

FINDINGS FROM: FISCAL RELATIONSHIPS: *THE INTERNATIONAL EXPERIENCE FOR INDIGENOUS PEOPLE*

Indigenous people in Australia, New Zealand, and the United States have socio-economic characteristics very similar to Canada's Indians. They also suffer from sub-standard public services and infrastructure. Each of these peoples also has movements for self-government or "self-determination"; outstanding claims, and demands for improvements in the infrastructure and services they receive. Each of these peoples desires a land base and more powers. They all wish to use these powers to improve their economic opportunities and protect cultural sites. These aspirations are creating political pressure to improve their place within their respective national fiscal frameworks.

In each case the non-indigenous population is resisting change. The criticisms are very similar: new arrangements will constitute special privileges; they undermine national unity; and they are damaging the investment climate. Political resistance is stronger at what corresponds to the provincial rather than the federal level.

In each case, there is also dissension within the indigenous communities regarding appropriate goals and dissension among communities about how goals are being pursued and what is necessary to achieve them. For example, there is a debate among Australia's Aboriginals about how to improve government services. One group wishes to impose new conditions on transfers to States and local governments that would force these governments to direct more expenditures towards Aboriginals. Another group wants to restructure their relationship entirely so as to finance Aboriginal government and service delivery organizations.

The international experience suggests that resistance towards a new fiscal relationship will be reduced if it demonstrably achieves three goals.

1. The new arrangements deliver improved job opportunities and services.
2. The new arrangements contribute to jurisdictional clarity.
3. The non-indigenous public sees that new arrangements support national standards and reduce social costs.

LESSONS FROM THE INTERNATIONAL EXPERIENCE WITH FISCAL RELATIONSHIPS FOR INDIGENOUS PEOPLES

- Build a national consensus among First Nations for a new fiscal relationship. Build a broad understanding of how a new fiscal relationship supports other goals. This will prevent opponents from exploiting internal dissension. Internal consensus can be built by undertaking national consultations; demonstrations of relevance to more immediate goals; constant communication; and the involvement of First Nation organizations from across the country.
- Develop a national table on fiscal relationships. A national table will alleviate suspicions of First Nations entering into discussions about a new fiscal relationship from those not yet ready for such a step. It will ensure that regional groupings of First Nations are fully informed about how their policies might affect other First Nations. It will ensure consistencies in the treatment of different First Nations. It will promote equity and accountability by allowing for easy comparisons of different jurisdictions. It will improve First Nations' business climates by promoting jurisdictional harmony. It will reduce administration costs by promoting the use of national First Nation institutions.



- Develop national First Nation institutions to help implement and eventually administer a new fiscal relationship. In the United States, tribal interests have suffered greatly from an inability to develop national representative organizations. National institutions will create a sense of ownership over the new arrangements. They will improve accountability by creating incentives for self-enforcement of good government practices. They will promote good communications between First Nations and other tiers of government and they will improve the access of First Nation governments to the resources they require.
- Maintain a strong federal role in championing the new relationship. The international experience suggests that without such a role, provincial governments will strongly resist. Other parties may also demand concessions that undermine the consistent and equitable treatment of First Nations across the country.
- Develop exclusive tax jurisdictions for First Nations. In the United States, the absence of exclusive tax jurisdictions has created ongoing disputes between tribal governments and state governments. These disputes are preventing investment on tribal lands and threatening the sovereignty and jurisdiction of tribal governments. The development of exclusive tax jurisdictions may require federal measures to induce provincial tax authorities to vacate tax room on First Nation lands.
- Unambiguously clarify powers, service responsibilities and associated revenues by all governments towards First Nation citizens both on and off reserve. This relationship should also provide for contingencies - for example, what will happen if the federal government devolves certain service responsibilities to the provinces? In the United States, such contingencies have often not been considered and the result has sometimes been erosion of tribal sovereignty or reduction in the services they receive. The effectiveness of a new fiscal relationship will be directly related to the clarity with which responsibilities are specified.
- Base the development of a new fiscal relationship on resolving the issues raised by the Delgamuukw decision. Delgamuukw makes developing a successful new fiscal relationship very achievable. In fact, a new fiscal relationship is probably the most mutually advantageous way of reconciling the different interests affected by this decision. There was a similar court decision in Australia in 1993. Prior to this decision Aboriginal organizations had been unable to make significant headway towards self-government or improving their economic opportunity. Since the decision, third party commercial interests have shown some willingness to support a new fiscal relationship and provide job opportunities to Aboriginals, provided this is linked to resolving the uncertainties concerning aboriginal title. The same logic implies that provincial governments and business interests in Canada will be more willing to negotiate a new alignment of transfer entitlements, service responsibilities, and tax authorities if these issues are linked to resolving Delgamuukw.
- Develop qualifying requirements and a qualifying process for First Nation groupings wishing to enter into the new arrangements. Requirements should be worked out by First Nation institutions, in conjunction with credible third parties and the federal government. A qualifying process should be administered by First Nation institutions. A process similar to this has been used in the United States for tribal governments wishing to take over services from their federal government. The Americans have found that it promotes accountability and promotes the success of the new arrangements. Qualifying requirements should include the mastery of standardized financial reporting requirements and the development of a credible economic and fiscal plan. This process should allow for the assumption of new responsibilities by First Nation governments in stages.



Figure 1. Use of Private Sector Delivery and Evaluations to Promote Maori Values

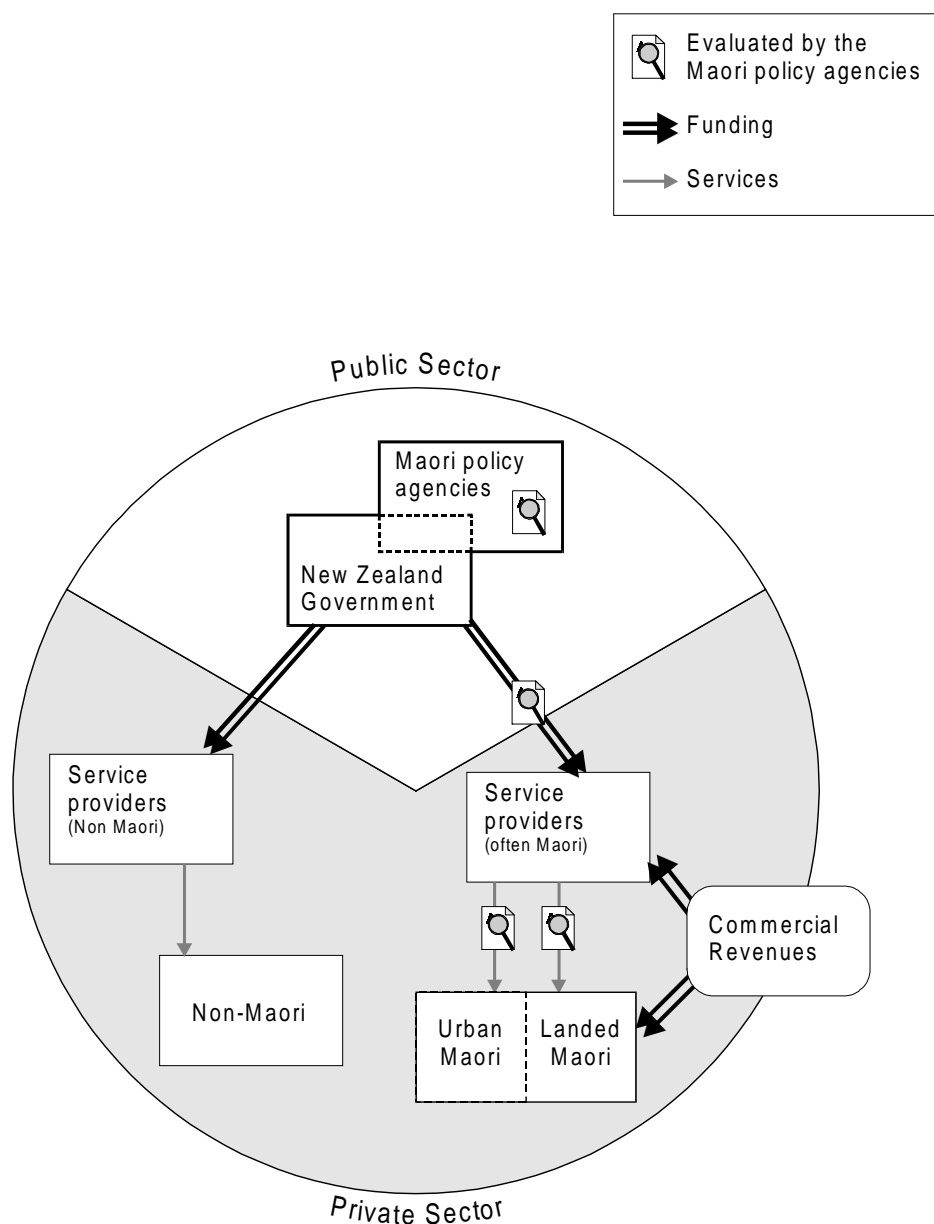


Figure 1 illustrates features of the Maori fiscal relationship. The government uses private sector delivery agencies and advisory and evaluation bodies to promote culturally appropriate public services. Advisory bodies measure program outputs and outcomes in order to assess the quality of services provided to the Maori. These evaluations are used as the basis for making recommendations about improvements. Figure 2 also shows that many services that are provided strictly via the public sector in Canada, are supplemented in New Zealand by services provided through Maori trusts. (This supplementary funding is labeled “commercial revenues.”) These trusts were established with the funds from successfully concluded claims. Trust funds include lease revenues and revenues from Maori commercial enterprises.

Figure 2. The Fiscal Framework for Tribal Indians in the USA

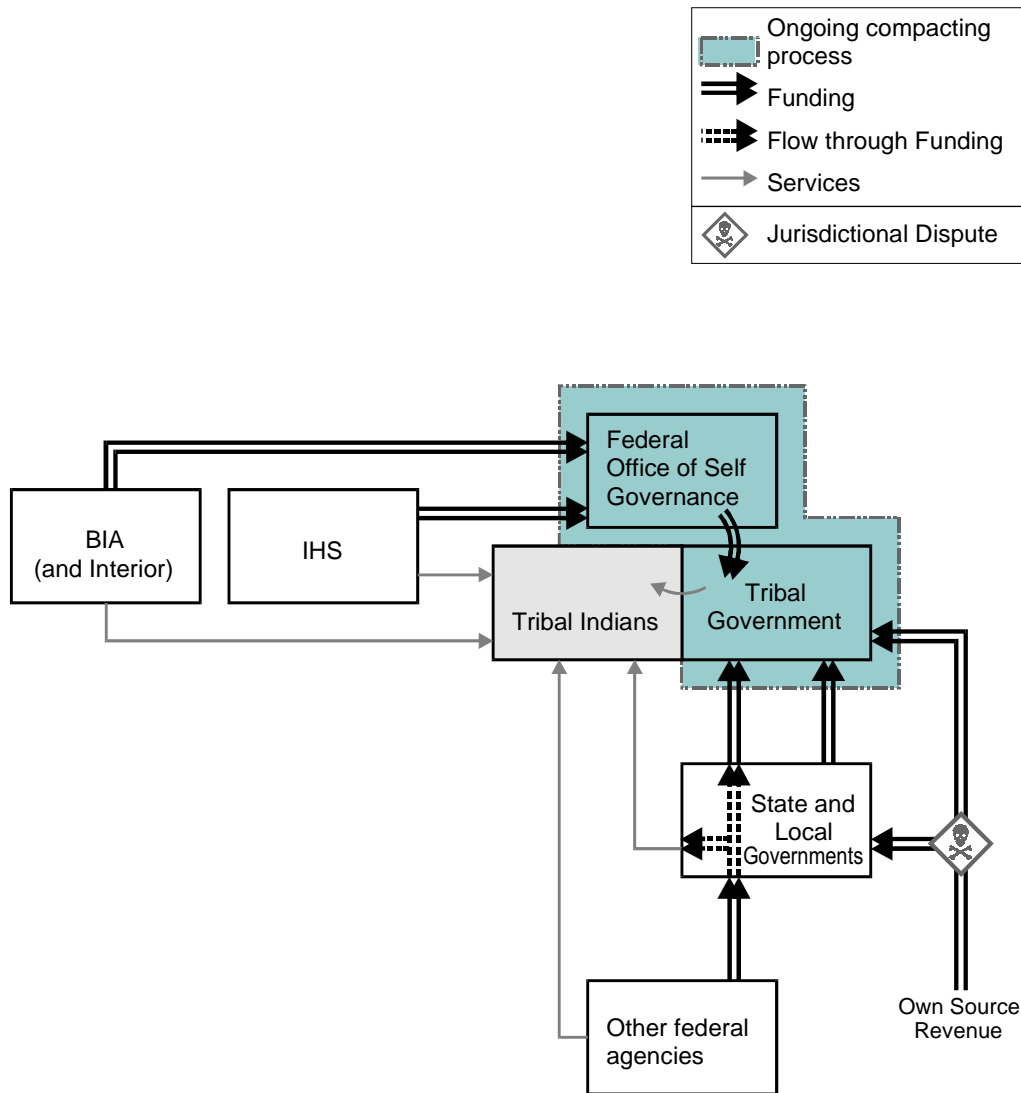


Figure 2 illustrates the fiscal relationship for “tribal Indians” (Indians residing within Indian country) in the United States. The figure shows that the principal federal service agencies are the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA). These agencies provide services directly to Indians residing in Indian country and also contract service responsibilities and their associated financing to tribal governments through the “compacting” process. The expansion of the compacting process is being facilitated through the Office of Self-Governance – a federal agency at arm’s length from the BIA. A variety of other federal agencies, generally outside the compacting process, also provide services to Indians as part of their responsibilities towards all Americans. Many federal agencies provide “flow-through” funds to state governments so that they can deliver services to Indians or support tribal governments in doing so. Flow-through funding is illustrated by the dotted lines within the box marked “State-Local”. The American fiscal relationship is subject to frequent disputes over tax jurisdiction between tribal governments and state and local governments. These disputes are indicated by the skull and crossbones set on the lines marked “Own-Source revenue”. Disputes are based on a variety of issues including the checkerboard nature of land designations within Indian country, the variety of classifications of citizens within Indian Country and the final division of service responsibilities between state and local governments and tribal governments. Their ultimate cause is the incomplete specification of the fiscal relationship.



Figure 3. Fiscal Framework for Aboriginals in Australia

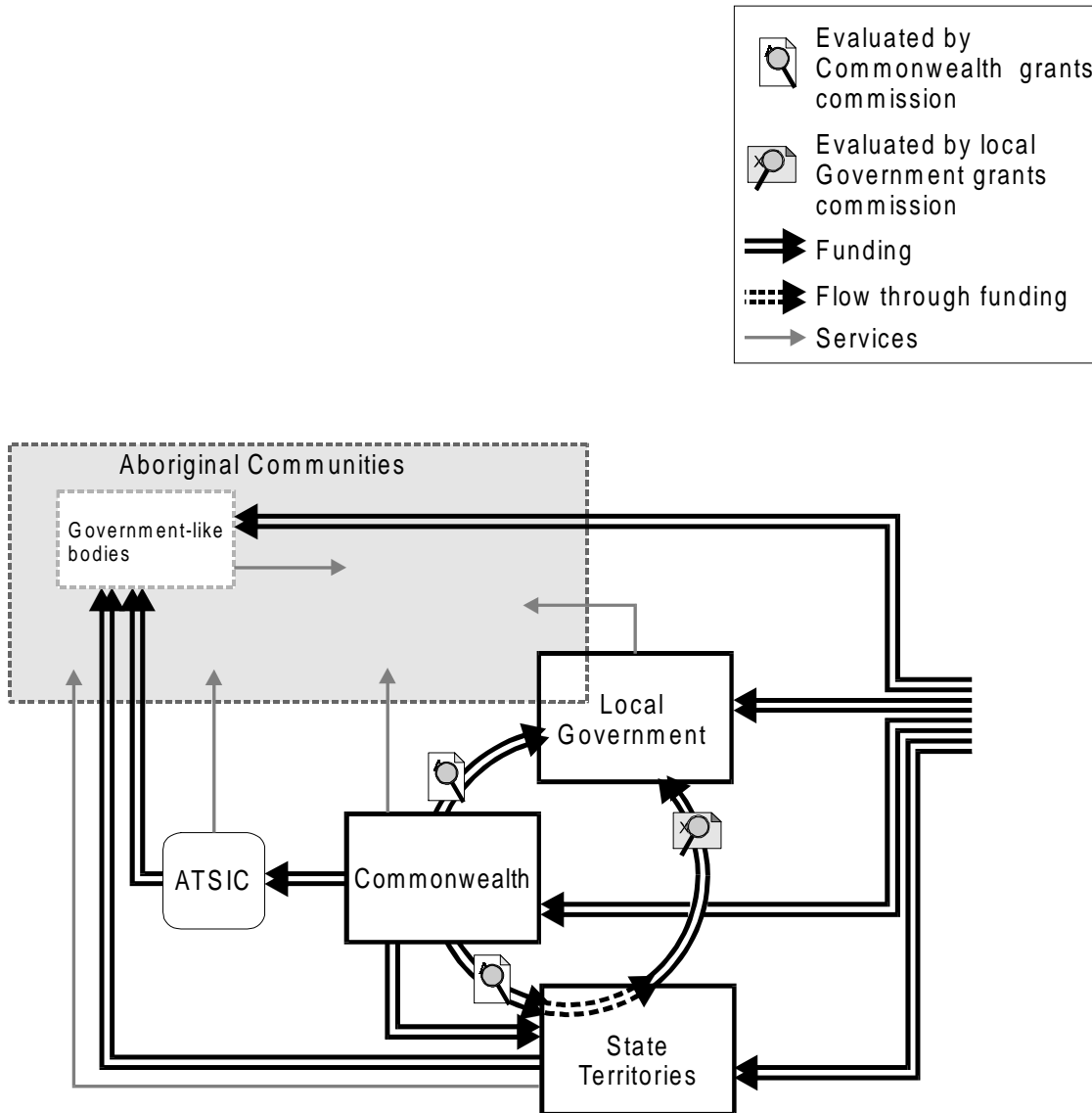


Figure 3 illustrates the fiscal framework for Aboriginals in Australia. The chart shows some developments of interest. For example, “government-like” bodies are emerging within Aboriginal communities. These bodies provide services to Aboriginals either as contractors to government or to supplement government services. These bodies receive funding from a variety of sources including grants-in-lieu of resource royalties, property taxes, and fees for access to land. They also receive federal funding, which is administered by ATSIC. Finally, state agencies may contribute.

All three tiers of government provide some services directly to Aboriginals. This is indicated by service lines, which flow directly to Aboriginal communities. The Commonwealth government is unique however, in that most of its funding is administered by ATSIC.

Some Aboriginal communities are local governments. These are eligible for the same support as non-Aboriginal local governments.