COMMONWEALTH GRANTS COMMISSION

INDIGENOUS FUNDING INQUIRY

FINAL SUBMISSION

From: Northern Land Council

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Commonwealth Grants Commission

Indigenous Funding Inquiry

NLC Final Submission December 2000

Overview

The draft report on Indigenous Funding shows a welcome readiness to consider the context and the underlying issues behind Indigenous service delivery problems. Despite its limited and prescriptive terms of reference, the draft report has canvassed a wide range of systemic, structural and even constitutional issues as well as gathering vital data.

The NLC considers that this Inquiry has the potential to have critical impact on Indigenous service delivery and funding issues over the next decade. It is vital that it completes the task that it has begun and proposes holistic measures to improve the disastrous state of Indigenous health, housing, education and infrastructure.

In particular, the funding relationship between Commonwealth, State/Territory and local government, and the accountability mechanisms between the three must continue to be a focus for analysis and reform proposals.

The other related issue that is of major concern in the NT is that of substitution or cost-shifting. The current Inquiry has the opportunity to address this problem and propose mechanisms to prevent states/territories from such activities.

The NLC considers that in addition to the welcome consideration of mechanisms to ensure that Commonwealth Government specific purpose payments (SPPs) are allocated in a more transparent and accountable manner, the CGC must also consider the balance of Commonwealth funds which states/territories receive as untied grants. In particular, the special situation of the Northern Territory – as a Territory and also as a region where Indigenous need is greatest – should be investigated to identify mechanisms to ensure proper targeting of ALL Commonwealth funds. This is particularly so as the Inquiry has identified that 74% Territory funding comes from the Commonwealth.

The supplementary nature of Commonwealth own purpose payments (OPPs) and SPPs, as well as of ATSIC's programs, should be emphasised. The NLC concurs with the CGC's conceptualisation of "citizenship" services as opposed to the special supplementary services required by Indigenous people to address their chronic disadvantage. The key question, then, is how to ensure that "citizenship" services are provided to Indigenous people through mainstream funding channels and that supplementary funds provide the "top-up" required. The lack of basic health and education services in many parts of the NT indicates that this is not occurring.

Index of Need

The CGC's preliminary investigations have shown that Aboriginal people in the NT are among the most disadvantaged in Australia. The NLC does not have the capacity to provide informed comment on the methodology behind the development of the index, however the outcomes accurately reflect the direct experience of our constituents and the inescapable observation that the dire situation of urban and remote dwelling people in the NT. It is critical that this index is put to constructive use in the allocation of resources. It is equally critical, however, that allocation recommendations are accompanied by appropriate management/delivery recommendations.

The current situation has arisen despite the NT receiving significantly higher per capita funding than any other Australian jurisdiction. Two issues become clear from this situation. First, this funding does not reach the target groups for which it is intended. For this reason, the NLC considers that mechanisms to improve accountability, service delivery, and decision-making must be considered by the Inquiry.

Second, the proper allocation of funds alone will not ensure equitable delivery of services. Greatly enhanced funding levels are required to allow Aboriginal communities to "catch-up" to the level of services which other Australians receive. This is outside of the terms of reference of this review, however, the magnitude of disadvantage emphasises the need to ensure that existing funding is effectively targeted.

General Revenue Assistance – Untied Funds

The Draft Report notes (p.44) that over 40% of State revenue comes from the Commonwealth Government, and that in the case of the Northern Territory 74% of revenue is provided. Of that, about half is received as general revenue or "untied" grants.

For the NT, this means that its revenue base is, in approximate terms:

- 37% "untied" general revenue
- 37% SPP revenue
- 26% own revenue

The NLC considers that, given

- the Commonwealth's level of contribution to the Territory's revenue and the Territories dependence on Commonwealth funds,
- that this extraordinarily high level of Commonwealth funding and Territory dependence is based on the Aboriginal population's needs,
- the unacceptably high level of unmet need of Indigenous Territorians which the Inquiry has already identified,

- the Territory's unsatisfactory level of outcomes on most indicators upon which community needs are measured,

- and the lack of transparency in the way the Commonwealth funding is allocated in the Territory,

It is critical that the current Inquiry considers mechanisms for ensuring that general revenue is appropriately targeted in keeping with the principle of horizontal fiscal equalisation.

As is well-known, the NT receives such a large per capita funding grant because of the Commonwealth's policy of providing states/territories with the funding to provide equivalent levels of "citizenship services" to all. The educational, health, housing and infrastructure requirements of Aboriginal people are the primary reason for the large per capita funding grant received by the NT. However, currently there are no mechanisms for ensuring that the funds allocated on this basis are actually spent on the services/citizenship needs upon which they are calculated.

The NLC acknowledges that this potentially raises legal and constitutional issues in relation to the six States but considers that it is incumbent on the current Inquiry to consider mechanisms to address the lack of accountability for these funds in the NT in particular, given the state of Indigenous need.

As a Territory rather than a State under the Australian Constitution the Commonwealth Government has greater powers in the NT (to the extent of being able to overturn NT legislation).

The NLC calls on the current Inquiry to investigate all possible avenues for the Commonwealth to exercise greater oversight over all funds received by the NT from Commonwealth sources.

Effect of the New Tax System

We also strongly recommend that the CGC consider the effect of the GST arrangements on the provision of services to Indigenous people by the States/Territories. In relation to the range of possibilities canvassed in chapter five in relation to changing Commonwealth/State funding arrangements, this issue is crucial as it will give the states/territories a larger proportion of their revenue as untied funds over which the Commonwealth may have little influence. The CGC needs to consider how to address the implications of this eventuality.

CGC proposed solutions:

Change to Commonwealth state arrangements:

NLC supports proposal for greater oversight by the Commonwealth Government and greater accountability by States for SPPs and OPPs. We also, as noted above, consider that the CGC must go further and consider accountability mechanisms for the so-called "untied grants" to States/Territories, in particular to the Northern Territory.

Capacity building

Developing the capacity of Aboriginal organisations to manage service delivery is a crucial step towards more effective utilisation of funding. Self-management or self-determination must develop, not be imposed from outside forces.

It is important to recognise that the lack of current "capacity" is the product of the Territory's neglect of Indigenous education and training, and until the problems of education are addressed initiatives in "capacity building" will be limited.

Development of capacity to manage complex para-governmental functions will evolve over time, given appropriate education and training opportunities.

In the NLC region, a number of successful Aboriginal organisations operate on Aboriginal land. The Bawinanga Aboriginal Corporation and Dhimurru Land Management Aboriginal Corporation are two such bodies. Common factors their success include:

- A close relationship with the traditional land owners and a recognition of the rights of traditional owners to control their own land;
- An incremental approach to taking on functions;
- An involvement in research, and the engagement of experts to assist in developing new initiatives;
- Adequate infrastructure and technical support.

Partnerships

The concept of "partnership" needs to be analysed more critically before it is embraced as a solution for the vagaries of Commonwealth/state funding arrangements. The experience in the NT of problems with IHANT and the NHT partnerships leads the NLC to caution in relation to such proposals. These two "partnerships" have resulted in the transfer of decision-making and budgetary power from Commonwealth bodies largely to the NT Government, with Indigenous "partners" lacking an equitable voice.

Equity is crucial in partnership arrangements if they are to succeed. The CGC should consider what legal and other mechanisms could be employed to ensure that Indigenous partners are adequately resourced and supported as part of successful partnerships.

Constitutional issues have been cited (in relation to the Natural Heritage Trust) for excluding other "partners" or involved bodies from being party to the terms of the agreement. The NLC is not convinced of this argument, but urges the CGC to examine whether there are any legal impediments to Indigenous organisations (non-government) being parties to funding agreements which involve Federal/State funding.

State-level Indigenous-controlled bodies.

The NLC supports the philosophy behind the CGC proposal for State-level Indigenous-controlled bodies but cautions that such bodies need to be based on Aboriginal structures not imposed by government. There is a danger of creating further non-Aboriginal bureaucracies to administer Aboriginal affairs. Contrary to the impression gained so far by the CGC (para 71, p.60) the IHANT model is not necessarily a good "working example" of either a partnership or a collaborative decision-making process between Indigenous organisations and government.

In trying to identify an alternative Indigenous structure to take over these functions, it is unrealistic to expect that ATSIC could assume the functions proposed. While ATSIC has an elected arm which is representative in nature, it is primarily a creature of government and as such does not have the appropriate independence to carry out the functions proposed. A far more effective strategy would be to build on the existing community-based organisations (for example the community health and medical services) to fulfil this role. These organisations have formed their own peak bodies which operate at the state level, and as the policy evolves those peak bodies could combine.

Alternatively, it may be more effective to consider regional arrangements building on the existing capable community organisations. For example, in Alice Springs the town-based Aboriginal organisations (Congress, Tangetyere, IAD and others) have a combined body which effectively covers the key service delivery areas in the town. Similar potential exists in Katherine and Darwin.

The NLC endorses the principles proposed by the CGC on page five, paragraph 72, for regional/state-level arrangements. However the CGC needs to develop more detail on how to implement these principles. The process of identifying/establishing appropriate bodies will be critical to their success and equity of resources and decision-making is crucial at all stages is crucial. If Indigenous groups feel left out of the initial decision-making process (for example, for the selection of a peak health coordination body) such bodies will be doomed to failure.

The question (raised by Glenn Rees at the Darwin hearing on 20 November) about whether decisions over funding allocation should be separated from service delivery is interesting in this context. Contemporary wisdom would suggest that decision-making should be as "close to the ground" as possible, yet the propensity for small or local organisations to fail or fall prey to mismanagement because of lack of critical mass should not be underestimated. The "policy " capacity of small local bodies is also severely limited (as pointed out by Chips Macinolty on 20/11/2000) and as a result decision-making could lack perspective and vision. Trials such as those on the Tiwi Islands and at Katherine West should not be considered trials in resource allocation in any absolute sense: the amount of funding available was <u>allocated</u> by the Medicare allocation; local <u>distribution</u> was decided by the Health Boards.

Appendix A: Response to NTG submission

Land tenure issues

At numerous points in the NTG submission (for example, 2.10, 8.2 & 8.15) claims are made that the Land Rights Act and native title make the delivery of services to Aboriginal people more complex, difficult and expensive.

This claim needs to be closely examined, and ultimately rejected by the CGC Inquiry.

There is no evidence that the type of land tenure (for example, Aboriginal land under the Land Rights Act) makes the delivery of services any more problematic because of inability to access land and buildings. The NTG's claims to this effect were dismissed recently by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report "Unlocking the Future" which found that a power of compulsory acquisition for the NTG was not required because essential services can be and are delivered on Aboriginal land by negotiating land access agreements with Aboriginal people. (HOSCATSIA, 1999: 120-21).

In other words, the NTG is able to lease land for public purposes from the relevant land trust in the same way that it leases premises in urban areas: by agreement with the owners. In fact, traditional owners tend to charge no rent or only peppercorn rent for essential service facilities such as health and education so in many ways access may be cheaper.

The main expense that the NTG can accurately claim is the cost of delivering services to remote areas, however the land tenure of those areas is utterly irrelevant.

It should be further noted that land "subject to claim" is no impediment to the delivery of government services at all (see section 11A and 67A of the Land Rights Act.)

The claims that the Land Rights Act is "an effective constraint on Territory development" (para 8.9) is based on an argument that the inalienable nature of Aboriginal land inhibits its economic potential. Presumably, the NTG is implying that as a result of this, Aboriginal people are more dependent on welfare and government services than they might otherwise be.

This implication is based on a number of erroneous assumptions:

1. That Aboriginal land is unproductive;

2. That Aboriginal land cannot be used to raise finance;

3. That traditional land management and conservation have no economic value.

It is not correct to imply that Aboriginal land is unproductive. Currently, nearly all mineral exploration in the Northern Territory is occurring on Aboriginal land, and 80% of the value of all minerals extracted in the NT come from mines on Aboriginal land.

The Land Rights Act includes a scheme for the consideration of applications to explore for minerals, and Aboriginal people retain a right under the Act to consent or not to such applications.

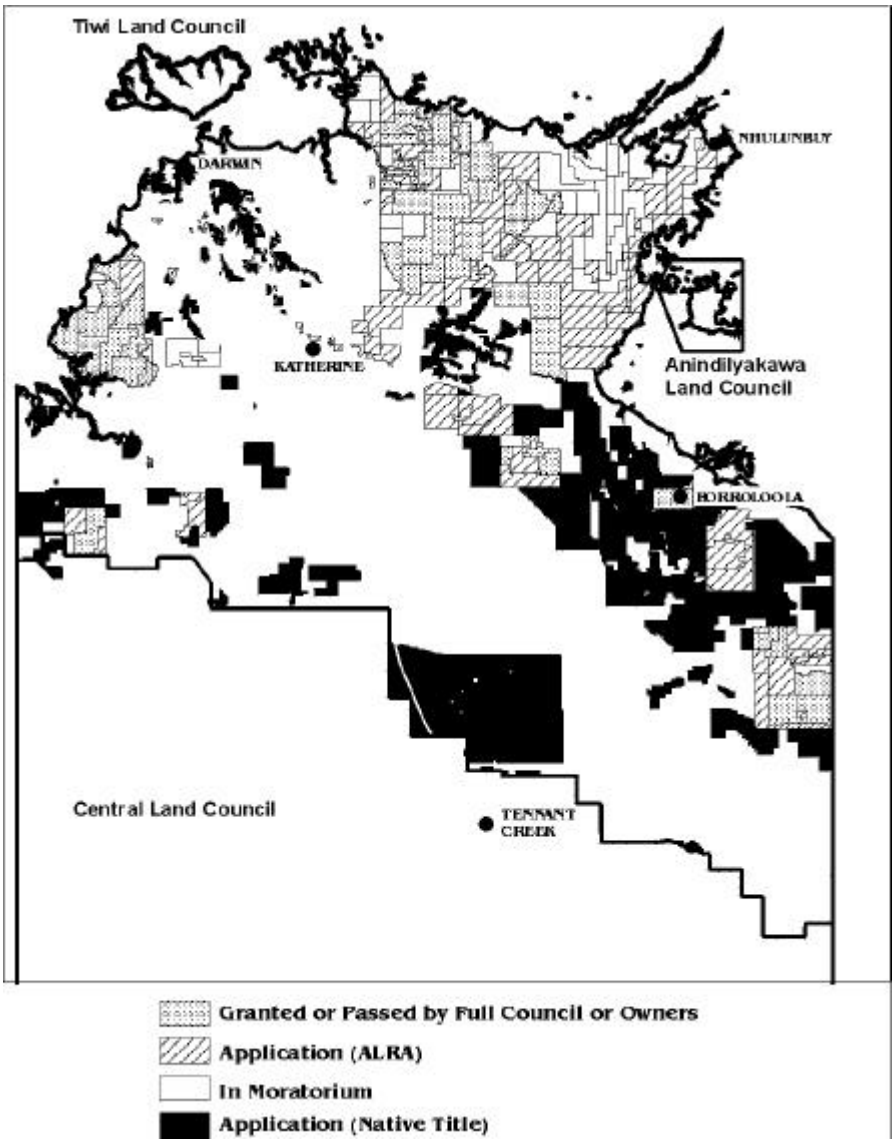
As the table and map below show, a significant proportion (30.5%) of available land is under exploration in the NLC region.

TABLE 1: Exploration on Aboriginal Land in the NLC Region

Aboriginal land under Exploration Licence Agreements	30.5%	46 500km^2
Aboriginal land under ELA negotiation	9.4%	14 500km^2
Aboriginal land for which ELAs are being processed	27.7%	42 300km^2
Aboriginal land which has been placed in moratorium	20.8%	31 700km^2
Aboriginal land not under application	11.6%	18 000km^2

Source: NLC Annual Report 1999/2000: as at 30 June 2000

MAP 1: Exploration on Aboriginal Land in the NLC Region



There are numerous other developments and ventures underway on Aboriginal land, and the Inquiry is urged to examine the Annual Reports of both the NLC and CLC for a full picture.

The second erroneous assumption – that finance cannot be raised on Aboriginal land - can best be answered by analogy. Pastoral lease holders are not able to mortgage their land as they do not own it. They can however mortgage their lease, and they can also obtain a mortgage on stock and improvements on the lease. Aboriginal land can be dealt with in a similar way, if the traditional owners consent. A lease can be given – to an Aboriginal resident, a company, or a developer – and finance can be raised on the lease. If the mortgagee defaults, the lease would revert to the mortgager. Provided consent is given by traditional owners, there is no legal impediment to this eventuality

Interestingly, the NTG appears to have overcome its own legal "problems" in relation to the security of leases on Aboriginal land in the negotiation of leases under the Land Rights Act for the proposed Alice Springs to Darwin railway.

The third error is the assumption that undeveloped land has no value. Such a view indicates the very outmoded economic views held by the NTG. The value of traditional conservation, intact biodiversity and the preservation of "carbon sinks" (among other aspects) have been discussed extensively nationally and internationally for many years (most recently at the World Environment Summit in The Hague in November 2000.) The land management practices of Aboriginal people have led to North Australia having a significant amount of intact biodiversity and considerable "carbon credits" in the form of native forests. The economic value of this land management should be recognised and encouraged as an extremely beneficial outcome of land rights for all Australians.

One of the concerns held by the Aboriginal Land Councils and other Aboriginal organisations for many years has been the propensity of the NTG to include in its data for the consideration of the Commonwealth Grants Commission the "cost" of the Aboriginal Land Rights Act. This issue appears to be at least alluded to in the NTG submission to the Indigenous Funding Inquiry in elliptical comments about the "cost" of land rights and native title.

It is interesting to examine exactly how the NTG defines direct costs of the Land Rights Act. Its submission to the Commonwealth Grants Commission's 1999 Review of General Revenue Grant Relativities lists the following as "identifiable direct cash costs imposed by land rights legislation":

- Attorney General's department: personnel costs, outside counsel; logistics, transport; transcripts; $925 000

- Department of Primary Industry and Fisheries: detriment submissions; consultations; $90 000

- Department of Transport and Works: detriment submissions; sacred sites clearances; $470 000[1]

"Detriment submissions" are actually one of the primary means the NTG has used to oppose land claims. As part of the hearing process, the Land Commissioner calls for submissions from any party who may suffer detriment as a result of a grant of Aboriginal land. The NTG departments almost invariably provide detailed reasons as to how a grant would be to the detriment of conservation, roads, industry etc. It appears somewhat deceptive to claim a political decision of the NTG to oppose claims as "costs" Further, it should be noted that the Attorney-General's department costs relate almost entirely to legal costs in opposing claims.

A further anomaly can be seen in the Department of Transport and Works' costs attributed to "sacred sites clearances."

Another interesting item on the 1997 submission was the figure of $109 000 for personnel and operational costs for the Office of Aboriginal Development. Further research reveals that this figure was in fact the amount that was distributed to two Aboriginal bodies to form "breakaway" land councils. Again, the NTG has made political decisions to nurture dissent within the Aboriginal community, and then attributes it as part of the "costs" of land rights.

The NLC considers that it is indefensible for opposition to Aboriginal rights to be accounted as expenditure on Aboriginal people. It should also be considered that the money spent on opposing claims and nurturing anti-land rights groups represents lost opportunities for constructive expenditure. When you add to this the expenditure which the Land Councils incur in responding to the NTG's trenchant opposition to land claims etc, the NTG's misallocation of resources is seen to have a significant negative multiplier effect.

The current Inquiry would have access to more up to date submissions from the NTG and can investigate whether the same "cost-shifting" and "cost-blaming" is occurring.

[1] Quoted in Fletcher, C., Grounds for Agreement: Evaluating responses of Northern Territory Governments to the Aboriginal Land Rights (NT) Act 1976, North Australian Research Unit Report no. 7, 1998, page 21.