

## **TOWARDS MORE EFFECTIVE GOVERNANCE FOR AUSTRALIAN INDIGENOUS ORGANISATIONS – VALUES CONTRACTS FOR BOARDS<sup>1</sup>**

**RUSSELL TAYLOR\***

Governance is best understood in terms of the key elements that are commonly seen to describe what is ‘good governance’ to assist (organisational) performance: accountability, transparency, participation, relationship management and...efficiency, and/or equity.<sup>2</sup>

### **Governance in the broader context<sup>3</sup>**

From a broad social perspective, the nature and pace of recent social, cultural, economic, environmental and political change, collectively, make it impossible to overstate the importance of governance. The exercise of effective governance impacts at all levels of society and plays an essential part in our lives and communities and our capacity to cope, survive and prosper.

Broadly, governance structures and processes:

- Represent community and organisational members’ welfare and basic human rights;
- Create and enforce policies and laws;
- Administer essential programs and deliver services;
- Manage human, land and cultural resources; and
- Facilitates negotiation with governments and organisations.

How well such structures and processes perform these functions has a direct effect on the strength and well-being of the entire community.

There is currently a need for a concerted national analysis and debate about what might be the appropriate governance structures and processes needed to cope with the nature and pace of change and associated pressures being experienced by governments and societies today. In the main, current governance discourse revolves around public sector governance (and public administration) some aspects of which do translate to an Indigenous governance context. However, there needs to be specific focus within such discourse on the Indigenous community issues involved. Such debate also needs to hone in on the significant aspects of institutional and organisational relationships which have been, and will continue to be, of critical importance to

---

<sup>1</sup> A paper presented at the Native Title Conference 2002 (WA) – Governance Issues.

\* Russell Taylor is CEO of the NSW Aboriginal Housing Office, but was Principal, Australian Institute of Aboriginal and Torres Strait Islander Studies, and Director, Australian Indigenous Leadership Centre when this paper was presented.

<sup>2</sup> Edwards:2002:52.

<sup>3</sup> As an acknowledgement, it should be noted that much of the context setting aspects of this paper rely heavily of the unpublished 2001 paper by Neil Westbury listed in the references.

the achievement of sound governance at all levels.

## **Defining Governance**

Governance is one of those words that is currently in fashion and hence its meaning is in danger of not being well understood unless further defined. In fact it is an old word (Shakespeare used it) and its meaning has evolved over time from 'a method of management' in the 17<sup>th</sup> Century to **encompass roles and responsibilities of private boards of directors to now, put simply, dealing with all forms of organizational relationships.**<sup>4</sup>

Governance is perhaps often and best understood as the '**art of steering societies and organizations**'. Governance occurs through interactions between structures, processes and traditions that in turn determine how power is exercised, how decisions are taken, and how citizens and other stakeholders have their say.

Importantly, 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.

Effective governance could be described as a model of governance that leads to the social, cultural and economic developments sought by citizens. It involves four main attributes:

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

**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.

Neil Sterritt, a Canadian First Nations leader, in making the connection between "self-government" and "governance", had this to say:

Self-government – an objective today of many aboriginal leaders and community members – is an important notion. Self-government and governance are connected ideas. While government means having "...jurisdiction or control over people in a

---

<sup>4</sup> Edwards 2002:51 emphasis added

political community”, governance is the means (process and structure) by which First Nations exercise that jurisdiction of control.

Self-government, of course, implies mandates and jurisdiction with respect to members, land and resources. **Governance implies having knowledge of leaders roles, responsibilities and accountability to members. Good governance, therefore, is essential to self-government.** In fact, one might consider good governance as the basis for self-government”.<sup>5</sup>

## Organisational Governance

Regardless of how governance is defined, the focus of this paper is governance as articulated and exercised by the organisational unit - represented in the main by community based organisations who aspire to deliver services to and/or advocate issues on behalf of Indigenous Australian constituencies, whose memberships vary from being residents of discrete remote communities to dispersed urban Indigenous peoples who make up a united cultural community of interest around service delivery and/or other common cultural, social and economic interests and activities.

As Indigenous Australians who may already hold or be called upon to take up the complex roles and responsibilities as members of boards of community and related Indigenous organisations (including Native Title Representative Bodies), we need to move beyond a simple description of what governance is, to the challenge of defining and understanding what *effective governance* in the Australian Indigenous context is all about.

Fundamentally, governance is about power, relationships and accountability: who has influence, who decides, how decisions are made and how decision-makers are held accountable. **Accordingly, from an individual organisational perspective, the processes associated with governance determine the ways by which organisations are directed, controlled (i.e. steered) and made accountable.**

## Institutional Factors impacting on Governance

The increased emphasis on governance in many countries has coincided with a growing awareness that institutional structures and relationships, not only within government but between governments and other sectors of society (including minority groups and their representative institutions), have a determining impact on outcomes. As already mentioned, while government has a critical influence on many issues of public concern, it is only one of many stakeholders. As issues of representation, decision-making and accountability become more complex, and the limitations of government are more apparent, it is becoming clearer that government programs are far from the sole determinants of social and economic conditions within communities and regions. Many issues are simply too complex to be addressed by governments acting alone. They will require collaboration and partnerships with other sectors of society.

---

<sup>5</sup> Sterrit 2002:2. Emphasis added

There is also a growing awareness of the significance of institutional factors influencing the course of community and regional economic development. A landmark World Bank study in 1988 into international aid found that the transfer of money was not the determining factor in the development process. The study found that despite some countries receiving substantial foreign aid, their gross national product incomes actually fell, whilst some other countries that received little assistance had rising incomes. It confirmed that 'poor countries have been held back not by a financing gap', but by 'institutions' and 'policy gap'.

Similarly, the relationship between institutional factors, and economic and community development have emerged as central issues. Case study research involving American Indian reservations in the United States of America has shown that the nature and effectiveness of Indian governing institutions have a significant impact on their reservation economic performance.

Such studies have clearly demonstrated that the depoliticisation of business management is associated with lower levels of reservation unemployment, and **that economic development prospects rise with stability in governing institutions**, with reductions in corruption and political opportunism by officer-bearers of tribal governments, by the establishment of professional tribal bureaucracies, and when there are high levels of institutional legitimacy accorded by the reservation population.

Such research concludes that the quality of governing institutions varies widely across reservations. Many Indian governments operate with imposed governing institutions that do not match underlying Indigenous notions of how authority should be organised and exercised. **As a result, they lack legitimacy with reservation populations, or are simply incapable of providing effective resolution of disputes, of reducing political interference in day-to-day management, or stabilising the rules by which businesses, other organisations, and individuals are expected to operate.** This has similar effects on Indian reservations as on Indigenous communities elsewhere in the world: namely, it tends to deny community support to institutions, makes those institutions vulnerable to self-serving exploitation on the part of local politicians, and leaves the financial or other fortunes of investors hostage to debilitating Indigenous politics.

This research has demonstrated that the North American shift to a federal policy of self-determination that delivers genuine decision-making powers to Indian tribes is making sustained economic development possible for the first time in Indian country. However they also confirm that such a policy only makes development a possibility; it does not guarantee it. **Of those obstacles that Indian tribes can themselves directly effect, they believe that the institutional one is paramount.**<sup>6</sup> Generous resource endowments, human capital, and access to financial capital will be virtually useless if tribes are

---

<sup>6</sup> The Harvard Project found that successful economic development in Indian Country is founded on three factors: (1) Sovereignty and self-governance (2) capable Indian institutions and (3) capable government (Begay et al 1997:5)

incapable of making collective decisions and sustaining collective action, and if they lack the institutional structures necessary to maintain a hospitable environment for human and financial investment.

**As for what those structures should be, no one solution fits each tribe.** While all tribes must solve similar and common problems the answers will be tribal specific, responding to particular sets of circumstances, constraints and cultural contexts.

The outcomes of such analytical research have provided an important influence on Canada's Royal Commission on Aboriginal Peoples and its subsequent recommendations that identified the issue of effective Indigenous governing institutions as central to future policy and program developments in Canada.

As Indigenous Australians, we are well aware that **these same key issues and factors have also been identified in Australia.** However, there is a dearth of specific research in the Australian context on these issues.

### **Cultural influences and governance**

Leadership and effective governance do not occur in a cultural vacuum. Culture informs and legitimises conceptions of self, of social and political organisation, of how the world works and of how the individual and group appropriately work in the world. In its political-economic manifestation, culture serves as a series of implicit contracts by which individuals are credibly bound to the system of incentives and constraints embodied in formal and informal mechanisms of social control and organisation.

There is clear historical and anthropological evidence that pre-contact Indigenous Australian societies had flexible and effective governance well adapted to sustainable small-scale hunter-gatherer societies. This governance system gave primacy to property rights in land and its resources that was based on religious knowledge and lineage-based inheritance. Such governance was not uncontested, but was clearly institutionally robust and in many situations it is still accorded primacy by Indigenous people, with land and native title rights that are now recognised in statute and common law.

Indigenous Australian culture has and continues to evolve against and within more dominant societal influences and more traditional forms of Indigenous governance have, to varying degrees, been changed by such influences. Such changed and evolving forms of Indigenous governance can also be understood within the emerging debates about the social capital framework.

In many situations, an Indigenous form of social capital appears well formed and vigorous. However, it may also be very locally and lineage (clan) based, rather than being 'community' or regionally oriented. This can result in individual opportunism and local factionalism with clear winners and losers, and associated community governance problems. **Such actions are tolerated, but generally do not result in good community governance.** This is a major issue for the achievement of stable, sound governance.

An equally problematic issue in these politicised circumstances where Indigenous Australians have been integrated into large artificial communities without a modern economic base, is that of group membership. The challenge that many local groups and communities now face is how to adapt extremely resilient Indigenous forms of governance to mesh with modern introduced forms of governance structure and their contemporary requirements.

...tribal governments must have formal structures in their constitutions, court, legislatures, and bureaucracies that have legitimacy with the people.... **Formal institutions have to be well matched to the (Indian) society's cultural norms, to indigenous understandings of how authority ought to be organised and exercised...** while governing institutions have to have legitimacy, they also have to be suited to the contemporary challenges tribes face and to the world in which tribes operate...**the trick is to find institutions that can pass two tests: they are at once both practical and legitimate.** The goals might be described as culturally appropriate development with "teeth".<sup>7</sup>

**This issue represents a major challenge for leadership: how to develop governance structures which are sensitive to, and compatible with, the cultural diversity and interests of their constituent members.**

The emphasis given to different aspects of governance will vary in different settings because societies value process, form and outcomes differently. There are significant tensions at play between individual rights, and family and communal obligations; between the 'objective' application of the rule of law, as against greater weight being given to tradition and clan in decisions, and so on. Some societies may see economic growth as their primary goal, while others may accord more importance to cultural richness and diversity.

It is important that differing Indigenous traditions and values be recognised and accommodated in a way that contributes to good governance rather than undermining it.

Recent critiques of Indigenous affairs policies in Australia have highlighted what happens when societies become dysfunctional and when shared preferences and perceived options become distorted, counteracting personal responsibility and undermining sound governance. These critiques argue that welfare dependence and inactivity is to blame for dysfunctional behaviour in many Indigenous communities.

However, others contend that many Indigenous people actually invest enormous time and energy in building social capital; it just may not manifest itself in good governance or socioeconomic development according to mainstream criteria. While these debates continue to rage, it is clear that there is an urgent need to more comprehensively understand and develop the short and long-term options for good governance within Indigenous communities and regions.

## **Why Indigenous Governance Matters!**

---

<sup>7</sup> Begay et al 1997:6, emphasis added

This unprecedented combination of enormous challenges and tantalising opportunities confronts Indian peoples and Indian leaders with one of the fundamental tasks of nationhood: creating and building capable government. Research from around the world makes clear that the **improvement in both socioeconomic and political conditions is inextricably linked to issues of self-governance, management and leadership**. The ways that groups of human beings organise themselves to pursue their objectives are central determinants of their success in achieving their objectives. Governing institutions “establish the rules of the game” through which human beings cooperate and disagree, control their own worst impulses and reward their best, and generally interact with each other both within their society and in relations with other societies. **Putting in place effective governing institutions is a crucial first step in any society’s effort to establish and sustain economic growth and to assert control over its own affairs**<sup>8</sup>.

From an Indigenous perspective the issue of governance is (and will remain for some considerable time) an issue of critical importance. Like all other sectors of society, the Indigenous community needs to be able to cope with the effects of globalisation and other competitive forces including the increased use and varieties of information technologies and management and the complexities in the nature and pace of our changing social, political and cultural landscape. This challenge for Indigenous leadership sits side by side with the more fundamental challenge that has to do with efforts to achieve equality (in citizenship rights, socio-economic status, education etc) with the wider non-Indigenous society.

In this context, **strong leadership together with stable, capable Indigenous organisations reflective of, and accountable to, their community’s needs and values form the crucial foundations for regional, community and family socioeconomic development**.

These institutions of governance also provide the essential mechanisms through which leadership and effective governance is exercised in dealing and striking alliances with external constituents, various government agencies and the private sector.

Since the 1970s there has been an explosion of new institutions of Indigenous governance formed at the community and regional levels including: ATSIC Regional Councils, Land Councils, Native Title Representative Bodies, Native Title Bodies Corporate, Local Governments, Community Councils and other incorporated associations operating under different statutory and governmental jurisdictions. Today there are several thousand separately incorporated Indigenous organisations in Australia.

As indicated earlier, the issues of Indigenous governance, leadership, capacity building and devolution of service delivery have been a central and bi-partisan policy focus in Canada and the United States for a number of years, and there is evidence of an emerging approach to identifying international best practice in these areas.

Until recently, however, there has been minimal attention given to issues of governance in Indigenous communities via local and regional representative

---

<sup>8</sup> Begay et al 1997:3 emphasis added

organisations in Australia.<sup>9</sup>

Despite the rhetoric associated with governmental policies and undertakings which espouses the principles of self-determination and self-management heralded by successive governments over the last three decades, it is open to question whether Indigenous communities have ever been able to exercise genuine decision making, given the absence of effective jurisdictional devolution (for further reading see Smith 2002) supported by programs for capacity-building aimed at addressing the lack of systematic support for the development of effective governing institutions at the community and regional levels. **Nor is it widely comprehended that there are enormous and varied demands placed on many of these organisations and their leadership.**

There needs to be more research undertaken and more discussion of the issues involved at a national level. The objectives of any such national research and/or dialogue should include:

1. To increase awareness and understanding among Indigenous leaders and communities, and amongst government policy-makers, about the linkages between good governance and sustained socioeconomic and community development in the Australian context;
2. To identify what works and what has not worked in Indigenous governance, and in related government policy; and
3. To develop recommendations for practical and policy implementation, and identify possible future directions.

Some underlying key issues that need to be explored include:

- The need to define Indigenous governance and capacity building for good governance;
- The evaluation of the current degree of effectiveness of, and limitations upon, Indigenous structures and capacity for governance at the community and regional levels;
- The exploration of possible models for advancing stable and accountable community and regional leadership and governance and associated decision-making processes;
- The benefits and costs of sound governance;
- The development of resources aimed at capacity building and training for governance; and
- The identification and analysis of key issues for Indigenous governance into the future.

---

<sup>9</sup> It is of considerable interest that the Commonwealth Registrar of Aboriginal Corporations (as at August 2002) is now dedicating some resources and energy to the training and capacity building of individual Indigenous organisations incorporated under the *Aboriginal Councils and Associations Act 1976* (said to be 2783 as at June 2002) through the proposed delivery of “*limited training in national governance competencies*” (quote from the Registrar of Aboriginal Corporations Request for Tender 4749/4345 issued in August 2002).



These issues collectively represent the critical challenge that needs to be faced and resolved by the current and future Indigenous leadership and are of fundamental and crucial importance to the future lives and well being of Indigenous Australians. As already mentioned there needs to be a combination of debate, research and critical analysis and evaluation around these issues utilising consultative measures which are inclusive of Indigenous communities and their leadership.

However, in articulating a case for a planned and increased jurisdictional devolution<sup>10</sup> (both ‘bottom up’ and ‘top down’) to local and regional Indigenous communities and organisations, as a means of achieving real self-determination, Smith notes that there is no need for Indigenous communities to reinvent the wheel. She argues that:

There is a wealth of relevant local, national and international experience that can be drawn upon, including universally accepted design principles that will need to be addressed. These include the need for financial and administrative transparency, equity and fairness of funding arrangements, certainty of devolved authority, clearly defined responsibilities; participatory and consensus-based community devolution processes, flexibility and choice dispersed vertical and horizontal accountability, efficiency and effectiveness, cultural legitimacy and mandate, sustainable leadership and an alignment of responsibility with capacity.<sup>11</sup>

Therefore governance and the related governance issues identified by Smith and others are of critical importance to the future well being and sustainability of Indigenous Australians, our culture, our communities, our organisations and our kin.

At the local community organisational level, the individual and collective effectiveness of boards and their membership is critical.

### **Organisational Governance and the Law**

Effective Indigenous organisational governance requires an understanding by board members of the legal environment within which organisations are established and operate and which, to say the least, can be complex and daunting to those who undertake such leadership roles.

Briefly, such organisational legal frameworks include an understanding (to varying degrees) of the following non exhaustive list: the Australian Constitution, Common Law and Statutory Law (and particularly those Statutes which comprise a package which can be best described as “Administrative Law”), other relevant Federal and State Acts of Parliament (e.g. Taxation, Industrial Relations, Workers Compensation and Occupational Health and

---

<sup>10</sup> Smith (2002:28) also notes that: *devolution is not only about the transfer of power, it is also about the transfer of resources. Jurisdictional devolution will require access to, and authority over a range of financial, social, cultural and natural resources – in other words, more than just money. A fiscal framework will need to underwrite the process, which identifies: the equitable division and allocation of block financial transfers to the local level; the division of expenditure responsibilities and accountability; and agreed areas of financial authority.*

<sup>11</sup> Smith 2002:27.

Safety legislation etc), specific Acts under which an organisation is incorporated (e.g. The Aboriginal Councils and Associations Act 1976, the Corporations Act 2001, Co-operatives legislation and the Native Title Act 1993 etc) and other relevant statutes such as Local Government Acts and By-Laws and, of course, the organisational specific Constitution and Rules.

In his *First Nations Governance Handbook*, Neil. J Sterrit (2002:11) refers to this legal framework as being components of the various '*Tools of Governance*' which are available to, and need to be understood and readily applied by, members of Indigenous community organisational boards (and Councils etc) in the interest of achieving effective governance.

In this context, board members also need to have an appreciation of other '*tools of governance*' that influence and determine the effectiveness of their behaviours and decisions as well as their representational legitimacy.

### **Other Influences on Effective Organisational Governance.**

Effective governance requires a clear and unambiguous understanding by board members of their individual and collective roles and responsibilities (Note: ignorance is no legal defence for inappropriate, ill-considered or illegal decisions). Collectively these roles and responsibilities, underpinned by the fiduciary responsibility to act honestly and responsibly (as *reasonable* people) and in good faith in the best interest of the organisation and members, can include:

- To set mission, vision, aims, culture and values of the organisation;
- To represent the organisation;
- To hire, fire, support and assess the CEO;
- To set and agree upon specific strategies and policies;
- To review and agree on management long term plans;
- To review financial and operational performance; and generally
- To work through the CEO and management.

Such collective responsibilities give rise to the need for organisational board members to have other additions to their individual and collective governance "*toolkits*" which include understandings (again to varying degrees) about :-

- Protocols and rules for board meetings;
- Appropriate Codes of Conduct;
- Financial Literacy and Management;
- Organisational management and design;
- Compliance/Reporting requirements and associated issues
- Planning and Risk Management (including Insurance and Professional Indemnity insurance);
- Mediation and conflict resolution;

- Ethics -including effective processes for dealing with Conflicts of interest, pecuniary interests and disputation.

This list of items (and others not specifically listed) come under the general category of the critically important raft of **roles and responsibilities attributed to Directors and Council members and which should include an understanding of the personal liabilities and responsibilities which attach to individual members**. It should be noted that recent reforms in corporate and associated legislation have lifted the ‘corporate veil’ whereby individual Directors can now be held liable for their corporate actions and decisions.

However, a clear and thorough understanding of the foregoing various roles and responsibilities of Directors and Council members by all participants will not necessarily mean that the resultant governance and decision-making will be effective.

Ultimately, effective governance is influenced by various factors which all have to do with the honesty, integrity, transparency, accuracy of decisions taken (and of course successful implementation and effective resourcing etc) and accountability.

However, an additional ‘*tool of governance*’, which can add considerable value to the potential to achieve effective governance, is the development of individual Values Contracts by board members.

### **Values Contracts for Boards.**

Obviously understanding the law and having an understanding of the other ‘*tools of governance*’ briefly mentioned are of critical importance to the ultimate achievement of effective governance. However, of themselves, such *tools of governance* will not act as a guarantee of good governance.

Moreover, it is suggested that these aspects of governance are perhaps the most straightforward (note: this does not mean easy).

**What is perhaps more problematic and difficult – but of absolutely critical importance to sound governance – is how and how well boards work together.**

If the board doesn’t work together to set in place some common values, have a mechanism to stick to them in tough times, regularly review how this scheme works and change it where necessary, then the Board loses control of its collective fate to those who care enough to want to control it.<sup>12</sup>

Recent research<sup>13</sup> has disclosed that the most effective boards share the following common traits:

- Share common values and aims that everyone understands;
- Have a clear understanding of a board members’ roles and

---

<sup>12</sup> Refer Clifton-Steele and Taylor 2001:38.

<sup>13</sup> Refer Clifton-Steele and Taylor 2001:35.

- responsibilities;
- Display mutual respect, work cooperatively and have ‘fun’;
- Handle conflicting views well;
- Make and implement tough decisions without coming apart;
- Regularly invest in time to evaluate their performance; and
- Experience no operational or financial surprises.

As Indigenous Australians, we are all aware of, or have experience with, the internal conflicts, factionalism and disputation which occurs at the local (and broader) organisational levels (mentioned earlier in this paper) which, to say the least, detracts from the quality of governance and often acts as a real barrier to an organisation ultimately realising its goals and potential.

However, through commitment and application to the concept of Values Contracts, boards can seek to and achieve more harmonious operations, decisions and internal relationships by implementing processes that develop, and regularly review, a Contract of Board Values.

The processes designed to deliver a Values Contract for boards are not particularly complex, nor sophisticated. What is required is the strong commitment of all members to the processes involved and the potential benefits.

An example of a Board Values contract is attached ([Attachment 1](#)). The contents of the Values Contract can vary from being a simple list of values and behaviours and/or to a more complex and sophisticated menu of issues. The attachment shown here is simply illustrative of what can be included.

An important aspect of the potential usage of Values Contracts in the Indigenous context is that the processes, and the contract itself, can be very valuable resources in attempting to find the cultural match or balance between the organisational structures and processes and culturally appropriate structures and understandings at the local/organisational level (refer to comments made earlier in this paper).

However, it is worth highlighting that such Values Contract can play an important role in various aspects of governance including the critically important aspects of:

- Developing better informed and educated boards;
- Building better relationships between board members including providing for “time outs” when discussions get heated and/or emotive;
- Developing processes on dealing with difficult decisions<sup>14</sup>;
- Encouraging members to be better prepared and informed;
- Dealing with conflicts of interest;
- Maintaining a clear demarcation line between the roles and responsibilities of the board and those of the CEO (and management);

---

<sup>14</sup> Refer to [Attachments 2 & 3](#) for a suggested process for dealing with tough decisions and some comments on the value of decision-making by building consensus which can be incorporated into the Values Contract.

and

- Identifying inappropriate behaviours and associated decision-making.

Some obvious benefits that can be achieved include:

- More efficient use of Board members' time;
- Less disputation and greater collegiality;
- Greater accountability and transparency in decision-making;
- More effective and ethical decision-making;
- Stronger mandate and member confidence and support;
- Stronger potential for improved performance;
- More ethical behaviours and decisions;
- Better financial management;
- Greater potential to attract funding;
- More culturally appropriate decision-making processes.

All of which = a much stronger platform for good governance to occur.

### **Processes for the development of Values Contracts for Boards**

As already mentioned, the processes required to develop, sign off on and regularly evaluate a Values Contract for an organisational board are not particularly complex and do not necessarily involve any “rocket science”.

What is required is for one or more board members to commit to the benefit of such a process, and act as the catalyst for the board to collectively talk over and commit to the process. There needs to be meeting time (and space) dedicated to the collective development of what issues and behaviours might be included in the specific Values Contract.

Importantly, when changes occur to the composition of individual boards, there needs to be time devoted for the Values Contract to be talked over, agreed to and signed on by new members.

There needs to be agreement by the whole board that where behaviours, processes and/or decisions appear to represent departures from the specifics of the Values Contract, then the actions, behaviours and people involved will be subject to discussion and brought back into line with the Values Contract.

Finally, as part of the ongoing responsibilities of the board (perhaps as a regular agenda item) there needs to be a review of evaluation of the board's performance against the items listed on the Values Contract.

### **Conclusion**

Effective governance by Indigenous organisations is of utmost critical importance now and in the future. Indigenous governing boards and board members need to be capable of exercising good governance.

Much more discussion, research, analysis, evaluation and education of the nature and benefits of effective Indigenous governance and capacity

building is sorely needed.

To be able to exercise effective governance Indigenous board members need to call upon a complex set of '*tools for governance*', some of which are highlighted in this paper.

However, one obvious and very valuable governance resource, which is potentially available to all Indigenous boards and their members is a collective Values Contract for boards which also need to be supported by effective step by step processes for decision-making.

This paper has attempted to advocate the usage of, and benefits to be accrued, from the development and adoption of such Values Contracts (and the decision-making processes involved) for boards of Indigenous organisations in their quest for the achievement of sound effective governance.

## References

**Begay, Manley, A., Cornell, Stephen and Kalt, Joseph, P.**

1997. *Making Research Count in Indian Country: The Harvard Project on American Indian Economic Development*. Malcolm Wiener Centre for Social Policy.

**Clifton-Steele, Rob & Acteum Management Group Pty Limited**

1999. *Decision Making by Building Consensus*. Unpublished

**Clifton-Steele, Rob and Taylor, Russell**

2001. *Governance Issue Workbook and Presentation* - material developed for the Australian Indigenous Leadership Centre National Certificate Courses. Canberra. Unpublished.

**Edwards, Meredith**

2002. *Public Sector Governance – Future Issues for Australia*. Australian Journal of Public Administration. Pp51-61. Vol 61, No 2, June 2002. Blackwell Publishing Limited.

**Smith, D.E.**

2002. *Jurisdictional devolution: Towards an effective model for Indigenous Community self-determination*. Centre for Aboriginal Economic Policy Research, ANU, Canberra. Discussion Paper 233/2002.

**Sterrit, Neil**

2002. *First Nations Governance Handbook*. A Resource Guide for effective Councils. Minister of Public Works and Governments Services. Canada.

**Westbury, Neil**

2001. Draft Discussion Paper *Indigenous Governance*. Canberra. Unpublished

**ATTACHMENT 1**

**A BOARD VALUES CONTRACT...**

**An example being used in an Aboriginal Corporation today ...**

1. We expect at least 7 days notice of meetings (except in emergencies).
2. 7 days before the meeting we expect our agenda to arrive with enough supporting papers to allow us to make informed decisions.
3. Our minutes will go out 7 days after the meeting so that we can be reminded of what we agreed to do.
4. We will take this job seriously and work hard at making the Board work.
5. We will do any "homework" before meetings, and we will give sufficient time for meetings and arrive on time.
6. We will actively participate in meetings but we will not allow one person to dominate the discussion.
7. We will trust the good intentions of fellow board members and we will respect the perceptions and contributions of others.
8. We will meet quarterly to honestly monitor how well we are following these values.
9. We will declare any involvements or interests before taking part in decisions. We will stand down if our interests conflict with those of the organisation.
10. If we have a tough decision to make:
  - We agree to use consensus building to make the decision.
  - When differences occur we will use "the step by step process" to try to reach agreement.
  - We will first make the correct decisions and then make any necessary "political adjustments".
  - We will keep confidential all remarks made while we are discussing the problem. We agree to act on decisions we make, even if we didn't agree.
  - We agree to support the decisions of the group.

Signed: ..... DIRECTOR

Signed: ..... DIRECTOR

Signed: ..... DIRECTOR

Signed: ..... DIRECTOR



## ATTACHMENT 2

### MAKING TOUGH DECISIONS

- Have a step-by-step process and learn to use it (see Attachment 3).
- In your *Board Values Contract* agree to use the process when you have a tough decision.
- Work through step by step.
- Allow time out when discussion gets "hot" or a step has not been completed.
- Remember to stick to your *Board Values Contract*.

**See Attachment 3 for more on this...**

### ATTACHMENT 3

#### **DECISION MAKING BY BUILDING CONSENSUS: The Anatomy of a Good Decision<sup>15</sup>**

Making good decisions is not "rocket science".

There are two major components of the art of making decisions:

1. A set of values or understandings about how we will deal with each other while we are working as directors of an organisation and are making decisions (This might, for instance include an agreement that anyone can call "time out" if the discussion is becoming too heated).
2. A step by step process for making decisions by *building* consensus that reminds the decision makers to think about all important steps required to ensure the decision is the best that can be made and will be implemented. (This might for instance be in the form of a checklist that reminds the decision makers to check whether every stakeholder with useful information is part of the decision making process.)

There are some important words here. **For instance, what is consensus?**

"Consensus" does not mean that everyone agrees with a proposal from the first moment it surfaces. Consensus is built and only develops after a group of people examine each other's views and perceptions about the proposal, get data, air the facts, develop alternatives, think about the likely results, costs and benefits, and only then, in the light of their agreed priorities make a decision about what to do. My dictionary gives alternate meanings for consensus. Compromise, harmony and agreement. There is no blinding light or simple formula. Building consensus can be a lengthy process, particularly if there are strongly held opposing views.

In theory all decisions are made like this.

However complex decisions that require input from other people who may have completely different ethical or business views to you, require a more formal process to ensure that every step is taken and every stakeholder feels that they have been part of the process of making the decision. This is compromise.

We will see that by using an agreed step by step process and agreeing on some values we can take out a lot of the heat that often develops in the decision making process.

These two major components work together to help us make decisions by building consensus. One component will not work without the other. The Process will not work if somebody sets out to derail it. There is no magic formula in the face of deliberate obstruction.

We have suggested that all directors on a board agree to, and sign up, a *Board Values Contract*. This contract controls the way the Board works together. So it is important that everyone signs off on the Contract. Amongst other things the Contract would usually say that directors agree to use the *Step By Step Process* for tough decisions. If everyone sets out to find the right answers and is

---

<sup>15</sup> © 1999 Rob Clifton-Steele & Acteum Management Group Pty Limited..

open minded, these two components work together to help consensus appear. The exercise becomes increasingly easy as the *Step By Step Process* becomes familiar and the contents of the *Board Values Contract* become instinctive.

The *Board Values Contract* "overrides" our personal philosophies and foibles when we are acting as board members and provide a basis that we can all rely upon in our dealings with other members of the group. Everyone should know that it is a condition of being part of this team that they stick to the values in the contract. Those who can't should be counselled to leave the Board.

To build trust, participation and mutual reliance it is important that everyone adheres to them and anyone "transgressing" is brought back into line by the group. This bringing back into line becomes one of the roles of every director on a Board that has adopted the *Board Values Contract*.

For instance, it is very hard to build an effective team if differences are settled by everyone rushing off to lobby their favourite board member. The *Board Values Contract* might require us to "use principled negotiation to reach agreement" and to "keep our discussions confidential to the Boardroom". To build trust it is important that all the values are adhered to and that we understand if we are failing in any of them.

These Values are important because, adhered to consistently by everyone, they give each person an opportunity to equally participate in the decision making process. They will stop decisions being commandeered by the most forceful or the loudest or agreement being half-hearted.

If there are no values, or if all participants are not made to adhere to them, the team will fall apart or individual members will feel that they have no power in the process.

The *Step By Step Process* is important because it helps to ensure that decisions are taken only after all the relevant information is collected and analysed and all appropriate people consulted.

This means that there should not be a rearguard action by someone who should have the right to have a say. Consensus develops as all the appropriate information is gathered and reviewed and personal biases are removed in reasonably objective discussion. It is here that the combination of the *Step By Step Process* and the Values is most important. Over time, the *Step By Step Process* will become very familiar.

The Process checklist shown on **Attachment 3 (1)** defines the steps in making a decision; each of which might vary in importance depending on the decision to be made.

The process consists of 5 stages. Between each, any participant can "call time" to think over the issues or to take the heat out of a discussion.

One of the responsibilities of the group as a whole is to determine what timeframe it will take to make the decision and when it will advance to the next stage. This methodology is not so formal as it sounds; many parts of the process can be passed over quickly, depending on the type of decision to be made.

When you first use this process it may be useful to identify an independent facilitator to make sure that you are following the steps.

## **ATTACHMENT 3 (1)**

### **A STEP-BY-STEP DECISION MAKING PROCESS<sup>16</sup>**

#### **STEP 1: PREPARATION**

- Decide the scope of the decision - clearly define what you are deciding.
- Decide whether this decision should be made by the group or just a nominated person.
- Appoint a "Champion" on the Board for this decision - they will shepherd the process.
- Identify any individuals who have a stake in making the decision or in the outcome. Determine how involved they are to be in the decision-making process.
- Determine where data will come from. Assign responsibility for collection. Champion "follows up".

#### **STEP 2: DEFINE THE ISSUES**

- Identify and document the issues and assess their importance.
- Challenge and clarify any assumption - get some more data.
- Expand, explore and discuss the issues and alternatives.
- Confirm the key stakeholders and their role in making the decision.

#### **STEP 3: DEVELOP THE OPTIONS & ALTERNATIVES**

- Identify and document options, creating a range of choices.
- Assess their consequences and impact on key stakeholders.
- Estimate resource requirements for each option.
- Assess the organisation's capacity to pursue the option.

#### **STEP 4: ASSESS TRADE-OFFS AND DECIDE**

- Estimate probabilities of success.
- Assess risk versus reward, or cost versus benefit.
- Set priorities.
- Assess against other commitments.
- **DECIDE!!!!** Take the vote. Remember to stick to your Board Values Contract.

#### **STEP 5: ASSURE IMPLEMENTATION**

- Develop Action Plans.
- Quickly & fully communicate the decision to all stakeholders and participants.
- Review the results regularly until implemented fully.

---

<sup>16</sup> © 1999 Rob Clifton-Steele & Acteum Management Group Pty Limited.

## ATTACHMENT 3(2)

### SOME EXPLANATIONS OF THE PROCESS CHECKLIST<sup>17</sup>

#### Step 1: Preparation

Many decisions should be made only by the person responsible for the "area", without need for reference to the group. As a general rule, staff should take as much responsibility as possible in their job. For instance, the Office Supervisor should probably have the authority to decide what quantity of stationery to order each month. This is not a decision that is ever likely to be taken to the Board. It is therefore important to decide first whether the decision needs to be made by the Board.

One person needs to be allocated the responsibility of ensuring that the Process takes place in a particular decision. This person is the Decision Manager. They ensure that every step is properly completed.

It is important to decide what decision is being made and the scope of the decision. At this point it is also important to make sure that the decision being made will answer all the concerns raised by any stakeholders. It is almost certain that if a major issue is missed at this stage, consensus will not be reached and a lot of time will be wasted. It is crucial that everybody is encouraged to understand what has gone on up to this stage and make some input. As stakeholders become involved in the process the scope of the decision may have to be reviewed.

"Who is to be involved in the process?" Rope in people who have expressed opinions, who have responsibility for pertinent areas, who will be expected to implement decisions, or whose input will assist. It is a waste of time to make a decision and implement it only to later find a crucial participant was not involved. It is necessary to decide how much involvement and authority each participant should have. For instance there may be many issues where volunteers should be consulted but few where they should have the power of veto.

Getting the facts, rather than perceptions or biases, is important. What information is to be used in making the decision and the responsibilities for collecting it should be assigned at this stage.

This is the end of the first stage. It is important that the group decide whether it is going to proceed past this point or stop and consider what has already been decided.

#### Step 2: Defining the Issues

The first part of this stage is to identify all of the issues to be considered when making this decision. These are headings to be considered under each of the options that will be identified in Step 3. For example, when considering whether to implement banning orders for violent visitors at the organisation we

---

<sup>17</sup> © 1999 Rob Clifton-Steele & Acteum Management Group Pty Limited.

identified as issues:

- What the users of the service generally would think.
- What would the funding body think.
- Fairness & Equity accusing service users.
- Our responsibilities to staff and volunteers.
- Our responsibilities to service users.
- Effectiveness of banning as a sanction.

It is important that these issues be documented and distributed. Any assumptions that have not been tested for the truth should be ferreted out and challenged. For instance a wrong interpretation of the law from the folk law surrounding some issue might force us to the wrong decision about some policy matter.

At this time, discuss the issues again, trying to expand them and to understand each person's understanding of them. In this discussion, look for further, more subtle, hidden issues.

Also try to identify the crucial participants and re-examine their role in the decision-making process.

### **Step 3: Developing the Options**

This section is relatively simple. It is useful to chart the options together with their costs and implications on a whiteboard or some similar resource. During this stage, it is important to look at each option in terms of the issues and stakeholders identified previously. It is also important to assess the organisation's ability to pursue each option.

### **Step 4: Assessing trade-offs and making the decision**

Having "sized" and assessed the options it is necessary to see how they fit with the other activities being undertaken by the organisation or other commitments already made. After checking the priorities against the organisation's objectives, mission and values the appropriate decision should become clear. As the process is used, and directors get used to putting on their directors' hat, the process becomes easier.

#### **What if it doesn't work?**

You will probably find that some previous stage of the process hasn't been fully completed. For instance, it could be that an issue has not been identified or its importance hasn't been recognised or agreed, or perhaps some relevant person didn't have a chance to have a say. If this occurs a fundamental building block of consensus building is not in place and the whole process has to start again. This is one of the reasons why it is so important that each stage gets sufficient time and attention to ensure that staff

with widely varying levels of skill and experience at "analysis and input" can have their say.

### **Step 5: Implementation**

Often, so much goes into the process of making decisions that the importance of ensuring implementation is overlooked. It's no use making the decision if it isn't acted upon. It's a good idea to write Action Plans, assigning responsibilities and due dates. Progress should be regularly reviewed. Most actions that stem from this process within the organisation can be reviewed within the Management or Council meetings and be followed through on their action lists.

This is a mechanical formula for decision-making. It should however be reviewed frequently to ensure that it fits the organisation's requirements and is as efficient and effective as possible.