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Australian National University  
NORTH AUSTRALIA RESEARCH UNIT

**DISCUSSION PAPER**

**TOWARDS THE PUBLIC SECTOR  
FINANCING OF ABORIGINAL  
SELF GOVERNMENT**

**G J Crough**

No. 8

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## **NORTH AUSTRALIA RESEARCH UNIT**

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- Governance and policymaking structures
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We hope that this series will open up discussion about some issues of northern development and the inevitable conflicts that arise from change, culture contacts and diversity of values.

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I would also like to thank Tim Rowse, Bob Searle and Jon Altman for their comments and suggestions on earlier drafts of the paper.

## Notes on contributor

Greg Crough is a Fellow with the North Australia Research Unit. He has worked as an economic adviser to the Australian Deputy Prime Minister; as a research officer at the United Nations Conference on Trade and Development in Geneva; and as an economic consultant. In the past four years he has undertaken research work for a number of Aboriginal organisations, including the Combined Aboriginal Organisations and the Central Land Council in Alice Springs, and the Northern Land Council in Darwin. His works include *Aboriginal Economic Development in Central Australia* (1989) with Bill Pritchard and Richie Howitt; *Infrastructure Provision in Remote Aboriginal Communities in the Northern Territory* (1990) with Bill Pritchard; and *Too Poor to Pay Tax?* (1991) with Bill Pritchard.

## **ABSTRACT**

The State and Territory governments have been criticised for their unwillingness to provide adequate services to, and funding of programs for, Aboriginal people. These governments receive General Revenue Assistance from the Commonwealth which gives them the financial capacity to provide a standard level and quality of services for their Aboriginal constituents. The Commonwealth Grants Commission is presently reviewing the methodology by which General Revenue Assistance is provided to the State and Territory governments. A number of Aboriginal organisations and communities have questioned the existing intergovernmental financial arrangements, and have prepared submissions for the Grants Commission. The organisations and communities have indicated that they want to be funded directly by the Commonwealth, rather than through the State and Territory governments. These demands could see the development of forms of self government in some remote Aboriginal communities.

# TOWARDS THE PUBLIC SECTOR FINANCING OF ABORIGINAL SELF GOVERNMENT

G J Crough

## Introduction

The delivery of services and programs for Aboriginal people has been the subject of extensive discussion. Policy changes have been made with monotonous regularity, usually without any effective input from Aboriginal people. New programs are introduced, new guidelines for funding are issued, and administrative arrangements are changed so often that it is not surprising that very few Aboriginal people can comprehend what is going on around them. The introduction of the Aboriginal and Torres Strait Islander Commission (ATSIC) and the accompanying changes in programs and procedures is the most recent, if not the most significant, of these changes.

While Aboriginal people and their organisations have often taken a close interest in developments in the 'Aboriginal Affairs' policies and programs of the Commonwealth, State and Territory governments, little attention has been focussed on the broader issues associated with the Commonwealth-State financial relationship, and how this impacts on Aboriginal people.

The intention of this paper is to initiate discussion on some of these issues. The paper is not meant to be a comprehensive analysis of Commonwealth-State financial relations, since this is an area of considerable complexity and an area of specialist study, as evidenced by the research work of the Federalism Research Centre in the Australian National University (Fletcher 1992a, b). A number of other authors have also undertaken research in this area (Arthur 1991; Sanders 1991).

## **State and Territory governments and service delivery**

There has been considerable dissatisfaction expressed by many Aboriginal people about the role of State, Territory and local governments in the design and delivery of services to Aboriginal people. There is a strongly held belief on the part of many Aboriginal people that the funding of programs and services for Aboriginal people by these governments is inadequate and inequitable.

Many of these concerns were highlighted by the Royal Commission into Aboriginal Deaths in Custody. Commissioner Johnston was critical of some of the mainstreaming policies of the State and Territory governments, and emphasised the important role of Aboriginal service delivery organisations. While it is true that large numbers of Aboriginal people can only gain access to mainstream service providers, and in other cases may prefer to utilise these services, mainstreaming of service delivery, certainly in the NT, is neither effective nor efficient in delivering services to Aboriginal people.

The Commonwealth, State and Territory governments indicated their support for the recommendation of the Royal Commission relating to mainstreaming and the preferential use of Aboriginal organisations in service delivery (Commonwealth of Australia 1992, vol 2, 733-7). However, in practice, the mainstream State and Territory departments and agencies have almost exclusive control of service delivery. Mainstream Commonwealth departments are also heavily involved in delivering services and funding programs to Aboriginal people. The fact that the governments can publicly express their support for the recommendation while at the same time doing the opposite in practice provides an interesting insight into the extent to which the recommendations of the Royal Commission will actually be implemented.

For example, even though the NT Government gave in principle support to the recommendation that 'in the implementation of any policy or program which will particularly affect Aboriginal people the delivery of



the program should, *as a matter of preference*, be made by such Aboriginal organisations as are appropriate to deliver services' (emphasis added), the Government has had an *explicit* policy of mainstreaming service delivery to Aboriginal people since March 1987. The NSW Government, in its response, could only go as far as to state that it is 'committed to a process of consultation with Aboriginal communities in relation to program delivery' (Commonwealth of Australia 1992, 735).

ATSIC's Office of Evaluation and Audit criticised both the Queensland and WA Governments in relation to infrastructure provision. The Office noted that the actual level of spending by the Queensland Government on infrastructure was not clear and specific data was unobtainable. The Office was also critical of the Queensland Government for something that ATSIC itself could easily be accused, given that ATSIC's administrative expenditure in 1991-92 was budgeted to be \$100.2 million (Collins 1991, 1127):

*... an extremely high level of expenditure appears to be directed to supporting the administrative and bureaucratic structure (Aboriginal and Torres Strait Islander Commission 1991b, 25).*

In its evaluation of the WA Government's performance, the Office concluded that:

*The Authority [Aboriginal Affairs Planning Authority] has a responsibility to encourage other State agencies progressively to fund their Aboriginal programmes from within their own budgets. The evaluation team could find no evidence of AAPA success in meeting this responsibility. Indeed, the ACDP [Aboriginal Community Development Program] as well as ATSIC grants to State agencies constitute the prime sources of funding in Aboriginal affairs in Western Australia (Aboriginal and Torres Strait Islander Commission 1991b, 35).*

The Equal Opportunity Commission in WA found that all of the State's service delivery authorities, including the State Energy Commission of WA and the Water Authority of WA, have:

*... abrogated funding responsibility for Aboriginal communities and wait for funds to be provided by the Commonwealth before they exercise their service responsibilities (Equal Opportunity Commission 1990, 19).*

The AAPA has acknowledged the deficiencies in service delivery in WA, and that the mainstream service providers do not provide adequate access to services and equitable treatment for Aboriginal people. In a submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, the AAPA illustrated just how far attitudes in WA need to change:

*The State for its part has not substantially altered its arrangements in Aboriginal Affairs. 'Self determination' and 'self management' have essentially been treated as concepts that can be grafted into the arrangements and formal relations with Aboriginal people which have stood since 1972 (Aboriginal Affairs Planning Authority 1991, 891).*

In the past year or so, ATSIC and the Minister for Aboriginal and Torres Strait Islander Affairs have been working with the State and Territory governments to attempt to overcome some of these problems. No one doubts that this is a complex and urgent issue. Two hundred years of racism and injustice cannot be unravelled very quickly, but in the meantime many Aboriginal people continue to experience social and economic problems that few other Australians are forced to endure, even during the present recession.

### **The Australian Aboriginal Affairs Council report**

Apart from the government responses to the recommendations of the Royal Commission, an important response to the problem of inadequate commitment to Aboriginal issues on the part of the State and Territory governments has been a report endorsed by the Australian Aboriginal Affairs Council (AAAC). I do not intend to discuss this report in detail in this article, since I have provided a critique previously (Crough 1991).

However, the implementation of the recommendations of this report will, in the first instance, result in the operational aspects of, and the funding for, ATSIK's Community Housing and Infrastructure Program being handed over to the State and Territory governments. ATSIK's role will be to determine the policy framework for the expenditure of the funds. Even from the very early days of Commonwealth responsibility for Aboriginal affairs, this seems to have been the preferred position of the Commonwealth (Department of Aboriginal Affairs 1976, 8).

The implementation of many of the recommendations of the AAAC report is likely to reduce the ATSIK regional councils to the role of advisory bodies, with little effective power. It is questionable how much effective power regional councils have at the present time, since they are responsible for allocating only a relatively small proportion of ATSIK's budget. While ATSIK's role will be determined by the content of the agreements entered into with the State and Territory governments, the substantive executive power will be at the national level rather than the local level. However, the Shadow Minister for Aboriginal Affairs has suggested that ATSIK's operations will be decentralised and its administrative decision-making will be devolved more to the regional councils if the Coalition is elected at the forthcoming Federal election (Wooldridge 1992).

Some State governments have already indicated that at best they will take account of ATSIK's views, but will not allow the regional councils to determine the priorities of their housing and infrastructure programs (Coopers and Lybrand Consultants, 1991). For example, in its response to the recommendations of the Royal Commission, the AAPA in WA stated that ATSIK regional plans will only 'assist' it to determine priorities for allocation of funds (Commonwealth of Australia 1992, 731).

ATSIK's Office of Evaluation and Audit, in its examination of ATSIK's grants to the State and Territory governments, was very critical of ATSIK's lack of policies regarding these grants. The majority of these grants were under the Community Housing and Infrastructure Program of ATSIK.

*In the absence of a stated policy it is the view of the evaluation team that ATSIC no longer provides grants to States in a way which ensures payments are directed to areas of Commonwealth concern for designated purposes as provided for in Section 96 of the Constitution. Currently, State/Territory agencies are encouraged to develop programs, to their own agenda, and submit applications for funding. The process has the effect of the States/Territory directing Commonwealth funds to areas of activity where the State/Territory government may have a particular interest or concern, or is unable or unwilling to fund (Aboriginal and Torres Strait Islander Commission 1991a, 1).*

The AAAC report, despite extensive criticism by a number of Aboriginal organisations (Bos 1992), was endorsed at the Heads of Government Meeting in Canberra in May 1992. The ATSIC Commissioners subsequently endorsed the Report at their June meeting. It is important that the responsibilities of each level of government for delivering programs and services to Aboriginal people be formally considered by the heads of Australia's governments. For too long these issues have been sidelined from political consideration by governments. However, the *Communique* of the Meeting added one qualification to the endorsement of the Report:

*Heads of Government recognised the role of ATSIC, but noted that its creation had introduced complexities into the relationship between governments (Heads of Government Meeting 1992).*

This qualification apparently arose because of criticism by the WA and Queensland governments of the role of the ATSIC in negotiating funding agreements between the Commonwealth and the States. These governments have been criticised over the years for their unwillingness to face up to their responsibilities to Aboriginal people. It is not surprising that they are objecting to any change in the present arrangements which *might* commit them to spending more money on providing services to Aboriginal people.

The recommendations of the AAAC report are one way of dealing with this problem. Perhaps bilateral agreements between ATSIC and the State governments, as envisaged by the AAAC report, will improve the situation. But are there alternatives for the funding of programs and services for Aboriginal people? Why is there so little discussion of the Commonwealth funding that is already provided to the State and Territory governments each year as a result of the Premiers' Conferences? This funding is based on the recommendations of the Commonwealth Grants Commission. Considerable amounts of this funding, particularly in the NT, provide the financial capacity for these governments to deliver services to Aboriginal people.

The intention of this paper is to discuss how the Commonwealth Grants Commission's processes, suitably modified, could be used to achieve a more effective outcome for Aboriginal people. By effective, I mean an outcome which results in the funding being used for the purposes for which it was intended, and which can build on the achievements already made by Aboriginal people and their organisations in many parts of Australia. The funding of forms of Aboriginal self government might well be put on the political agenda. Of course, there is much more to Aboriginal self government than levels of funding.

## **The role of the Commonwealth Grants Commission**

The Commonwealth Grants Commission is undertaking a review of the methodology by which Commonwealth funding of the State and Territory governments is assessed. This funding provides these governments with the financial capacity to deliver a significant proportion of their services and programs for Aboriginal people.

Until now Aboriginal people and their organisations have had minimal input into the Commission's deliberations. This is changing, as a number of Aboriginal organisations have recognised that the Commonwealth Grants Commission has the potential to play a major role in assessing the funding requirements of evolving forms of Aboriginal self government.

The Commission is a statutory body established in 1933 to report upon applications by the States to the Commonwealth Government for special assistance under section 96 of the Constitution. Under section 96, the Parliament of the Commonwealth can grant financial assistance to the States on terms and conditions it thinks fit (Commonwealth Grants Commission 1983). The Commission does not decide the size of the payments to the State and Territories. This is decided by the Commonwealth at the Premiers' Conferences after discussions with the State Premiers and Territory Chief Ministers. The role of the Commonwealth Grants Commission is to make recommendations on the distribution of the grants between each of the States and Territories.

The Commission's recommendations derive from a formula-based assessment process. While the assessments are certainly not immune from political controversy, they are regarded as being above party-politics. But as Walsh has suggested:

*... in reviewing and recommending general relativities, the Commission is now, inextricably, part of the main event ... The independence of the Commission's work may not be in question but its recommendations and its terms of reference (like those of the IAC before it) have become an important part of the political battlefield and the submissions presented to it must be expected to increasingly reflect the broader political competition from which it previously had been partly protected (Walsh 1989, 2).*

To get an idea of the size of the payments that are annually assessed by the Commission, the General Revenue Assistance and Hospital Funding Grants to the States and Territories by the Commonwealth will be \$17,900 million in 1992-93. These payments are untied and are meant to assist the State and Territory governments meet their recurrent outlays. The Commonwealth Grants Commission does not make recommendations about capital payments, although consideration has been given to including capital transactions in the assessments (Commonwealth Grants Commission 1990, vol I, 79). General purpose capital grants to the States and Territories in 1992-93 will total \$330

million. Other payments, including Specific Purpose Payments, will total \$14,500 million in 1992-93 (Commonwealth Treasurer 1992). The payments assessed by the Commission will therefore comprise more than 60 per cent of the total Commonwealth payments to the States and Territories in 1992-93.

## The principle of fiscal equalisation

Fiscal equalisation is an extremely important and complex concept which lies at the heart of the intergovernmental financial arrangements of the Australian federal system. Fletcher has suggested that it is the 'glue' holding the federal system of government in Australia together (Fletcher 1992b, 4). The principle is intended to ensure that all Australian citizens have access to a comparable range and quality of government services. In the words of the Secretary of the Commonwealth Grants Commission (correspondence, 18 October 1991):

*The underlying objective of the fiscal equalisation principle governing intergovernmental revenue sharing arrangements in Australia is to equalise the overall capacity of each State or Territory to provide a standard range of government services to all of its citizens — including Aboriginals and any other ethnic groupings which happen to make up the population.*

In other words, the objective of fiscal equalisation is to provide each State and Territory government with the *financial capacity* to provide a standard range of services to its population. There is no guarantee that the level and quality of services will actually be equalised between individuals, or areas, *within* a State or Territory. Because the General Revenue Assistance payments are untied, the priorities for the expenditure of these funds are determined by each of the State and Territory governments.

The principle of fiscal equalisation results in a transfer of Commonwealth taxation revenue from the NSW and Victoria to the other States and

Territories. This reflects the fact that Queensland, WA and the NT have less well developed infrastructure, smaller and more dispersed populations, and narrower taxation revenue bases. It should also be noted that more than 56 per cent of the Aboriginal population lives in these States and the NT, and a significant proportion of these people live in very remote areas.

Fiscal equalisation has at times been the subject of very heated argument and controversy. In recent months, for example, it has been criticised by senior politicians in Victoria and NSW. The Leader of the Opposition in NSW foreshadowed a constitutional challenge to the principle if he were to form a government:

*The Grants Commission needs to be scrapped. We must move to a system of equal per capita payments phased in over the course of this decade to be completed with the centenary of Federation. If that approach is not acceptable to the Federal Government, then I would foreshadow that a Carr Labor Government would, in conjunction with the support of the Victorian Government, launch a constitutional challenge in the High Court. This would test the validity of the Grants Commission process and the rights of New South Wales and Victoria, not to be discriminated against by the Federal Government, particularly as it relates to payment in lieu of what was 50 years ago a source of State revenue (Carr 1992).*

The arguments of the Victorian and NSW politicians are basically that the smaller States no longer require such a high level of Commonwealth financial assistance. They argue that since a large proportion of the Commonwealth's taxation revenue is recorded as being generated in NSW and Victoria, citizens in these States are entitled to a larger share of the financial benefits. In contrast, all members of the NT Legislative Assembly supported the motion that 'fiscal equalisation [is] an essential component of the federal system'. As the Leader of the Opposition indicated in the Legislative Assembly (20 May 1992):

*The principle of fiscal equalisation has brought people to the north, established the infrastructure that has made possible the*



*mining projects which has made possible the development of the northern and western parts of Australia and which has allowed those benefits to flow back into the south and eastern corners which now enjoy the resource wealth of this part of the country. Fiscal equalisation is the cornerstone of fair go federalism.*

The Commonwealth Treasury has questioned whether fiscal equalisation undermines 'economic efficiency'. The Treasury suggested that concern about the relationship between equity and efficiency has been due to:

*... the increasing focus, in recent years, on the need for microeconomic reform and efforts to improve Australia's international competitiveness (Commonwealth of Australia 1991a, 71).*

As a result of the pressure applied by the NSW and Victorian Governments over this issue, at the Premiers' Conference in June 1992 it was agreed that a Heads of Treasuries Working Party would be established to examine the adequacy of current fiscal equalisation scope and methodology and the principles on which it is based. However the Conference did endorse the principles of and need for horizontal fiscal equalisation. The report of the Working Party, as well as the reports of the consultants engaged by the NSW and Victorian Governments, will be considered at the Heads of Government meeting in 1993 in conjunction with the report of the Commonwealth Grants Commission review of its methodology (Commonwealth Treasurer 1992).

The operation of the principle of fiscal equalisation may be substantially modified during the next few years if Australian economic policy makers continue their obsession with relatively narrow economic concerns. There is no doubt that the situation in certain States and Territories would be very different if strict principles of economic efficiency were applied to the intergovernmental funding arrangements.

## **Fiscal equalisation, service delivery and infrastructure deficiencies**

As was noted above, at the present time the Commonwealth Grants Commission does not assess capital payments to the State and Territory governments. The funding assessed by the Commission is not in itself intended to overcome infrastructure deficiencies between, and within, States and Territories. The provision of infrastructure is primarily covered by other payments, including payments for housing, local government, and roads. These payments account for about 40 per cent of Commonwealth payments to the States and Territories, and are not subject to fiscal equalisation. However, these payments are influenced to some extent by fiscal equalisation considerations due to the so-called inclusion method used by the Commonwealth Grants Commission. Given the inadequate housing and poor roads in many Aboriginal communities, how these funds are distributed has a direct impact on Aboriginal people. The NT Treasurer argued in the Legislative Assembly (20 May 1992) that:

*It is interesting to note that it is that very sort of infrastructure that the Northern Territory needs to spend most of its money on. The limited coverage of fiscal equalisation is a major penalty for the Northern Territory, because Commonwealth payments in these areas tend to be based on, or are moving towards, equal per capita shares.*

The payments assessed by the Commonwealth Grants Commission are only for recurrent purposes. This means that much of the funding is based on providing the financial capacity to maintain the existing infrastructure and patterns of service delivery, unless the State or Territory governments change their priorities. In the case of many remote Aboriginal communities, since they have less infrastructure to maintain, they inevitably receive less recurrent funding. The present system, despite the emphasis given to equity, does very little to overcome the existing discrepancies. This point was highlighted by the Leader of the Opposition in the NT Legislative Assembly (26 February 1992):

*Years ago, when 87% of our expenditure was from the federal government in the form of tied and untied funding, we spent a greater amount on the development of infrastructure in the urban areas as against that which was spent in the rural areas. That occurred year after year and, to an extent, that effectively has tied our hands. Since we have all that infrastructure in the urban areas, when the gross amount of funding has been reduced on a CPI-adjusted basis, we have found it far more difficult to maintain that level in the urban areas. Thus there is less real money available for expenditure in the rural areas.*

Unless the Commonwealth substantially changes the nature of its payments to the State and Territory governments, many of these inequalities will be removed only after the policies and programs of some of the State and Territory governments have been fundamentally re-oriented. In Aboriginal affairs, the historical evidence suggests that this is highly unlikely.

Putting it another way, the principle of fiscal equalisation is based on providing State and Territory governments with the financial capacity to deliver a standard range of services. In a situation where most State governments have been reluctant to provide even the most basic of services to Aboriginal people, the average standard for Australia for service delivery to Aboriginal people will inevitably be very low. It is not surprising that the problems confronting many Aboriginal people appear to be totally intractable.

### **Commonwealth funding of local government**

While the current fiscal equalisation arrangements result in a transfer of Commonwealth taxation revenue from NSW and Victoria, the principle has not been applied to the Commonwealth funding of local government. The existing distribution of local government funding is based on equal per capita payments. When these funds are distributed within each State and Territory, by the Local Government Grants Commissions, the principle of fiscal equalisation is applied. In 1991-92 the estimated

general purpose assistance to local government by the Commonwealth was \$1,024 million. However, this figure included \$305 million which was previously identified as tied roads funding (Commonwealth of Australia 1991a, 64-5).

In 1991 the Commonwealth Grants Commission's *Report on the Interstate Distribution of General Purpose Grants for Local Government 1991* was published. The Report presented a number of options to the Government, and some of these implied very major changes in the distribution of funding between the States and Territories. However, the Commission did not recommend that any of the options be implemented. The Commission noted that if a form of fiscal equalisation were applied to the distribution of local government grants, the funding for local governing bodies in NSW and Victoria would fall dramatically. Per capita funding was at least reasonably simple and predictable.

The Commonwealth Minister for Local Government announced in May 1991 that the Grant's Commissions assessments for the funding of local government, based on the application of the principle of fiscal equalisation, would not be adopted. There is little doubt that the Commonwealth would have been severely criticised by the NSW and Victorian Governments, and every local governing body in each of these States, if the distribution had been altered.

For Aboriginal people, this issue takes on a higher degree of significance in those States and Territories where there are large Aboriginal populations in certain local government areas (notably in WA and Queensland), or where there are large numbers of Aboriginal local governing bodies (as in the NT). Were any of the options presented by the Commonwealth Grants Commission's Report adopted, there would have been very large increases in the funds available for distribution to local governments in these States and the NT.

## Commonwealth funding of the Northern Territory

The assessments of the Commonwealth Grants Commission in relation to General Revenue Assistance are particularly important for the NT. As the Commission has indicated:

*On average the States and Territories raise only half of the money they need to provide services; the rest has to come from the Commonwealth. The Northern Territory depends on the Commonwealth more than any State. It raises less than one fifth of what it needs, even though its taxes and charges are assessed by the Commission to be at (or even above) average levels (Commonwealth Grants Commission 1992b, 3).*

In analysing the full impact of Commonwealth expenditure on the NT, other direct Commonwealth expenditure needs to be included. ATSC's grants and loans in the NT, for example, totalled more than \$107 million in 1990–91. Defence spending, which amounted to \$160 million in 1991–92 (Bilney 1992), and the relocation of parts of the defence forces, are also becoming an increasingly important factor in stimulating population growth and economic activity in the NT. An analysis of these other Commonwealth payments is not included in this paper.

Commonwealth funding, and public sector spending in general, are the economic base of the NT, despite the decline in real terms in Commonwealth payments to the NT. The emphasis given by the NT Government to the expansion of the pastoral, mining and tourist industries disguises the fact that the public sector accounted for 22.5 per cent of total NT Gross Domestic Product in 1990–91, and employed one-third of the wage and salary earners (Northern Territory Government 1991a, 56). Nationally public administration, defence and community services accounted for only 16 per cent of Gross Domestic Product in 1990–91 (Australian Bureau of Statistics 1992a).

The dependence of small (in population terms), remote jurisdictions of a large country on federal finance is not unusual, as a number of writers in

other countries have commented (Aird 1988). The NT, as it has successfully argued before the Commonwealth Grants Commission, requires additional Commonwealth funding because it has a narrow taxation revenue base and its population has certain social and economic characteristics which distinguish it from the States.

Despite the Government's heavy reliance on Commonwealth funding, political debate in the NT often tends to ignore this factor. The NT Government continually stresses, particularly in relation to its spending on the provision of services to Aboriginal people, that it is spending "Territory taxpayers' dollars". In one sense this is correct, since the spending is allocated from the NT Budget, and the priorities are in large part decided by the NT Government. However, it does serve the Government's political purposes to encourage the view that it is the non-Aboriginal population (taxpayers) of the NT who are supporting the Aboriginal population.

Misconceptions of this type were strongly criticised by Commissioner Johnston, who pointed out that:

*It is important to recognize that a high level of dependence on publicly funded services is not something peculiar to Aboriginal people. We are all dependent on numerous public services which some of us subsidize indirectly through taxation (Johnston 1991, vol 4, 368).*

Not only is the NT Government highly dependent on its financial relationship with the Commonwealth, but the funding assessments are strongly influenced by the relatively large Aboriginal population of the NT. While the public sector underpins the economy of the NT, spending on Aboriginal affairs programs and services is a key element in the economy of the NT. It is not surprising, however, given the agendas of the major political parties in the NT, that this factor is often ignored.

## **The Impact of Aboriginal people on the Commonwealth Grants Commission's assessments**

The social and economic characteristics of the Aboriginal population have a significant influence on the Commission's assessments. The influence shows up most clearly in the NT, even though numerically there are more Aboriginal people in each of the States of Queensland, WA and NSW. At the 1991 Census, preliminary estimates showed that Aborigines accounted for 21.9 per cent of the NT's population, 2.5 per cent of WA's population, and 2.2 per cent of Queensland's population (Australian Bureau of Statistics 1992b).

Further, as a result of the high rates of Aboriginal unemployment, the costs of providing infrastructure in remote areas, and the impact of remoteness on service delivery, the NT Government receives a significantly higher level of per capita funding than the States. For example, in relation to the funding it receives for education, the NT Government submission to the Commonwealth Grants Commission stated:

*In the past the Commission has accepted the NT's claims that it experiences special needs in relation to the provision of primary education services to its Aboriginal population. It has accepted that the Territory has to provide primary education services in different ways to those provided in the States because of the remoteness, dispersal and cultural background of its Aboriginal population (Northern Territory Government 1991b, vol 1, 203).*

The submission also indicated that Aborigines comprise 31.2 per cent of the NT student population, and 74 per cent of the students are 'tribally-oriented and live in remote and rural communities' (Northern Territory Government 1991b, vol 1, 179).

The WA Government submission to the present Commonwealth Grants Commission review argued:

*The normal economic imperatives which cause the State to establish townships (i.e. to support economic developments) are not the imperatives which cause new Aboriginal communities to be established. The high costs of service delivery to remote Western Australian Aboriginal communities is a special cost that does not relate to costs which the State would normally accept in return for economic gain from resource development (Government of Western Australia 1991, 284).*

However, the WA Government also pointed out that there have been different responses by each of the State and Territory governments to the growth of the 'homelands' movement:

*For example, the Northern Territory has developed a clear policy of supplying a relatively high standard of service and infrastructure including roads and airstrips, as well as high standards of water, sewerage and power supplies. The other States provide less facilities and much lower levels of services than the Northern Territory (Government of Western Australia 1991, 285).*

The growth of outstations is resulting in an increasingly decentralised Aboriginal population in some States and Territories. This is increasing the cost of the present pattern of service delivery. Despite the above comments by the WA Government, the NT Government has made it very clear that the growth in the number of outstations is 'not a movement which the NT Government has sought to encourage in any way' (Northern Territory Government 1991b, vol 1, 195).

In 1991-92 the NT Government's general revenue assistance from the Commonwealth was based on a per capita relativity, as assessed by the Commonwealth Grants Commission, of 5.673, compared with 1.000 for Victoria and 1.015 for NSW. Put more simply, the NSW Government received \$824.54 of general revenue assistance from the Commonwealth for each person in the State, and Victoria \$811.80, while the NT Government received \$4,843.27. The disparity in the relativities between the NT and the two largest States has increased considerably in recent



years. The Chairman of the Commission (correspondence, 28 August 1991) stated that in the case of the NT Government:

*... a substantial amount of its general revenue funding reflects the disabilities it faces in providing services to Aboriginal people.*

One particular category of expenditure clearly shows the differences between the NT Government and the other States in the pattern of spending on Aboriginal programs and services. As defined by the Commonwealth Grants Commission, Aboriginal Community Services includes expenditure on the provision of community management, including services usually provided by local government; the operating, repair and maintenance costs of essential services, including water, power and sewerage; and minor new works or the upgrading or purchase of assets relating to the above services.

In 1990-91, the NT Government's spending under this category was \$60.528 million (\$382.80 on a per capita basis). In WA the spending under this category was \$26.78 million (\$16.23 per capita), and in Queensland \$28.637 million (\$9.74 per capita) (Commonwealth Grants Commission 1992a, 255-7). Some of the expenditure included in these figures is funded by Specific Purpose Payments from the Commonwealth.

Part of the reason for the higher level of expenditure by the NT Government reflects the higher level of service delivery, particularly for power, water and sewerage services. However, in itself, the level of spending does not ensure that the services actually provided are of a higher quality, or the most appropriate. For example, there is considerable evidence that large diesel-powered generators in some Aboriginal communities are inappropriate, more expensive, and their installation limits consideration of potentially cheaper and more efficient alternatives, such as mixed solar, wind and diesel-powered systems.

An additional reason for the higher level of spending is the existence of a large number of Aboriginal local governing bodies in the NT. Of the total spending on Aboriginal Community Services in 1990-91 (\$60.528

million), spending by the Office of Local Government accounted for \$22.806 million. OLG's Operational Subsidies were allocated to 52 local governing bodies in 1991-92, and most of these are Aboriginal local governing bodies. In addition, payments were made to a further 21 Aboriginal communities (which do not have local governing body status) under the Minor Communities Program (Northern Territory Office of Local Government 1992).

Not only do few Aboriginal local governing bodies exist in the other States, but the relationship between Aboriginal people and local government is more problematic in these States than it is in the NT (Fletcher 1992, 78). Part of the reason for the difference is the existence of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Act undoubtedly strengthens the negotiating position of Aboriginal people and their organisations, certainly compared with the situation prevailing in WA and Queensland. The fact that Aboriginal people are a relatively large proportion of the NT population is another significant factor.

### **The problems with untied Commonwealth funding: performance equalisation**

Despite more than a decade of higher per capita funding, there is little evidence that the standard of service provision in the NT has been equalised between the remote Aboriginal communities and the urban areas. While the economic and social circumstances in which many urban Aboriginal people live are poor, they do have access to a range of mainstream government services that are not available to the residents of the remote communities.

The application of the principle of fiscal equalisation is not intended to ensure that access to services is equalised *within* a State or Territory. Rather, it is intended to provide the financial capacity to each government to provide a level of services similar to the standard of all the States and Territories. As the Commonwealth Grants Commission has explained:

*The principle on which the Commission's assessments have been based thus addresses the equalisation of fiscal capacity of the States to an Australia-wide standard. This standard is based on an averaging of the actual policies of the States. Each State is free to determine its own policy (Commonwealth Grants Commission 1990, 3).*

Many Aboriginal people, and particularly those living in the most remote parts of Australia, do not have access to even the most basic of essential services. Some Aboriginal people are beginning to ask the obvious question: what is the point of the Commonwealth Grants Commission undertaking complex calculations, producing assessments that conform to the principle of fiscal equalisation, when the Commonwealth Government then provides untied funding to the States and Territories? Why does the Commonwealth continue to allow the priorities for the expenditure of a large proportion of its State and Territory grants to be determined by the State and Territory governments?

Within a federation such as Australia, there are often strong differences of opinion between the constituent governments over the distribution of funds. This is not surprising for a country as geographically large and diverse as Australia. For decades there have been disagreements between the States over the distribution of funds, and between the States (and now Territory) governments and the Commonwealth. The present debate over fiscal equalisation is one example of these disagreements.

Another example relates to the appropriate balance between untied grants and Specific Purpose Payments. The State and Territory governments have been critical of the increasing proportion of payments from the Commonwealth that are for specific purposes, the expenditure priorities of which are heavily influenced by the Commonwealth Government's priorities. Even though the proportion of Specific Purpose Payments has been increasing, this does not in itself guarantee that the outcomes will be fully consistent with the Commonwealth's priorities. The Auditor-General, for example, found a number of problems with these payments, although the Commonwealth Treasury indicated that such

payments cover a wide range of areas and are not always governed by restricted and detailed objectives (Auditor-General 1990). Fletcher notes that the WA Government spent the Aboriginal Community Development Program funds on Aboriginal advancement programs, but not on remote communities as was intended (Fletcher 1992, 95).

The Commonwealth Grants Commission has discussed the relationship between fiscal equalisation and equity, and noted that most governments agreed that the equalisation process should result in the equalisation of fiscal capacities. However, the Commission suggested that the Victorian Government favoured:

*... a performance equalisation procedure whereby the Commission would monitor the States with a view to ensuring that they provided equal services to individuals and imposed equal taxes and charges (Commonwealth Grants Commission 1990, vol I, 22).*

The Queensland Government, on the other hand, strongly argued that the States should retain the flexibility to pursue their own expenditure priorities. According to the Government, this was 'a basic tenet of our Federal structure of government'.

As the Commission indicated, the equalisation process as it is presently applied treats the State and Territory governments, *rather than their individual citizens*, as the entities to be equalised. While the Commission concluded that there are practical difficulties in moving towards 'individual-based government capacity equalisation', it would examine the issue further in its review of the relativities. It also noted that *performance equalisation* could be implemented by abandoning:

*... unconditional general revenue grants and replace them with a system of conditional Commonwealth payments designed to secure greater uniformity in State policies ... These are matters for decision by governments, not the Commission (Commonwealth Grants Commission 1990, vol I, 26).*

It is interesting that ATSIC, in its submission to the Commonwealth Grants Commission's review of the distribution of local government grants, did question the appropriateness of untied grants. ATSIC quite correctly argued that the payment of untied grants:

*... allows States and local government authorities to avoid spending in geographic areas or on functions where related disabilities have been recognised by the Commission, leaving it to an authority such as ATSIC to provide the necessary services (Commonwealth Grants Commission 1991, 98).*

The Commonwealth Grants Commission did comment that the concerns raised by ATSIC related to equality of services to *individuals*, but this was 'not within the Commission's power to address'.

It should also be noted that the Commonwealth had an opportunity to address some of these issues in its response to the Royal Commission recommendations, but as with many of the responses the Government was very restrained, and even disingenuous. Commissioner Johnston recommended that:

*Governments commit themselves to achieving the objective that Aboriginal people are not discriminated against in the delivery of essential services (Commonwealth of Australia 1992, 755).*

In its response, the Commonwealth simply stated that the Commonwealth Grants Commission takes into account disability factors associated with providing government services to Aboriginal people. The Commonwealth could have indicated that it believed there might be problems with the present system of the payment of untied grants to the State and Territory governments for delivering services and programs to Aboriginal people. It could have indicated that alternative funding arrangements were being pursued, other than implementing the AAAC Report, which in itself does not address the larger picture of Commonwealth funding.

The issue of performance equalisation has been recently raised by the consultant preparing the NSW and Victorian Governments' case against the present system of fiscal equalisation. A newspaper report (*Australian Financial Review* 8 July 1992) on the preliminary work of the consultants included the following comments:

*... his initial work suggests there are real incentives for subsidised States to spend more on high-cost services — adversely affecting overall competitiveness ... The Commonwealth Grants Commission does not hold the states receiving these subsidies accountable for their spending efficiency.*

### **The appropriateness of present patterns of service delivery**

When performance equalisation is discussed in the context of Aboriginal programs and services, an important issue is the nature of the service delivery, not just whether governments spend large amounts of money on these services. There is no doubt that the costs of delivering services to Aboriginal people living in remote areas are very high. Clearly many Aboriginal people have a very strong interest in ensuring that the level of funding for programs and services is not reduced as a result of the debates about the future of fiscal equalisation. However, they also have a strong interest in ensuring that the pattern and type of service delivery is relevant to their needs, suitable for the environment in which they are living, and that the infrastructure that is provided is capable of being maintained without the expenditure of ever increasing sums of money.

As was previously mentioned, the NT Government's expenditure on the provision of power, water and sewerage services to remote Aboriginal communities is considerable. As a direct result of the Government's attempts to introduce charges for power and water, there has been increased questioning by some communities of the nature of service delivery. The NT Government's response to the recommendation of Commissioner Johnston regarding funding and service delivery states that

the government departments and agencies already conduct their business in accord with the recommendation (Commonwealth of Australia 1992, 751). However, the experience of many Aboriginal communities in dealing with the Power and Water Authority would suggest that this is not the case. PAWA has been severely criticised in the media and in the Legislative Assembly for its recent behaviour. The NT Ombudsman's report, following a complaint from Ntaria Council (Hermannsburg) about the introduction of the power charges, was very critical of the Authority (Northern Territory Ombudsman 1992).

The central Australian community of Papunya has been strongly resisting the introduction of charges, and at the time of writing has been without power for three months. Aboriginal people in the community have been very critical of government policy and its impact on their lives:

*We the Community at Papunya feel that there is more at issue than simply the power supply to people's houses. To us the problem is much more and involves the issue of power being given to the people themselves ... Whatever the intentions of people involved in the establishing and running of this settlement may have been, the effect over time has been to give us a feeling of powerlessness over our own lives. If our people were given proper information and allowed to make their own decisions we feel this situation would not have occurred ... (Papunya Community Council 1992).*

The NT Government also spends considerable amounts of money on the provision of local government services to remote communities (part of the Aboriginal Community Services assessments of the Commonwealth Grants Commission). While the Government congratulates itself for its demonstrated commitment to Aboriginal people because of its high level of spending, Commissioner Johnston was very critical of the activities of the Office of Local Government:

*Certainly some of the writing which has emanated from the Office of Local Government in the Northern Territory would do little to disabuse Aboriginal organizations of their fears that the push for community government is motivated by strategies and*

*considerations other than equitable distribution of funding for local government purposes (Johnston 1991, vol 4, 32-3).*

Quite severe criticism at the inappropriateness of many of the Government's policies was made by a Department of Lands and Housing officer at a closed meeting of OLG field officers:

*Few government officers involved in programming and service provision have even a rudimentary understanding of skin group systems, moiety systems, local anthropology, contemporary Aboriginal management systems, community dynamics, avoidance systems, traditional land management systems, land ownership structures, community development, and community planning practices and principles (Ryan 1992, 6).*

The level of spending itself should not be the primary indicator of a government's commitment to deliver services to Aboriginal people. Service delivery, as Aboriginal people have clearly said, and as Commissioner Johnston recommended, must be culturally and socially appropriate, and must involve Aboriginal people in the design and delivery of the services to the greatest extent possible. Any form of performance equalisation must take this factor into account.

### **The Commonwealth Grants Commission's present review**

The Commission is presently undertaking its five-yearly review of the relativities. That is, it is examining the methodology by which the distribution of funds between the States and Territories is determined. The Commission will complete its final report in April 1993, when it will then be considered by the Financial Premiers' Conference. Although the review does not exclude participation by the general public, normally the reviews only involve representatives of Australia's governments. This is a very complex issue, and most of the input is provided by the treasury departments of the State and Territory governments.



This time the situation is different. The Commission advertised for submissions from the general public, and a number of Aboriginal organisations produced submissions, including the Central and Northern Land Councils, and the Northern Territory Aboriginal Town Campers Advisory Committee. The Chairperson of ATSIC also presented a submission. At the request of the Land Councils, the Commonwealth Grants Commission held a public meeting with a number of Aboriginal organisations and community representatives in Darwin in late July. The meeting discussed the review of the relativities, and representatives from more than twenty Aboriginal communities presented evidence on the poor state of roads, education and health services in their communities. Nearly all of the representatives were highly critical of the NT Government and its service delivery policies. Many argued that self determination for Aboriginal people could only occur after the recommendations in the Land Council submissions were adopted.

It is of note that the NT's Treasurer criticised some of these submissions in the Legislative Assembly (12 May 1992). Branding the submissions 'anti-Territory', he went on to say that the Land Councils:

*... want to snatch for themselves the reins of the Grants Commission funding despite the fact that this whole matter is quite properly the province of a democratically-elected government representing the interests of all Territorians. It is, at the very essence, racism.*

There would be many people in the NT who would strongly dispute the assertion that the NT Government governs in the interests of all Territorians. It is certainly not obvious that the higher level of per capita funding that the NT Government has received for more than a decade has been used to reduce the gap between Aboriginal people living in remote areas and non-Aboriginal people in the urban areas.

## The Northern Territory Land Council submissions

The Central and Northern Land Councils argued that the objective of Commonwealth funding for Aboriginal programs and services should be to provide Aboriginal service organisations and Aboriginal local governing bodies with the financial capacity to provide an equitable level of services to Aboriginal people, rather than providing this financial capacity to the NT Government. This would mean applying the principle of fiscal equalisation to a discrete Aboriginal community, or an Aboriginal local governing body, or to people living on an area of Aboriginal land such as Arnhem Land.

The Land Councils pointed out that despite years of fiscal equalisation, the gap between Aboriginal communities and those where non-Aboriginal people are the majority of the population remains very large, and may even be getting worse. The Land Councils questioned why large amounts of Commonwealth funding are provided to the NT Government, which then continues to direct a large proportion of this funding to providing services to the residents of the major urban areas.

The Land Councils advocated, as was also suggested by the House of Representatives Standing Committee on Aboriginal Affairs in its report *Our Future Our Selves*, and the National Report of the Royal Commission, that block funding for Aboriginal organisations and communities be introduced. However, unlike the Commonwealth's responses to the Royal Commission recommendation, the Land Councils have suggested an approach that I believe is more consistent with Commissioner Johnston's reasoning in his National Report.

The Land Councils suggested that the Commonwealth Grants Commission should undertake a national review, to establish the appropriate levels of funding which would enable Aboriginal service organisations in Aboriginal communities to provide adequate, and significantly improved, levels of services. Without actually saying so, what the Land Councils are referring to in their submissions is the

provision of funding that could ultimately lead to various forms of Aboriginal self government. For the Commonwealth Grants Commission to undertake assessments of this type, a change to the Commission's legislation would be required.

## **The ATSIC submission**

ATSIC and its predecessors have had limited involvement in previous Commonwealth Grants Commission reviews. It is somewhat disappointing that the submission is so brief, but this probably reflects both the limited expertise within ATSIC and the inability of senior ATSIC staff to devote much time to the issue because of their other priorities.

The usefulness of the ATSIC submission is significantly compromised by its endorsement of the recommendations of the AAAC report. This is not surprising since the report was drafted by senior ATSIC staff. It also reflects the unwillingness of ATSIC to contemplate, and then advocate, a major change in the way that the Commonwealth funds the State and Territory governments. It may well be that senior officers in ATSIC do not believe that such change is achievable in the present political climate.

ATSIC's Office of Evaluation and Audit, in commenting on the administration of ATSIC's grants to these governments, stated:

*In summary, the present approach to the administration of States grants by ATSIC reinforces a highly unsatisfactory state of affairs, whereby the States only provide infrastructure to remote communities where the Commonwealth provides funding, yet where the extent of Aboriginal needs far exceeds the capacity of the Commonwealth to finance (Aboriginal and Torres Strait Islander Commission 1991, 12).*

In assessing the extent to which the final statement in this quote is a true reflection of the situation, the questions raised in the ATSIC submission

are important. The submission asks how much funding is provided to the State and Territory governments for Aboriginal programs and services by the Commonwealth; and what is the accountability of these governments in applying the amount allocated?

The problem is that given ATSIC's commitment to handing over much of its own funding to the State and Territory governments, why would it care how much funding is provided to these governments as a result of the Commonwealth Grants Commission's deliberations? Perhaps it is indicative of the obsession ATSIC, and increasingly certain members of the Commonwealth Parliament, seem to have about quantification, measurement and performance indicators.

The debate about spending on Aboriginal programs and services is almost completely dominated by accountability issues. This applies to all of the major political parties. At the same time, many of the more pressing concerns raised in the reports of the Royal Commission into Aboriginal Deaths in Custody, such as increasing Aboriginal control of service delivery, have not received the same degree of attention.

Adding up how much money is spent on Aboriginal programs and services, such as is done in the Commonwealth Budget Paper with the surprising title *Social Justice for Indigenous Australians* (Commonwealth of Australia 1991b), may actually undermine the position of Aboriginal people. It is already quite common to hear comments about the millions of dollars of taxpayers' money supposedly wasted on Aboriginal people. While the Minister for Aboriginal and Torres Strait Islander Affairs has responded to some of these concerns in the booklet *Rebutting the Myths*, more effort will be required.

Much of the spending recorded in this Budget Paper is actually money that should properly be regarded as citizenship entitlements, not Aboriginal-specific spending. For example, most of the spending on the Community Development Employment Projects scheme, which is an

ever-growing part of ATSIC's budget, is really citizenship entitlements (unemployment benefits) under another name.

The amount of money spent by governments should not be the main criterion for judging social justice. In general, Aboriginal people have little control over how the money is spent, much of it is controlled by the State and Territory governments, and much of it is spent on programs that were not designed, controlled or managed by Aboriginal people.

Some would argue that ATSIC has changed this situation. However, for many Aboriginal people, the establishment of ATSIC seems to have made little difference. Some would argue that ATSIC has made the situation worse. In particular, a number of Aboriginal people have commented how the State and Territory governments, when they are seeking an 'Aboriginal viewpoint', now only consult with the ATSIC regional councils. This is resulting in the marginalisation of many Aboriginal organisations and individual Aboriginal people. The confidentiality restrictions on the regional councillors and the commissioners, most of which seem to be self-imposed, also seem to be spreading.

Another important reason for the critical attitude of many Aboriginal people relates to the staffing of ATSIC. It is not coincidental that of the 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody, the only recommendation not to receive support was that ATSIC be constituted as an employing authority independent of the public service. As Rowse has argued:

*This response sidestepped the intellectual challenge of considering how best to resolve the tension between the rights of staff and ATSIC's legislative commitment to empower indigenous people. It chose to recognise Aboriginal and Torres Strait Islander interests in a rather different way: in the career development opportunities of Aboriginal public servants (Rowse 1992).*

## Could an alternative system of funding be established?

The Land Councils in their submissions to the Commonwealth Grants Commission have argued for a modified system of fiscal equalisation, that would apply to a form of 'government' other than the State and Territory governments. To give an indication of how fiscal equalisation for an Aboriginal community, or area of Aboriginal land, might work in practice, take the example of any of the larger Aboriginal communities in the NT which are on Aboriginal land. The following discussion is meant to be general, and of course there are many complexities that would need to be resolved.

Most of these Aboriginal communities already have Aboriginal councils which are formally recognised as local governing bodies. They usually also have outstation resource centres, and a variety of other Aboriginal service organisations. There are also various Commonwealth and Territory-funded services in these communities. The local governing bodies, and the outstation resource centres, already undertake a range of governmental functions, although with totally inadequate funding. Many services in the community and the outstations are provided by the council and the resource centre, either directly or as a result of contractual arrangements with NT and Commonwealth government departments and authorities.

These local governing bodies already receive direct Commonwealth funding through the Northern Territory Local Government Grants Commission, and other Commonwealth funding through the Northern Territory Office of Local Government. However, the distribution of funds by OLG, under Ministerial direction, does not conform with the principles of fiscal equalisation. The funding for all of the services and programs in these remote communities could be assessed by the Commonwealth Grants Commission, and provided *directly* by the Commonwealth. It is important, however, that the funding assessed should not just be for recurrent purposes. If funding for the provision of infrastructure is not included, then the gap between remote Aboriginal communities and the urban areas will be maintained.

The decision about who actually undertakes the road works, or administers the schools or the health clinics, could then be determined by Aboriginal people living in the community, or by people who are serviced by organisations in the community. Some communities may not be prepared to take over all service functions at the present time. But at least the Aboriginal organisations in the community would have the financial capacity to provide a level of services to the residents at a level approaching that enjoyed by people living in urban areas.

The Commonwealth Grants Commission has considered a related issue previously, although its consideration was not specifically in the context of Aboriginal programs and services. One of the terms of reference of the inquiry into the distribution of local government funding asked the Commission to analyse the feasibility and appropriateness of treating the local government sector in each State either as a whole or *on a local government unit by unit basis*. The Commission indicated that it would be feasible to adopt a unit by unit approach, but it was not desirable because of a large increase in the Commission's resources that would be needed and the dubious effectiveness of such an analysis (Commonwealth Grants Commission 1991, 99–100).

The Commission has not always been restricted to assessing the funding requirements of State, Territory and more recently local governments. The *Grants Commission Act 1973* empowered the Commission to make recommendations with respect to associations of local governing bodies (Commonwealth Grants Commission 1983, 102). The legislation was subsequently amended by the Fraser Government. The Commission found its new legislative powers were very complex to administer, mainly because of the large number of local governing bodies involved (up to 900 councils and possibly, had they been established, 60–70 regional groups). There were also difficulties because the Commission felt it could not make recommendations that grants be paid to organisations which could not disburse money. The State governments were opposed to the formation of regional councils, an attitude which largely reflected their opposition to the Whitlam Government and the perceived threats to

their own existence that that Government's policies implied. It is interesting to note, however, that 43 voluntary regional organisations of councils have now been formed (Office of Local Government 1992).

### **Some of the benefits of a federation**

Australia is a federation, comprised of a number of different forms of government. Each has its own defined powers, whether these are derived from the Australian Constitution (the Commonwealth and State governments), Commonwealth legislation (the NT and Norfolk Island), or State legislation (local governments). A federation, particularly for a country the size of Australia, is probably the only governmental structure that can accommodate the differences within one larger national unit.

The funding arrangements that tie each of these governments together are complex. These arrangements can be changed, and can be modified to suit the particular circumstances of the respective governments involved in the funding relationship. Norfolk Island, which is for all intents and purposes self governing, provides a good example of how even small administrative units and geographical areas can negotiate a separate status within the federation (House of Representatives Standing Committee on Legal and Constitutional Affairs 1991).

Financial arrangements were negotiated for self government in the NT, and arrangements are being negotiated with the residents of Norfolk Island. There would seem no major legal impediments to people living on a defined area of Aboriginal land to be accommodated into the present intergovernmental financial arrangements, as a separate Aboriginal political entity. This could be a form of Aboriginal self government. While such areas of Aboriginal land exist already in the NT and SA, Aboriginal people in WA who presently have no secure land title, may obtain title to large areas of land following the High Court's decision in the Mabo case. Aboriginal people living in urban areas, and in the other States, would probably need to negotiate other types of arrangements.



The Commonwealth's position on land rights has been, at least until the Mabo decision, that a national approach is not practicable. While this could be seen as an abrogation of the Commonwealth's responsibilities, a uniform national approach to changing the funding arrangements for Aboriginal people, and Aboriginal programs and services, should not be necessary. Indeed, as Sanders has suggested,

*One of the more striking aspects of commonwealth intervention in Aboriginal affairs over the past twenty years has been the way in which it has not been greatly concerned with achieving uniformity (Sanders 1991, 275).*

Some Aboriginal people living in Arnhem Land and parts of central Australia want to begin discussions over these matters now, as was clearly demonstrated at the Commission's public meeting in Darwin in July 1992. The Commonwealth Government should not prevent this from happening on the grounds that a national approach is necessary. Aboriginal people in the NT have benefited from Commonwealth land rights legislation, while Aboriginal people in some of the other States have had to cope with governments which are not prepared to recognise the valid rights of Aboriginal people. While national approaches to many policy questions are essential, one of the advantages of a federation is that it allows for diversity and complexity.

Institutionally, Aboriginal self governing entities could, in the first instance, be incorporated as Aboriginal Councils under the Commonwealth's *Aboriginal Councils and Associations Act 1976*. The Aboriginal Council provisions of the Act were originally intended to provide for the establishment of self governing bodies in Aboriginal communities on Aboriginal land (Dalrymple 1988). No community has ever been successful in incorporating as a council, even though a number of applications have been lodged with the Registrar of Aboriginal Corporations. The lack of success has been due to bureaucratic inertia and obstructionism, and opposition from some of the State and Territory governments.

Whatever institutional form Aboriginal self government may ultimately take, it is not out of the question that it could be recognised, as has recently occurred in Canada, as another 'order' of government. Indeed, Canada has explicitly recognised that Aboriginal peoples have an 'inherent right of self government' (*The Globe and Mail*, 11 July 1992). The North American political systems have been able to accommodate the concept of multiple sovereignty in regard to indigenous people. Multiple sovereignty already exists in Australia in the form of the constitutional delineation of the powers of the Commonwealth and the States. Aboriginal self government would not require the creation of another State in Australia. What does need to be recognised is that orders of government can, and indeed do, exist in Australia, and that the concept of multiple sovereignty does not challenge the existence of the Australian nation state.

It could be argued that one reason for the confusing discussion about sovereignty in some of the decisions of the judges in the Mabo case is a lack of awareness of the debates in Canada and the United States. The North American experience suggests that it will take quite some time for these issues to be properly clarified by the Australian courts. A number of court cases and favourable decisions (to Aboriginal interests) will probably be necessary to force governments into negotiations over Aboriginal self government. One would hope that the Commonwealth might be prepared to be more far-sighted than it has been in the past.

## **Conclusion**

While the Commonwealth Grants Commission cannot determine policy, it does have a major role to play in trying to ensure that the inter-governmental financial arrangements produce equitable outcomes. The recommendations of its present review, and the broader discussions about fiscal equalisation, will influence how funding is divided between the States and Territories for a number of years.

Assertions of sovereignty and demands for self government continue to come from sections of the Aboriginal population. This is even more likely following the recent High Court decision in the Mabo case. It appears that increasing numbers of Aboriginal people are beginning to link issues such as land rights, government funding and self government in a practical community-based context.

A recent manifestation was the formation of the Yolngu Government Association at a meeting in the Arnhem Land community of Maningrida in May 1992 of representatives of twelve Aboriginal councils. A similar association, with the temporary name One United Voice, was formed at a meeting in the central Australian community of Papunya in July 1992. These associations are intended to represent the broader interests of Aboriginal local governing bodies and resource centres in the NT. An important objective of the associations will be to make representations to the Commonwealth Grants Commission, and to seek direct Commonwealth funding for Aboriginal organisations.

Self government, as indigenous people in other parts of the world have shown, requires the negotiation of appropriate financial arrangements with the national government. The reform package concluded between the Canadian Federal Government, the nine Provincial governments, and Aboriginal leaders in July 1992 clearly shows how this can be achieved. The package commits the governments to the principle of providing Aboriginal *governments* with fiscal or other resources, such as land, to assist those governments in governing their own affairs, taking into account the levels of services provided to other Canadians in the vicinity, and the capacity of an Aboriginal government to raise revenue from its own sources (*The Globe and Mail*, 11 July 1992).

The dilemma for Aboriginal people in Australia will be governments continuing to hand over the responsibility for service delivery without guaranteeing adequate funding to carry out these functions. There are already some indications that this process is accelerating in the NT. Given the Commonwealth Grants Commission's present legislation, it

cannot recommend how forms of Aboriginal self government might be funded. But some important issues in the debate are now being raised. As the Commission itself has indicated, 'this matter raise[s] serious policy issues for both the Commonwealth and Northern Territory Governments' (Commonwealth Grants Commission 1992c).

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