.
- Other specific inter-governmental relationships that the Attorney-General may wish the Committee to address or investigate.

2.2. *Background to this Paper*

The Standing Committee at its meeting on 1 March 2002, taking into account the additional terms of reference, endorsed and approved a program of activity relating to the Committee's future short and long term strategies and programs, including a methodology to achieve that program.

The focal point of the Standing Committee's activities under its approved program of activity and the additional terms of reference relates primarily, but not exclusively, to the matter of Northern Territory Statehood.

On 22 May 2002, the Committee, having regard to the resolution of the Legislative Assembly of 25 October 2001 in providing additional terms of reference, resolved among other things, to conduct an inquiry into matters relating to Indigenous governance in the Northern Territory, in particular, the examination of appropriate relationships that should exist between the Indigenous people/communities of the Northern Territory, the Northern Territory Government and the wider Territory community:

- (a) under the present constitutional/legislative arrangements applying in the Northern Territory; and
- (b) whether those arrangements might have influence upon a future grant of Statehood to the Northern Territory; including
- (c) the question whether the Northern Territory Government should enter into a Framework Agreement or Agreements with the representatives of those Indigenous people/communities.

In elaborating on Framework Agreements, the Standing Committee in its *Report into Appropriate Means to Facilitate Statehood*¹ in April 1999 included a discussion of the interests of the Indigenous people of the Northern Territory as part of any grant of Statehood. The report also discussed the subject of a possible Framework Agreement for the Northern Territory, that is, an agreement between the Northern Territory Government, and the representatives of the Indigenous people of the Northern Territory, concerning a range of issues of vital interest to the two parties, and setting out a framework within which the relationship between the two could or should be developed in the future.

The Standing Committee, in its Report, recommended², among other things, that:

*the Northern Territory Government commence discussions as soon as possible to explore the development of a Framework Agreement as called for by the Committee for the Indigenous Constitutional Conventions.*³

¹ Standing Committee on Legal and constitutional Affairs. 1999. *Report into appropriate measures to facilitate Statehood*. Northern Territory Legislative Assembly. Darwin, Australia.

² Recommendation 4.1

³ The reference to "Indigenous Constitutional Conventions" in this quote is a reference to the two Indigenous Conventions held at Kalkaringi and at Batchelor in 1998.

Both of those Conventions called for the Northern Territory Government to enter into good faith negotiations for such an agreement to allow for recognition of Indigenous self-government in the Territory.

The Standing Committee stresses that, in accordance with the parameters of its Terms of Reference, this Discussion Paper, and the Inquiry by the Committee to which it relates, are only concerned with structural issues of Indigenous governance, including as it might be expressed in any Framework Agreement or Agreements that might be negotiated, within the context of the Northern Territory as self-governing or as a new State.

The Committee is not proposing to consider options that might retract or unduly limit existing rights of the democratic participation by any one section of the Northern Territory community in the government of the whole Territory, in favour of any other section of that community. That is, the Committee will not be considering proposals to dismantle Self-Government and the democratic rights under it, except as substituted in proposals for a new State.

All options that are to be considered by the Committee must meet the minimum basic standards set by international human rights law in terms of the rights of all peoples to participate democratically in the business of government, and must not be racially discriminatory in terms of those standards.

2.3. Purpose of this Paper

The purpose of this Discussion Paper is to initiate public discussion throughout all parts of the Northern Territory on the matter of the appropriate relationships that should exist between the Indigenous people/communities of the Northern Territory, the Northern Territory Government and the wider Territory community on matters of Indigenous governance:

- (a) under the present constitutional arrangements applying in the Northern Territory: and
- (b) how those arrangements might have influence upon a future grant of Statehood to the Northern Territory.

This includes the question whether the Northern Territory Government should enter into a Framework Agreement or Agreements with the representatives of those Indigenous people/communities.

In bringing these matters into context, the Royal Commission into Aboriginal Deaths in Custody clearly and unequivocally identified through its recommendations that Aboriginal people require policies and processes that will lead to the elimination of disadvantage and the growth of empowerment and self-determination of Aboriginal society, stating in particular:

The reconciliation of Aboriginal and non-Aboriginal society demands a very strong commitment to the elimination of Aboriginal social, economic and cultural disadvantage. This will involve ending domination and an empowerment of Aboriginal people. The first pre-requisite to the restoration of control is the desire and capacity of Aboriginal people to take control of their lives. The second pre-requisite is assistance from governments. That support is necessary because the economic base of Aboriginal people was completely destroyed by their

*dispossession, and their treatment since that time has rendered it quite impossible, until very recently, for any economic base to be developed. The third pre-requisite is the development of a mechanism through which that support can be provided to Aboriginal people in such a way that the dependence of Aboriginal people on the broader community is not perpetuated. The principle of self-determination can provide opportunities for progression toward redressing inequalities. Ultimately, self-determination is about people having the right to make decisions concerning their own lives, their own communities and the right to retain their culture and to develop it.*⁴

Further, the Royal Commission into Aboriginal Deaths in Custody Report highlighted that Governments and Aboriginal organisations need to agree together the processes which, should be adopted for the delivery of services and the designing of policies and recommended:

*That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people (Recommendation 188)*⁵.

The matter of Indigenous governance has been under consideration since that Report. It was taken up in the Administrator's Address to the Legislative Assembly on 16 October 2001, outlining the Government's program on Indigenous affairs:

*It is absolutely essential both for the Territory's development and social harmony that Indigenous Territorians share opportunities for economic development. Through the use of Indigenous Framework Agreements, the Government will assist Aboriginal people to have the opportunity to develop their own business enterprises, exercise control over what happens in their communities, and determine how services can best be delivered in ways that are culturally appropriate. These agreements will include appropriate performance and financial management criteria...The government will work cooperatively with Indigenous Territorians and their respective organisations to ensure the appropriate recognition of their concerns, while addressing their economic and social dislocation. It will achieve this by working in partnership with Indigenous Territorians, particularly through the use of Indigenous Framework Agreements providing for greater self-determination and control over their own affairs.*⁶

On 7 March 2002, the Minister for Community Development and Minister assisting the Chief Minister on Indigenous Affairs, the Hon. John AhKit, MLA, presented a major statement on Indigenous affairs to the Legislative Assembly. The Minister's statement encapsulates the areas of interest that the Standing Committee wishes to address, and in part reads:

⁴ *Final Report of the Royal Commission into Aboriginal Deaths in Custody – A Summary*, prepared by Kathy Whimp, Aboriginal Legal Rights Movement, Adelaide:

http://www.austlii.edu.au/au/special/rsiproject/rsilibrary/rciadic/rciadic_summary/rcsumk02.html.

⁵ 1991. Royal Commission into Aboriginal Deaths in Custody. *National Report: Vol 4*. Australian Government Publishing service, Canberra, Australia: p7.

⁶ Northern Territory of Australia. 2001. *Parliamentary Record, 16 – 25 October 2001*. Vol. 1, Northern Territory Legislative Assembly. Darwin, Australia: pp 5-7.

For Indigenous communities, equity will mean building their capacity to engage in the economy in a meaningful way and investing in their own future...[and] equality will be gauged by how effectively they can exert their rights as citizens of the Northern Territory. Access to essential services so long limited or denied Indigenous Territorians; we will give them the tools to achieve real advancement for themselves and their children. Access to information will allow informed decision making about their own communities that will enable Indigenous people to develop strategic solutions to the problems they face and all of this will enhance and confirm the capacity of Indigenous citizens of the Northern Territory to fully participate in the economic, social and political life of the Territory, from within their own communities through to the work of parliament.⁷

Taking into account the Administrator's address and the Minister's statement, the Standing Committee, in addressing this issue generally, is aware that Framework Agreements are only one aspect of the broad scope of Indigenous issues that need to be taken into account and given earnest consideration.

Such agreements have been identified by the *Indigenous Constitutional Conventions* and by this Committee in its previous Report as a specific matter warranting further exploration and consideration. The prospect of entering into such agreement or agreements must therefore be given special consideration. The wider range of Indigenous issues can still be brought within this special consideration as part of negotiating what matters should go into any such a Framework Agreement or Agreements, and how those wider range of issues should be dealt with in those agreements.

The Standing Committee is keen to contribute both to the debate on Framework Agreements, and also to the community process of considering Indigenous issues generally, by examining both existing and possible new relationships between the Northern Territory community and its Government on the one hand, and the Indigenous people/communities and their organisations in the Northern Territory on the other, with a view to considering how to make those relationships operate in the fairest, most practical and as harmonious a way as possible. For example, this could include the review of existing partnerships and agreements, statutory or otherwise, with Indigenous communities and organisations. Where appropriate, this could then identify more flexible, effective and accountable fiscal, economic, political, administrative and judicial framework structures that could be put into place.

The public discussions initiated by the Standing Committee through this Discussion Paper can support this process of considering these existing relationships and could assist Indigenous communities and organisations in the Northern Territory as they work with Government and others to develop new relationships.

It is not intended that these discussions should usurp the role of any other bodies or persons in the community, nor do they seek to undermine their activities. On the contrary, the Committee in its work will seek to complement the work done

⁷ Northern Territory of Australia. 2002. *Parliamentary Record, 26 February - 7 March 2002*. Vol. 3, Northern Territory Legislative Assembly. Darwin, Australia: p 1111.

elsewhere and bring the issues to the attention of the Territory public for open discussion and resolution.

The Standing Committee also sees its role in this matter as being an important dimension in building lines of communication and understanding between all Territorians, both Indigenous and non-Indigenous. It has an important role in working towards a more tolerant, peaceful and prosperous future for all Territorians, and at the same time one which ensures that there is equitable treatment for all Territorians.

Furthermore, the Standing Committee, through this process, seeks to gain and to impart a better understanding of the distinct perspectives that Indigenous people and their communities have within the Northern Territory on a range of issues of importance to them. For example, the Committee seeks an understanding of the differing goals and visions that Indigenous people and their communities may have for the future, being goals and visions, which have been largely shaped by their distinctive histories, cultures, governing traditions and contemporary situations.

In the past, interest groups in the Territory have tended to look at the issues solely from their own perspective and background, which in some cases are vastly different from one another. The lesson of history is that we must look beyond these narrow perspectives to a wider, more encompassing view, if the whole community is to be given a chance to work together for its mutual advantage.

The Standing Committee's eventual aim is to put forward recommendations to the Legislative Assembly that would, if implemented, so structure the ongoing relationships between the Indigenous people of the Territory and the wider Territory community and the Northern Territory Government that would enable the transition to Statehood to take place within a positive framework.

This approach would enable the Indigenous people/community in the Territory to embrace the grant of Statehood as being compatible with their own goals and vision for the future, and thus enable them to become integral and valued members of this new State of Australia. Whilst, at the same time the non-Indigenous community of the Territory would be given the opportunity of embracing a form of reconciliation with the Indigenous people/communities of the Territory by democratic endorsement of the Statehood proposal and by the acceptance of the agreement or agreements setting out the terms of these ongoing relationships.

2.4. Powers of Parliamentary Committees

The Standing Committee on Legal and Constitutional Affairs is a parliamentary committee made up of Members of the Legislative Assembly from the major parties and Independents. It has the power to inquire into and report on such matters that are referred to it by the Legislative Assembly, the Attorney General or upon its own motion in accordance with its additional terms of reference provided by resolution of the Legislative Assembly on 25 October 2001.

While the Committee can make recommendations to the Legislative Assembly, the implementation of any Committee recommendation requires the support and action by the Northern Territory Government.

2.5. The Committee's Process

Although there is no strict time limit, the Standing Committee will carry out its work on these important Indigenous issues mentioned above during this current session of the Legislative Assembly. In doing so, the Committee proposes to organise briefings with relevant organisations and to conduct public hearings and meetings in the major Territory urban centres, in Indigenous communities and elsewhere in Northern Territory. The Committee will also receive written and oral submissions from interested individuals, communities and organisations. At the end of this process, information will be compiled in a final report to the Legislative Assembly.

In gaining a better perspective on Indigenous issues within the Northern Territory, the Standing Committee would like to establish a collaborative working relationship with Northern Territory Indigenous communities and organisations including peak national Indigenous organisations.

In this Discussion Paper, the Standing Committee does not enter into a detailed examination of the issues. Rather, it sets out some of the issues it wants to explore and poses some questions, to give greater focus to the public hearings and to submissions made to the Committee.

3. ISSUES TO BE CONSIDERED

In addressing Indigenous issues in the Northern Territory at the outset of its deliberations, the Standing Committee recognises that Statehood and major constitutional development in the Northern Territory will not occur without the support and recognition of the basic rights of Indigenous people in the Territory⁸.

Indigenous people comprise approximately 29 percent of the Northern Territory's population⁹. The Indigenous people/communities of the Northern Territory have a strong and distinctive cultural heritage and, as such, matters relating to the protection of land rights, sacred sites, local autonomy, the maintenance of Indigenous language, culture and religion and the recognition of customary law are strongly supported within that community.

The Standing Committee is aware that some of the representative Indigenous organisations within the Northern Territory support a significant grant of regional or local autonomy and self-determination for Indigenous people in the Territory. Whilst other Indigenous organisations/communities within the Northern Territory, may wish to achieve the recognition and the management of their way of life within a single Territory

⁸ The involvement of Indigenous peoples in the process of Northern Territory constitutional development was advocated by the former Sessional Committee on Constitutional Development. See Sessional Committee on Constitutional Development. 1996. *Foundations for a Common Future: The Report on Paragraph 1 (a) of the Committee's Terms of Reference on a Final Draft Constitution for the Northern Territory* - Volume 1. Northern Territory Legislative Assembly, Darwin, Australia: Chapter 5, pp 11-12.

⁹ Australian Bureau of Statistics Article: 4705.0 - Population Distribution, Indigenous Australians – June 2002.

constitutional and legal framework. The Committee wishes to hear of the range of views on these matters.

The Standing Committee plans to focus on several key issues. These issues are intended to provide a starting point for consultation between the Committee and those who make presentations or submissions to it.

The Committee begins its inquiry with these objectives in mind:

- To provide an opportunity for reflection and public discussion on the existing legislative, political, administrative, financial and judicial structures and arrangements within the Northern Territory, and on the other alternatives that are available, and to enable Indigenous communities and organisations and the wider community to express their views on these matters.
- To make recommendations that will assist the Northern Territory Government, Indigenous communities and organisations in negotiating and implementing new relationships, particularly with regard to processes for implementing appropriate frameworks of regional or local autonomy, financing and economic development and representative processes, within the overall constitutional position of the Northern Territory (including as a new State).
- To identify those matters that impact on Indigenous communities and the community as a whole that should or could be included in any Framework Agreement or Agreements that encompass the new structures, arrangements and relationships (see list of possible matters below).
- To identify the legal and constitutional constraints within which any such Framework Agreement or Agreements must operate, including those constraints arising from the Commonwealth Constitution and the Australian federal system.
- To develop and make recommendations that will assist Indigenous communities and organisations in the Northern Territory to develop the capacity to manage appropriate and effective legislative, political, administrative, financial and judicial structures and arrangements within the overall framework of the Northern Territory.

4. PRINCIPLES AND STANDARDS IN DEVELOPING NEW RELATIONSHIPS

The development of new relationships between the Indigenous people of the Northern Territory and the wider community and its Government will require that Territorians acquire a basic understanding of what *government* and *governance* means, or can mean, in the circumstances in which Indigenous communities and organisations find themselves, either now or in the future.

In an article entitled *The Importance of Indigenous Governance and its Relationship to Social and Economic Development*¹⁰ that formed the basis of discussion in the

¹⁰ This introductory paper was prepared by Mr Neil Sterritt, President of Sterritt Consulting Ltd.

Indigenous Governance Conference held in Canberra, 3-5 April 2002, succinctly addresses that issue:

Governance is not synonymous with government. Equating governance with government constrains the way in which problems with policy and practice are conceived. For example, the confusion in terminology has led to policy issues being defined implicitly as a problem of government, with the result that the onus for fixing it is necessarily seen to rest with the government. It can place blinkers around the range of strategies that seem to be available to deal with these problems. In short, definitional confusion related to governance has important practical consequences: it may affect not only the definition of a problem, but also the policy analysis over how to resolve it and the assignment of responsibility for taking action.¹¹

The Standing Committee wishes to explore new and innovative ways in which decision making in relation to Indigenous issues and concerns might take place.

The Committee does not see that this should necessarily be confined in all cases to traditional Westminster structures of government. Issues of democracy in the Western sense, accountability and review must still be taken into account, along side other issues such as equity, human rights, self-governance, tolerance and respect, cultural sensitivity, effective communication, etc.

Further, the Standing Committee is concerned with issues raised by the decision making process that affects both Indigenous and non-Indigenous people, and how regional and local forms of Indigenous autonomy could be reconciled with that situation, consistent with the maintenance of social cohesion and the need to act fairly towards all concerned. Under the present multi-cultural situation of the Northern Territory, where crosscultural links can be extensive, including with Indigenous people, this is a serious issue needing consideration.

The Standing Committee suggests that any discussion of governance options, to be meaningful, must be elevated to matters of general principle or acceptable standards. Major constitutional and institutional changes cannot be based just on considerations of political expediency and sectional self-interest, otherwise any such proposals are unlikely to succeed in the first place, and if they do, they are unlikely to survive in the longer term. The recent experience in the Territory supports this view. It should not be a bare contest between Indigenous and non-Indigenous power bases. Of the main principles and standards that should be taken into account, democracy, accountability, review, equity and fairness, human rights, etc., have already been mentioned. They also include legitimacy and accessibility.

Such matters are further elaborated in the above article *The Importance of Indigenous Governance and its Relationship to Social and Economic Development*, in which refers to four main attributes of governance:

- *Legitimacy:* the way structures of governance are created, leaders chosen, and the extent of constituents' confidence and support;

¹¹ Plumpre T and Graham J, 1999, *Governance and Good Governance: International and Aboriginal Perspectives*, Institute on Governance, unpublished paper appearing on www.iog.ca, Ottawa, Canada.

- *Power:* the acknowledged legal capacity and authority to make and exercise laws, resolve disputes, and carry on public administration;
- *Resources:* the economic, cultural, social and natural resources, and information technology needed for its establishment and implementation; and
- *Accountability:* the extent to which those in power must justify, substantiate and make known their actions and decisions.

The Standing Committee is interested in examining all these matters of principle and standards, in the context of developing appropriate legislative, political, administrative, financial and judicial structures and arrangements to accommodate Indigenous communities within the overall legislative and constitutional framework of the Northern Territory, including as a new State, and both in terms of short term strategies and long term solutions.

The Committee expects that a variety of submissions will be made to it and it welcomes all such views, but points out that it must act in accordance with its Terms of Reference.

SOME QUESTIONS REGARDING PRINCIPLES AND STANDARDS IN DEVELOPING NEW RELATIONSHIPS

- What are the basic principles or standards to be applied in developing new arrangements and relationships with Indigenous people/communities in the Northern Territory?
- Can we draw comparisons or find common answers to this question among the various Indigenous communities within the Northern Territory?
- Are there national and international experiences that we can also draw upon of relevance to the situation in the Northern Territory?
- How effective are the policies and processes in respect of the existing legislative, political, administrative, financial and judicial structures applicable to Indigenous communities within the Northern Territory, and to what extent do they not meet these principles and standards?
- Are the matters discussed above a helpful framework for negotiations on change, and if not, what would be a more useful focus and approach?
- How can Indigenous communities and organisations best accommodate any short and long term changes to the existing relationships between Indigenous communities and organisations and Commonwealth and Northern Territory Governments without abandoning or compromising these principles and standards?
- To what extent is legislative and/or constitutional support required to maintain these principles and standards, as part of any new arrangements and relationships entered into with Indigenous people/communities in the Northern Territory, and if so, what form should they take (including upon a grant of Statehood)?

5. MATTERS THAT MIGHT BE INCLUDED IN ANY FRAMEWORK AGREEMENT OR AGREEMENTS

It is not possible at this time to identify all those matters that potentially could be included in any Framework Agreement or Agreements with the Indigenous people of the Northern Territory, assuming that it is decided that such agreements are to be part of any chosen option for the future. This is a matter for negotiation. But it may nevertheless be helpful to list broadly the kind of matters that could be dealt with in any such agreements.

SOME MATTERS THAT MIGHT BE INCLUDED IN ANY FRAMEWORK AGREEMENT OR AGREEMENTS¹²

- Indigenous culture, language and religion;
- Aboriginal customary law, its recognition and enforcement;
- Aboriginal land and land under claim under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth;
- Access to Indigenous communities;
- Accountability and review;
- Conservation and Indigenous heritage issues;
- Cross-cultural issues;
- Financial viability and economic development;
- Indigenous access to and control of resources;
- Indigenous autonomy, self-management and self determination;
- Indigenous community essential services and infrastructure;
- Indigenous health and education;
- Indigenous housing;
- Justice and application of law issues;
- Legal and constitutional protection of Indigenous rights;
- Native title issues under the *Native Title Act 1993* of the Commonwealth;
- Political representation of Indigenous people and rights to participate in the affairs of the wider Territory community;
- Recognition and enforcement of the basic human rights of peoples, including as particularly applicable to Indigenous people and minorities;
- Reconciliation;
- Relationships with the institutions of Northern Territory Government;
- Sacred sites;
- Service delivery to Indigenous communities.

¹² A non-exhaustive list of such matters, not necessarily in order of importance.

The Standing Committee would welcome public discussion of the whole subject of Indigenous Framework Agreements and their merit, their importance to Indigenous affairs, how they might be negotiated and implemented, and what matters should be included in any such agreements.

6. STRATEGIES FOR SUSTAINABLE INDIGENOUS MODELS OF GOVERNANCE

A significant challenge lies ahead in implementing proposals to create and maintain appropriate and sustainable models of governance that will meet Indigenous community aspirations and also be acceptable to the greater majority of the wider Territory community. This is why it is thought necessary to elevate the debate to matters of principle and standards. Any solutions must in particular exhibit the elements of fairness and equity, not only to the Indigenous community of the Northern Territory, but also to the wider Territory community. The solutions must also be workable and capable of lasting.

Three key elements in this latter respect are financial, capacity building and legal structure. The Standing Committee would like to explore with Indigenous communities and organisations in the Northern Territory, as well as the wider community, their ideas about practical and effective ways to ensure that those communities have the financial and other capacities required to exercise their powers and carry out their responsibilities under any new arrangements and relationships that might be implemented, and how those new arrangements and relationships might be legally structured to facilitate effective and lasting solutions.

6.1. *Financial*

The Standing Committee assumes that one important key to making Indigenous communities socially viable is to make the Indigenous local and regional economies successful and sustainable.

Funds to support these economies can come from various sources:

- from use and development of lands or resources
- from Commonwealth, Territory/State governments in the form of transfers, grants or loans
- from lending institutions/investors
- from aid organisations
- from local sources

The Standing Committee would like to explore with Indigenous communities and organisations in the Northern Territory ways in which their financial arrangements and relationships might be structured and arranged to assist Indigenous communities in developing successful and sustainable local and regional economies.

6.2. Capacity Building

Indigenous communities and organisations will also require support and training with regard to management and administration skills. Some Indigenous communities may not want to take on greater self-governing authority until these skills have been developed.

The Standing Committee would like to explore with Indigenous communities and organisations ways in which support and training with regard to management and administration skills might be enhanced.

6.3. Legal Structures

The present system of governance for Indigenous communities in the Northern Territory is based on several different models, under a variety of Commonwealth and Northern Territory legislation. Many outside agencies are involved, as well as the Indigenous agencies and organisations themselves.

The Standing Committee wishes to assess the advantages and disadvantages of these models, and how they could be restructured and improved or replaced. In the context of a future grant of Statehood, this includes a consideration of how this might occur as part of the grant, including by way of express provision in any new State constitution.

SOME QUESTIONS REGARDING STRATEGIES FOR SUSTAINABLE MODELS OF INDIGENOUS GOVERNANCE

- What steps should be taken in the short term to improve the situation under the present models?
- What are the most effective models for governance in Indigenous communities in the Northern Territory? Should there be more than one model?
- How should that model or those models be implemented?
- Would partnerships and agreements with the respective Commonwealth and Territory Governments and private sector institutions be useful?
- How might these partnerships and agreements be developed?
- What legal structures and institutions need to be created?

7. CONCLUSION

In conclusion, the Standing Committee wishes to stress that this is only a Discussion Paper intended to stimulate public debate. It does not put forward any distinct proposals or recommendations. The issues will evolve over the course of the Committee's inquiry and the receipt of public input.

The Standing Committee looks forward to this dialogue in order to make a positive contribution towards practical and meaningful ways of assisting the Indigenous communities and organisations in the Northern Territory in their quest for an equitable order, and in developing a more tolerant, peaceful and prosperous society in the Northern Territory for all Territorians.

8. SUBMISSIONS AND VIEWS TO THE COMMITTEE

Any person or organisations wishing to express views or to present a submission on this matter are welcome to present them to the Standing Committee.

Requests for further information, appointments for individual meetings with the Committee, or queries about the work of the Committee, should be directed to:

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