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# Centre for Aboriginal Economic Policy Research

## Native Title Representative Bodies: the challenge of strategic planning

**J. Finlayson**

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DISCUSSION PAPER

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## ABSTRACT

This discussion paper is the result of empirical research. The argument is driven by the question of what constitutes appropriate and practical Native Title Representative Body (NTRB) responses to the proposed amendments where legislation is expected to focus on organisational structure, administrative and financial processes and policy procedures. All NTRBs will be affected by the scale of the proposed administrative changes as issues of control, representation and accountability are common operational concerns across the board. However, material from the case study suggests the amendments are more likely to impact significantly on the capacity of smaller regional organisations to respond effectively. The wider administrative emphasis given to concern with control, representation and accountability are discussed with reference to how at least one NTRB can develop responses which are both practical and realistic in policy terms.

### Acknowledgments

The research for this paper was based on one week spent with a Native Title Representative Body (NTRB). I have not named the organisation concerned in order to maintain confidentiality with them and protect their privacy. Approval to undertake this research was given by the NTRB's governing committee and with their knowledge that I intended to write a CAEPR Discussion Paper reflecting on observations and interviews during my visit. My thanks to staff and other members of the NTRB who were prepared to speak so frankly with me and for their time in doing so.

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In 1995, two years after the *Native Title Act 1993* (NTA) was proclaimed, the Aboriginal and Torres Strait Islander Commission (ATSIC) commissioned a consolidation Review to assess the 'effectiveness of the Native Title Representative Bodies (NTRBs) determined under the *Native Title Act 1993*' (ATSIC 1995: iii). The major terms of reference encompassed an investigation of existing and future arrangements through:

- a survey of representative bodies which would include data on claims researched and lodged with the National Native Title Tribunal (NNTT); geographic coverage of representative bodies and the relationship of those bodies to other bodies; and the responsiveness of representative bodies to issues brought to their attention;
- assessment of the effectiveness of representative bodies in terms of their functions and responsibilities under the Act; and
- identification of management and funding strategies to address problems apparent in the review (ATSIC 1995: 1-2).

The ATSIC Board of Commissioners further identified a key set of issues for consideration including the:

- definition of the precise roles and responsibilities of representative bodies;
- level of expertise desirable for the staffing of representative bodies;
- identification of any additional measures which should be taken in order to maximise efficient and appropriate service to Indigenous people in native title matters; and
- appropriateness of financial and administrative arrangements currently in place for native title assistance' (ATSIC 1995: 2).

The recommendations of the Review provide a useful model for strategic directions in the ongoing development of organisational structures and administrative procedures by which NTRBs can provide effective service delivery. The review also suggested a timetable for post-review implementation of its recommendations. It is surprising then, that many of the review's recommendations were either ignored or languished as NTRBs proliferated. Consequently, the Federal Liberal-National government's recent (1996) proposals to introduce amendments to the NTA focus, in detail, on tightening the requirements under the Commonwealth's NTA for financial accountability and representation in NTRBs. An additional reason for the amendments directly concerns the operational effectiveness of NTRBs based in the constant criticism by industry groups of the 'unworkability' of the NTA, together with industry 'uncertainty' about the capacity of many NTRBs to operate as effective representative bodies with peak body status. In addition, the level and intensity of intra-Indigenous

conflict associated with much of the native title claims process, in concert with the difficulties faced by NTRBs in resolving these disputes, has fuelled public criticism and demands for Federal Government intervention and greater external scrutiny. Finally, the proposed amendments to the NTA follow a series of legal judgments which found that questions of law could not be decided by the National Native Title Tribunal (NNTT). These recent decisions seriously affect the capacity of the NNTT to implement a threshold test for claims when they are lodged, and as a consequence some claimant groups lodged ambit or similarly inappropriate claims. (The NNTT also now cannot make a determination of claim status but can only mediate agreements amongst parties; it is the Federal court which has to make determinations.)

The proposed amendments (Commonwealth of Australia 1996a), due for introduction into the Commonwealth Parliament in 1997, seek to rectify the identified loopholes in the administrative processes of claim research, preparation and consultation with claimants which are expected of NTRBs. Changes with respect to the ministerial process for determining NTRBs; increased functions and obligations for greater financial accountability; and amendments to the right to negotiation (RTN) process for mining under the future act regime (see ATSIC 1996; Commonwealth of Australia 1996b; Smith 1996) have been specified for amendment.

Following the incorporation of the proposed amendments into legislation, a 12 month 'transition period' will enable presently registered NTRBs to continue to operate with the proviso that existing NTRBs will be required to reapply for representative status.

At first glance many of the proposed changes to NTRB organisational accountability and claims management seem onerous in the extreme. In fact, the basis of many of the proposals stem from recommendations in the 1995 Review (ATSIC 1995). However, the review balanced 'accountability' with recommendations for greater NTRB statutory powers. The amendments, by comparison, ask for greater accountability while ignoring the balance required by increasing their mandatory powers. Not surprisingly, a philosophical tension has emerged between Indigenous and bureaucratic positions that argue the organisation's brief is to provide a professionally-based regional service, against an alternative view that the organisation must be organically grounded through grass-roots representation, control and the incorporation of localist concerns.

In this paper, questions of what constitutes an appropriate NTRB response to the proposed amendments are problematised in relation to what processes best serve Indigenous interests in the native title claim procedures. Such questions are apt since legislative attention in the amendments will focus on organisational structure, administrative and financial processes and policy procedures, including matters of internal

accountability and equity in regional representation. Similar issues of accountability were apparent in the case material presented during the 1996 review of the *Aboriginal Councils and Associations Act 1976* (ACA) (see Martin and Finlayson 1996). However if all future NTRBs are to be incorporated under this Act, as proposed in the amendments, then policy makers will need to at least be familiar with the recommendations of the ACA review with regard to accountability and representation.

This discussion paper focuses primarily on the internal issues faced by smaller NTRBs in accommodating the changes required by the proposed amendments - though these are matters of concern for all the NTRBs. The paper begins with a broad ethnographic description of one particular NTRB and its history, followed by discussion of the principles of what constitutes policy realism in the context of the necessity to make an appropriate organisational response with respect to issues of control, accountability, and representation. For reasons of confidentiality the NTRB is not identified by name.

**The organisational setting**

Early in 1997, I spent one week with an NTRB of the organisational size referred to in the Review as a (hypothetical) Model 2 (ATSIC 1995: 75). As the Review describes it, their notion of organisational models is based on a correlation between workload requirements and organisational structure. This formula was established in an effort to give parity between the two very sharp divisions amongst NTRBs - (1) that of the big, well established and long established NTRB; as against (2) the small under-resourced NTRB only recently set up. Model 2 is described as consisting of '10 staff ... The major difference between the two models [Model 1 and Model 2] is that the latter only consists of one legal officer, one anthropologist, one research officer, one field officer and one secretarial position. Model 2, however, includes an accountant/book-keeper position' (ATSIC 1995: 117).

In the Review's proposal each Model was costed according to a formula for the associated salary and salary-related costs, capital and recurrent costs, based on anticipated and differential workload agreements. It was clearly understood by the Review team that workloads for native title claims would differ regionally and by State according to differing development interests and land tenure. Certainly, this has proved to be the case. For example, the majority of future act notices occur in Western Australia while a minority have been lodged in Victoria. It was also stated that funding 'agreements' should be established by ATSIC with each NTRB based on actual reality of their differing workloads.

In practice, the application of workload agreements to funding allocations has not been established as a direct relationship. In part, this was because

the issues of native title continue to show differentiation between each State. Not only has the actual volume of claims research, management, preparation and dispute resolution expanded exponentially, but more importantly, ATSIC did not implement the workload funding formula. Consequently, although the NTRB I investigated had begun with the staffing structure and funding regime appropriate for a Model 2 organisation, it had departed from the original conception of an indicative staffing model to include three field officers (instead of two), two legal officers (instead of one), and several administrative staff (but with the anthropologist's position vacant). All anthropological research was out-sourced, as indeed was much of the legal work. Such changes in workloads were envisaged by the review. For this reason, baseline funding and staffing models were not fixed.

In the early 1980s, a non-statutory land council with limited on-the-ground experience of research or involvement in land matters and with no secure or ongoing funding base, had operated in the area. The name of the present NTRB is the same as its predecessor and although it is now a regionally-based land council with different personnel and local loyalties and constituted under the NTA, many constituents continue to associated it with its predecessor. Unfortunately, this has led to expectations of the NTRB's performance being based on the opinions held of its predecessor. Moreover, the establishment of the organisation as an NTRB rather than as the reemergence of the earlier land council has meant a shaky path. In the period immediately after the land council gained its initial status as an NTRB, its ability to function effectively was dogged by internal disputes centred around doubts about its representative structure; not an uncommon issue in Aboriginal organisations (see Martin 1996; Martin and Finlayson 1996).

Eventually, these matters were managed through a change of governing committee membership and administrative personnel and by organisational consolidation of NTRB profile. At this point, the organisation was able to wholeheartedly turn its attention to its mandate for native title claim work. However, this process took a period of some months during which factional disputes challenged the authority and legitimacy of various parties to comprise the governing committee and to administer the organisation's funds. Although the organisation is no longer dogged by the combination of factors which led to such an impasse, a number of critical organisational and representational matters have continued to require consideration and resolution.

## Control

In this particular organisation, just as in many other Aboriginal organisations, the question of who is in control is open to constant challenge, debate and revision. This is not simply a question of the

composition of the local Aboriginal representation on the board; although this is certainly discussed publicly in the region. In essence, the question is a matter of where the locus of decision making lies and the inevitable tension associated with it of whether it is the governing committee or the administrative staff, led by the executive officer, who monopolises the role. Indeed, control at an organisational level for many Aboriginal people appears to be an issue judged by the degree of so-called community control and participation. Yet in many cases, to define control in terms of grass-roots participation is more of an ideological position or statement of symbolic Aboriginal authority, since the actual composition of a governing committee is more often than not reflective of the dominance of particular family groups and interest groups, or even the prominence of a sub-regional population. On the other hand, grass-roots control is not necessarily expected by Aboriginal people to reflect democratic participation. Often the contrast in the nodes of power within an organisation demarcates community factions (said to be those with a mandate of authority) from professional and bureaucratic groupings (said to be those whose role it is to be directed, since they are without the mandate of Aboriginal authority).

To continue to cast the relationship between an NTRB and its Indigenous constituency as a grass-roots dynamic is also a difficult position to sustain, since as Smith (1995: 68) rightly observed 'NTRBs are not based upon traditional authority structures, even though they are required to establish their public legitimacy partly in terms of being able to speak for, and on behalf of, landowning groups. First and foremost, they are a new class of legislatively created institutions located at the interface between Indigenous values in relation to land and aspirations, and those of the wider Australian political and economic system'.

Smith's characterisation derives from expectations of NTRBs as specified in their responsibilities and statutory functions. In practice, fierce resistance from members of the governing committee to the notion of an impersonal relationship between themselves and the administration of the organisation is not uncommon; including arguments about decision-making and the allocation of financial and infrastructural resources and differential access and control of these by NTRB constituents and staff. Underlying the belief that community organisations should reflect local interests through all levels of their executive and administration is all too often an unexamined notion of the 'community' and the 'community's vision'. Such notions belie the fact that regions are composed of local groups with highly articulated local visions and views of their own position and of their relationship in the wider regional context of Aboriginal affairs. In this sense, there is no unified or homogeneous vision from the constituency's position, and yet there is an expectation that NTRBs will find or develop a regional role capable of transcending localism. The

successful NTRB will be capable of developing a regional role encompassing of localism.

The capacity to construct a relationship between local groups and a regional structure in the NTRB in this case study was also limited by the necessity - common to most NTRBs - to incorporate under the ACA. Generally, new organisations use off-the-shelf constitutions offered by the Registrar of Aboriginal Corporations and, over time, set about adapting the generic constitution to suit their particular needs. Part of the difficulty of resolving questions of control is institutionalising the locus of authority in the organisation. In some cases, generic constitutions severely inhibit the capacity of an organisation to structure an appropriate relationship between the members of the organisation and its constituents; nowhere is this limitation more evident than in the constitutional regulations for the annual general meeting. In the context of these organisations the term 'appropriate' is taken to mean an articulated relationship with the capacity to accommodate changing needs, changing funding regimes, changes in requirements for internal accountability and external scrutiny, and so forth. This goes beyond the simple question of what structures or bureaucratic relationships are 'culturally appropriate'; an issue investigated in the ACA Review. Some respondents to the ACA Review were uncertain about the interpretation of 'culturally appropriate' in terms of structuring or administering their organisations and how some issues might apply to Aboriginal people in rural or urban communities who tend to see themselves as sharing commonalities with the dominant culture.

Another commonly occurring problem in NTRBs with respect to control is the relationship between the governing committee and its administration. Too often administrative staff in the case study were denied autonomy in their day-to-day work and their efforts, especially when professional advice on matters offered to the governing committee were treated with unnecessary suspicion. Explanations for problems of this kind are that members of governing committees too often lack any formal training in management and board duties and also lack experience as board members. The problems point to the critical need for duty statements and codes of conduct to guide incoming board members and codes for relationships with management. Autonomy is not a license for undertaking actions which do not have to be accounted for. But it implies a contract of trust between the governing committee and the administrative staff by which daily administration of the organisation's work is achieved free of factional intervention and direction or personal interference.

Furthermore, the newly elected governing committee member may have had little previous experience of the particular organisation and its highly complex statutory duties and therefore only a limited conception of its organisational role. Indeed, unlike previous community organisations, the role of the NTRB is radically different. In addition, its functions and

responsibilities are legislated requirements under the NTA, which means that the capacity of governing committee members to direct the activities of the NTRB are not as flexible or negotiable as they might be in other incorporated bodies and organisational contexts.

Under the proposed amendments to the NTA, the statutory functions and responsibilities will increase, especially in relation to financial accountability to the external funding sources. Hard decisions about rationalisation of resources and funding priorities for claims will be required of NTRBs under the new responsibilities. However, where there is limited understanding of the organisation other than as a community body, these requirements are likely to be resisted.

The bottom line however, is that to retain NTRB status in the post-amendment period, NTRBs must have in place policy and procedural mechanisms for transparent decision-making; processes for accountability of claims prioritisation and review; contracts for out-sourcing of legal and anthropological work; mediation and dispute resolution mechanisms; staff and management accountability to regional land owners and board management duty statements and codes of conduct. These requirements require the governing committee to establish policy domains based on publicly known processes and procedures, and presumably on which they, as the executive, could (and will, inevitably) be called to account.

In the case study, it was clear that many of the administrative staff of the NTRB felt that the executive called them to account on issues of authorising expenditure, yet resisted any financial scrutiny or expectation of accountability in their own decision-making and financial arrangements. Relations between the elected and administrative arms of the organisation were often tense and distrustful. It was also apparent that many executive members had a limited appreciation of the day-to-day administration of the organisation and that procedures and policies existed for management of the administration and that staff worked within guidelines established and detailed in their duty statements. In some senses, what one found was a situation where the effectiveness and efficiency of the administration was curtailed by the limitations of the governing committee to set policy agendas and to respond with relevance to the management issues by providing appropriate leadership.

Nevertheless, control in an NTRB is not simply a question of dividing power between the executive and the administration. Public scrutiny of decision-making and transparent management must be observable by constituents. In the case study, the NTRB began to deal with the thorny issues of 'control' by initiating a publicly accessible organisational document of policies and procedures. A second step involved providing professional development for governing committee members in terms of their own accountability to constituents, duty statements and codes of

conduct and, encouragement to defer to the policy manual when disputes about NTRB management or claim funding erupted in the wider community.

There are distinct benefits in developing a policy manual and operating with reference to stated procedures. One benefit is that organisations like NTRBs educate their constituency to an expectation that actions have to operate with reference to certain procedures and public accountability. For some communities and individuals, external accountability will involve a paradigm shift since organisational outcomes have often resulted from the influence and patronage of particular individuals or powerful families in organisations. Field officers in the NTRB case study reported that many constituents expected the organisation to continue to operate 'under the table and not according to rules'. Previously, control, power and decision-making had operated by informal processes; a system in which key individuals were the means of access and action.

## Accountability

Much of the discussion above has touched on the wider procedural issues of formal organisational control (constitution, governing committee, policy manuals). In the following section, the issue of accountability is discussed with specific attention to two matters endemic in the NTRB case study. Firstly, the structure of relationships between external bodies and the governing committee, particularly evident in disputes over out-sourcing of professional work (legal and anthropological) is outlined. Secondly, management issues as a function of the relationship between the governing committee and the administration is discussed.

Initially the organisation had a limited number of professional staff and this necessitated out-sourcing where specific expertise was required during claim preparation. The majority of anthropological and legal work was handled through consultancies. A number of district law firms were engaged. In some cases, the solicitors took the view that they were more capable and better placed to represent the claimants' interests than could the NTRB. Over time, some of the legal out-sourcing developed into situations where the legal firm contested the NTRB's management and control over funding for their clients by maintaining that separate representation in the mediation process was in the claimants' best interests. These legal firms encouraged a point of view that separate representation was not only necessary, but equitable and that funding should be coordinated by them, not by the NTRB. However, such arguments were often a response to efforts by the NTRB to rationalise and prioritise allocation of funding resources and decisions about which claims to progress. The same arguments were also brought up when the NTRB attempted to resolve overlapping claims and disputes between claimants using separate lawyers paid for by the NTRB.

Local law firms often had little appreciation of the NTRB's mandate under the NTA to resolve disputes between claimants (see s.202 (4) NTA). In line with the traditions of their practice legal firms handling native title cases inevitably adopted an overly legalistic and adversarial approach to legal representation of their clients. In general, such an adversarial role has not usually included mediation of disputes between claimants.

The proposed amendments will extend NTRB's responsibility for conflict mediation, in conjunction with an expectation that NTRBs develop policies to prioritise and stipulate the bases on which resources are allocated to claims. A summary of the proposed changes is provided by ATSIC in their 1996 publication *Proposed Amendments to the Native Title Act 1993: Issues for Indigenous Peoples*. Representative bodies will also have specific dispute resolution functions to ensure that competing claims are resolved, including claims that have already been lodged. Such functions will include the resolution of conflict concerning consultations, mediations, negotiations or proceedings under the NTA. A new internal review mechanism will be provided by NTRBs to native titleholders who wish to challenge their decisions and actions' (ATSIC 1996: 27).

In the NTRB case study, the majority of their 14 claims were out-sourced to local legal firms. In some cases, the solicitors involved suggested to their clients that efforts by the NTRB to resolve claimant disputes represented a conflict of interest (see also Independent Commission Against Corruption (ICAC) 1997: 72-82). According to this legal view, no grounds existed for an NTRB to handle such situations nor should/could they take decisions about prioritising claims funding, least of all to refuse funding to one party of disputing claimants. When the NTRB had attempted to exercise their prerogative in decision-making, the response of one legal firm involved was to immediately seek alternative funding from the Legal Aid and Family Services (LAFS) section of the Commonwealth's Attorney-Generals Department. At an earlier point in the development of the native title process, some claims from the region had been funded by ATSIC and LAFS independently of an NTRB. This arrangement was largely a consequence of the fact that the first claims from the region lodged with the NNTT occurred prior to Ministerial recognition of an NTRB to service the area.

Irrespective of the impetus for change associated with the proposed amendments, in this case study, it is necessary that the NTRB rethink its organisational structures and administrative practices if it is to develop successfully as a service organisation. This process necessitates careful policy formulation for decision making about allocation of funds, protocols for consultation with claimants, accountability procedures to constituents, and so forth. Arrangements to out-source work on a contractual basis are critical. Accountability frameworks must be specified by the NTRB for the private solicitors and other advisers engaged by it (see Stead (1997) for

discussion of what some of these contractual issues include). The Review addressed what its authors recognised as the essential conditions in which such a relationship should be managed. In particular, the Review recommended NTRB coordination and management of the process as a priority (ATSIC 1995: 19, 2.55). Aware, from bitter experience, of the wisdom of this recommendation, the NTRB staff in the case study are now struggling to regain financial and coordinated control of the management of their out-sourced claims.

The problem of control over the claims process for the NTRB in question was further compounded by pressure on native title claimants from some of the professionals involved in out-sourcing, to operate independently of the representative body - whether in disputes with other claimant parties or in mediation conferences. The capacity to so influence claimants was in large measure achievable because of the generally low level of understanding about the role of NTRBs in the wider Aboriginal community and the high level of suspicion with which many claimants regard one another, in combination with a competitive approach over access to funding resources. Furthermore, many of the local professionals were themselves sources of poor advice in terms of knowledge of the statutory requirements of NTRBs and the nature of the proposed amendments in relation to accountability mechanisms, policy and procedures for claims management.

Yet, there is little reason to see the NTRB case study as an exception in its relationship with out-sourced professionals, since the importance of these issues were first addressed by the land councils established in the Northern Territory in the mid-1970s and has continued to be addressed (see Australian National Audit Office (1993) review of Northern Land Council's use of consultants). Understandably, most of the new NTRBs are struggling to deal with an increasing and high volume of claim research, but with a limited number of experienced staff. The reality is the continuing necessity for reliance on external professionals for some time to come.

A second major issue faced by the particular NTRB I observed, but common amongst many NTRBs, was the problem of how to deal with issues of administrative accountability in the relationship between the NTRB's governing committee and its administration (see also ICAC 1997: 33-47).

With changes to the functions and obligations of NTRBs in the political winds, the governing committees of many NTRBs may be required to make a conceptual leap with respect to their understanding of their roles and responsibilities. An NTRB is not fundamentally a grass-roots community organisation. It is a new creature which must operate according to statutory functions. The transition to operating according to a different

set of requirements than that which has been understood of community organisations in the past, is a fraught process for many NTRBs. The tensions involved are often identifiable in the debate about accountability between the administrative and the elected arms of the organisation.

In the case study, the onus for organisational accountability rested with the administrative personnel, at least in the view of many governing committee members. Questions were raised at monthly governing committee meetings about the work performances of staff and they were expected to acquit all field expenditures. However, the same questions were not expected to be raised by the administrative staff over use of funds or decisions made by members of the governing committee. The processes of decision-making were made largely in the absence of public knowledge or access to decision-making processes, codes of conduct, conditions for financial reimbursement, or organisational policies for review of decisions. Staff felt they were often in the position of being denied access to knowledge of how decisions were reached by the governing committee or how these decisions might be reconsidered. They also felt compromised by decisions of the governing committee to spend funds in areas unrelated to native title matters. Not only were staff not expected to question these decisions, but they were expected to juggle the finances to accommodate them.

On occasions, staff had been reminded that their role in the organisation was to 'carry out the decisions' of the governing committee. They had little authority to question decisions. In such a climate of workplace relations, the issue of delegation of authority and responsibility was problematic. Most staff felt they alone were scrutinised for accountability in the workplace, with little accountability expected of the elected arm and no structure for articulating the poor performance of governing committee members to the regional community.

Interestingly, some staff I interviewed were of the view that the distrust amongst some members of the governing committee toward the administration stemmed from the fact that staff, although predominantly Indigenous people, were not highly visible or widely known in the local community. Often staff lived outside the circles defined as 'the community' and many had been educated elsewhere. These differences led to a distinction being made in the minds of some governing committee members between those employees who were professionally educated and qualified to fulfil their duty statements and those staff who were acceptable because they were 'from the community'. Once again, tension was evident between the role of an NTRB and that of community organisations.

A further expectation of the community-nature of the NTRB was evidenced in constituents approaching staff on the basis of a 'one-stop shop' to meet all their needs. In the past, many community organisations,

including land councils, had offered constituents assistance on a range of issues apart from land matters. In the wider community, there was a continued perception and expectation that this was also the appropriate role of an NTRB.

According to the administrative staff, few members of the governing committee were familiar with the daily administrative work of the NTRB or the processes involved in claims preparation and research, including the work necessary for mediation conferences. To rectify the knowledge gap, the NTRB's office manager developed and distributed an operations manual to the governing committee. The manual describes the organisational profile, the rules of the corporation, workplace procedures, duty statements of staff, policy for use of vehicles and other infrastructure, performance reviews, grievance procedures and so forth. It is, in short, an invaluable working guide to the organisation.

## Representation

A good deal has been written of the difficulties of representation in incorporated bodies as a consequence of the review of the ACA. The plethora of incorporated community organisations is often a response to unresolved, and ongoing disputes about representation in a particular community. Indeed, one informant for the NTRB case study suggested that the level of continuing factionalism within the present organisation was such that a possible solution under consideration was to start an alternative body. This organisational segmentation is, of course, an accepted practice for 'handling' disputes.

On another level, both staff and governing committee and NTRB constituents were beginning to wrestle with the concept of what was 'representative' about a native title representative body. It was not simply a question of how the constitution or the composition of the governing committee should reflect the diversity of regional Indigenous groupings. A further question was how decisions which differentially matched financial and human resources to claimant groups were fair or representative. A number of individuals (legal counsel and Aboriginal claimants) argued that for an NTRB to manage disputing claims under the same umbrella was a conflict of interest and involved inequitable representation.

Unfortunately, the idea of the NTRB as a representative body is indeed misleading, since it is a requirement of the appropriate functioning of the body to make difficult decisions about how the service is delivered, to whom, and under what circumstances; that is, representation does not mean everyone gets everything. Inevitably, not all claims will be progressed or researched. But such decisions must be made in an open process, in

accordance with policy guidelines detailing how NTRB funds are distributed amongst claims on the bases of priority, financial sustainability, claim feasibility, and so forth. NTRBs are not required to progress all claims in their region; their involvement in any claim has to be on the basis of a request by claimants and with informed consent, and then must be weighed up against their own organisational capacity to respond.

Some of the more challenging work emerging for NTRBs is how to resolve disputes between competing claimant parties and in the process, how to establish representative structures which facilitate negotiation between the parties. One of the underlying tensions promoting intra-Indigenous disputes is the fear of not having their interests represented, including a fear of absorption into a regional configuration where the specificities of localism are denied or overlooked. To avoid exacerbating these anxieties, NTRBs are asked to think laterally about how to be flexible and inclusive. In some cases, the use of voting as a decision-making mechanism is replaced by consensus, since voting can simply allow meetings to be stacked and thus equal representation denied. In other situations, claimants may be fighting one another for recognition based on the use of a corporate group name, and acceptance may be achieved through an amalgamation of names. Many of the intra-Indigenous disputes necessitate imaginative solutions to issues of inclusiveness, incorporation and representation fiercely guarded by local groups.

## Concluding remarks

In preparation for the implementation of the proposed amendments and their impact on the functions and responsibilities of NTRBs, including a future where the bodies will be expected to reapply for representative status, ATSIC is providing workshops devoted to drafting policies and procedures, strategic planning, benchmarking and management, and financial management. While the provision of such in-servicing is necessary and timely, it is surprising that the impetus has come from the proposed amendments to the NTA rather than a follow-through process in keeping with the original recommendations of the NTRB Review. Perhaps the lesson from this NTRB case study for ATSIC as a funding and parenting body for NTRBs, is their need to develop more proactive strategies in keeping with the onground requirements of their constituent organisations.

To meet the proposed changes to NTRBs appropriately, NTRBs will, as the case study plainly illustrates, have to operate with policy and financial realism. There is no bottomless pit of money. NTRBs, irrespective of what constituents or governing committee members think, expect or hope, are not community, grass-roots organisations.

First and foremost, these bodies are professional service organisations expected by the bureaucracies funding them, as much as by their constituents, to deliver an appropriate and competent service based on protecting and advancing native title interests in their region of responsibility.

In practice, this will involve a significant sea change in attitude and workplace practices, and insistence on accountability by many of the smaller organisations only recently established as NTRBs. It also requires extensive education of NTRB constituencies about what native title is, in terms of the legislative framework and what role the representative bodies have in the process. Unlike previous incorporated bodies, NTRBs faced a much higher level of scrutiny into their administrative processes, policies and work practice procedures. Many governing committee members will be expected to think in terms of wider regional visions and in terms where localism will need to be subsumed to achieve broad visions. The transition from old ways of operating organisations to new and different models will not be easy. In part, the philosophical tension between arguing for endemic local control of NTRB decision-making processes by reference to community grounding, and support for such organisations playing an interstitial role between the Indigenous and non-Indigenous worlds, remains open to debate. Unfortunately, in the present policy climate where the High Court decision on the coexistence of pastoral leases and native title is under challenge; where changes to the right to negotiate to future acts has implications for claimant representation; where higher threshold tests for lodging claims will be applied; and where new recognition regimes for NTRBs and detailed requirements for their increased financial scrutiny and accountability are all on the agenda, NTRBs must be realistic about how they will engage with the new conditions and expectations.

The value of the NTRB case study in the current policy environment is its illustrative value. The problems of this organisation are common to many. It is equally clear that in some cases, the administrative vision and operating procedures of an NTRB may be in advance of positions taken by a governing committee on questions of control, accountability and representation. Yet, the evidence also suggests that unless governing committees, management and staff (and constituents) acquaint themselves with a comprehensive knowledge of the roles, responsibilities and functions of the NTRB, the organisation is in danger of being dissolved once the proposed amendments are enacted and the transition period concludes. For this reason alone it is imperative that both clients and members of NTRBs think critically and realistically about the future development of their organisations.

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