12. SELF-DETERMINATION AND LOCAL GOVERNMENT (RECOMMENDATIONS 77-78)

The Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) examined the interaction between local governments and self-determination. Specifically, the RCIADIC looked at the exercise of local government authority within Indigenous communities and their access to the requisite funding. In Chapter 20 of the National Report, the RCIADIC investigated the amount of control Indigenous people have to determine how they live and interact within the broader community. In this regard, the RCIADIC reviewed the concept of ‘self-determination’ and traced policy development approaches of governments throughout recent Australian history and particularly, the perceived treatment of Indigenous people in recent Australian history.

This aspect of Chapter 20 followed on from an earlier chapter of the National Report (Chapter 17), that looked at how the concept of ‘self-determination’ could more effectively be applied and promoted to produce positive change within the Indigenous community. Chapter 20 did not address any suggested deficiencies on this point, and provides only a high level overview of the policies that produced significant impacts upon the direction of self-determination strategies. The RCIADIC did not make any recommendations in this regard and for a detailed analysis of the recommendations relevant to the concept of ‘self-determination’, please see Chapter 17 - The Path To Self-Determination.

Relevant to the Report, Chapter 20 also examined the role of local government. Specifically, the RCIADIC considered certain funding mechanisms and how the provision of local services and infrastructure can effect change in the Indigenous community through the adoption of related ‘self-determination’ measures. In this regard, the RCIADIC made recommendations relating to access to Commonwealth roads funding and the provision of grants to local government councils by the Queensland State Government.

This Chapter examines the extent to which these Recommendations have been implemented by Federal, State and Territory governments.

1. Local Government Status Authority and Road Funding (Recommendation 77)

Recommendation 77: That the distinction between communities with or without formal local government authority status should be abolished for purposes of access
to Commonwealth roads funding. The Minister for Aboriginal Affairs and the Federal Minister for Local Government should establish a review of Commonwealth Local Road Funds and specific purpose funding with, amongst others, one specific term of reference being to find feasible solutions to the problem of inequity for Aboriginal people in the provision and maintenance area of roads.

Recommendation 77 combines aspects of the RCIADIC's findings with respect to the links between self-determination, local government and road infrastructure funding. The RCIADIC found inequities between Indigenous communities which did not have local government status authority and those local government authorities that did. Accordingly, it recommended that the distinction be abolished with respect to access to Commonwealth roads funding. Furthermore, the RCIADIC identified that a review should be undertaken of Commonwealth Local Road Funds and specific purpose funding, with particular attention to be focused on the provision and maintenance of roads in Indigenous communities.¹

The two related aspects of Recommendation 77 involve:

(a) the abolition of local government status authority for the purposes of access to Commonwealth roads funding; and
(b) a review into Commonwealth Local Road Funds.

1.1 Local government status authority

The Commonwealth Government has provided over $44 billion in financial assistance grants to local governments since 1974-1975.² In 2012-2013, a total of $2.2 billion in financial assistance grants was provided to local governments.³ There are two components within this programme, a general purpose component and an identified local road component. These financial assistance grants are provided pursuant to the Local Government (Financial Assistance) Act 1995 (Cth) (‘LGFA Act’).

The objects of the LGFA Act recognise that the Commonwealth Parliament wishes to provide financial assistance to improve, amongst other things, "...the provision by local governing bodies of services to Aboriginal and Torres Strait Islander communities...".⁴ However, there are practical restrictions to the provision of financial assistance. In other words, the provision of funding under the LGFA Act must be to a “local governing body.” ".

⁴ Section 3(2)(e) of the LGFA Act.

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Section 4 of the LGFA Act defines "local governing body" as:

(a) a local governing body established by or under a law of a State, other than a body whose sole or principal function is to provide a particular service, such as the supply of electricity or water; or

(b) a body declared by the Minister, on the advice of the relevant State Minister, by notice published in the Gazette, to be a local governing body for the purposes of this Act.

Accordingly, only those Indigenous communities which are recognised as local governing bodies will receive funding under this scheme.

Currently, financial assistance grants are provided to the states and territories in the form of general purpose and local roads grants. Local Government Grants Commissions in each state and the Northern Territory distribute financial assistance grants to local governing bodies in accordance with the LGFA Act and the National Principles for allocating grants. The National Principles are divided into principles regarding general purpose grants, and principles regarding the local roads grants. In respect of the general purpose grants, the National Principles relevantly include:

"Financial assistance shall be allocated to councils in a way, which recognises the needs of Aboriginal peoples and Torres Strait Islanders within their boundaries."\(^6\)

In respect of the local roads grants, the National Principles state:

"The identified road component of the financial assistance grants should be allocated to local governing bodies as far as practicable on the basis of the relative needs of each local governing body for roads expenditure and to preserve its road assets. In assessing road needs, relevant considerations include length, type and usage of roads in each local governing area."\(^7\)

The financial assistance grants are untied, which means that the local governments are then free to spend the grants in accordance with their specific local priorities.\(^8\)

The RCIADIC recognised that, as the great majority of Indigenous communities did not have local government authority status, most of these communities had no direct entitlement to funding of this kind.

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\(^5\) Section 6 of the LGFA Act.
\(^8\) Section 15 of the LGFA Act.
From the outset, we note that the abolition of ‘local government status authority’ for the purposes of access to Commonwealth roads funding, as called for in Recommendation 77, has not been implemented in any jurisdiction.

In the latest Local Government National Report (‘National Report’), it was reported that of the 565 local governing bodies that received a financial assistance grant in 2012-2013 under the LGFA Act, 32 were Indigenous. These 32 Indigenous local governing bodies received $53.9 million, of which $10.8 million was provided under the local road component. The National Report noted that the 32 Indigenous local governing bodies were established in one of three ways:

(a) Under a state government’s normal local government legislation, for example, the Aurukun and Mornington local governments in Queensland and the Ngaanyatjarra Local Government in Western Australia. There are currently 26 Indigenous local government bodies established in this way.

(b) Under a state government’s distinct legislation, for example, the Anangu Pitjantjatjara Yankunytjatjara and the Maralinga Tjarutja Councils in South Australia. There are currently 3 Indigenous local government bodies established in this way.

(c) Following a declaration by the Australian Government Minister, acting on advice from the state minister, that it is a local governing body for the purposes of the LGFA Act. There are currently 3 Indigenous local government bodies established in this way.

Section 16 of the LGFA Act requires annual reporting, which must include an assessment by the Minister (based on comparable national data) in relation to a number of specified matters, including the performance by local governing bodies of the services provided by them to Indigenous communities.

In relation to the local roads component, the National Report only identified two states which specifically referred to considerations of Indigenous communities:

(a) In New South Wales, the local road component of local government financial assistance is calculated based on a formula developed by the New South Wales road authority, and is based on population, local road length and bridge length. In addition, it is stated that the local road component shall be allocated so as to

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11 Ibid, page 46.
12 Section 16 of the LGFA Act.
13 Ibid, page 56.

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provide Indigenous communities equitable treatment in regard to their access and internal local road needs.\textsuperscript{14}

(b) In Western Australia, the local road component is calculated using an asset preservation model. In addition, 7\% of the funds are allocated for special projects, with one-third allocated for roads servicing remote Indigenous communities and two-thirds allocated for bridges.\textsuperscript{15} The Indigenous Roads Committee advises the Western Australian Local Government Grants Commission in respect of the allocations for roads servicing remote Indigenous communities. The Indigenous Roads Committee is comprised of representatives from the Western Australian Local Government Grants Commission, Western Australian Local Government Association, Main Roads Western Australia, Department of Aboriginal Affairs, Department of Prime Minister and Cabinet and Department of Local Government and Communities.\textsuperscript{16} The Indigenous Roads Committee has established funding criteria based on the number of Indigenous people services by a road, the distance of a community from a sealed road, the condition of the road, the proportion of traffic servicing Indigenous communities and the availability of alternative access.\textsuperscript{17}

The National Report contains a ranking, on a state-by-state basis, of the funding per capita for general purpose grants and of the funding per kilometre for the local road grant. The ranking revealed:

(a) Queensland: Indigenous local government bodies were ranked 10th, 11th, 24th, 25th, 28th, 29th, 30th, 33rd, 37th, 39th, 41st, 42nd, 43rd, 47th, 52nd and 57th out of 73 local government bodies for funding per kilometre for the local road grant. Rankings below 15 were below the state average.\textsuperscript{18}

(b) Western Australia: the only Indigenous local government body was ranked 130th out of 138 local government bodies for funding per kilometre for the local road grant. Rankings below 57 were below the state average.\textsuperscript{19}

(c) South Australia: Indigenous local government bodies were ranked 11th, 12th, 28th, 36th, 73rd and 74th out of 74 local government bodies for funding per kilometre for the local road grant. Rankings below 30 were below the state average.\textsuperscript{20}

\textsuperscript{14} Ibid, page 59.
\textsuperscript{15} Ibid, page 100.
\textsuperscript{16} Ibid, page 101.
\textsuperscript{17} Ibid, page 101.
\textsuperscript{18} Ibid, page 191-193.
\textsuperscript{19} Ibid, page 194-198.
\textsuperscript{20} Ibid, page 199-201.

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Northern Territory: Indigenous local government bodies were ranked 8th, 9th, 10th, 11th, 12th, 13th, 14th, 16th and 17th out of 17 local government bodies for funding per kilometre for the local road grant. Rankings below 8 were below the state average.\(^{21}\)

In the National Report, it was noted that state and local governments had pursued initiatives aimed at promoting the delivery of local government services to Indigenous people.\(^{22}\)

While not directly relevant to Recommendation 77 and access to road funding, the National Report considered the fifth National Principle for distribution of general purpose grants (being the National Principle which requires financial assistance to be allocated to councils in a way which recognises the needs of Indigenous peoples within their boundaries) and noted that:

"While the special needs of Indigenous Australians are recognised when assessing the expenditure of councils on services in all jurisdictions, it remains the decision of each council as to how the grant will be spent and what services will be provided for its Indigenous residents."\(^{23}\)

The National Report then summarises how each state provides such recognition:

(a) New South Wales: councils with an above state-average proportion of Indigenous Australians receive recognition for the additional costs of providing services.

(b) Victoria: a cost adjustor is applied to reflect the proportion of each council's population that is Indigenous.

(c) Queensland: a cost adjustor is applied to reflect the proportion of each council's population that is Indigenous, and the assessed expenditure per capita is increased in accordance with the proportion of Indigenous population and also for Indigenous people aged over 50.

(d) Western Australia: three cost adjustors are applied, being Indigenous, socio-economic disadvantage and population dispersion.

(e) South Australia: additional funding per capita is allocated to address the needs of Indigenous communities. Special consideration is also given to councils that have a high non-resident use for their facilities, including those councils with high seasonal influxes of Indigenous Australians.

\(^{21}\) Ibid, page 203.


\(^{23}\) Ibid, page 156.
The Road funding programme from the Commonwealth to South Australia was ended in the 2014-15 Budget. "This funding was provided as a temporary supplement to the Financial Assistance Grant programme in the 2004–05 Budget. Funding has been provided to South Australian councils over the period 2004–05 to 2013–14. In 2013–14 South Australian local governing bodies received $17.815 million in supplementary road funding."24

(f) Tasmania: no special allowances are made, as there are very few separately identifiable Indigenous communities in the state.

(g) Northern Territory: a cost adjustor is applied based on the proportion of the population that is Indigenous.25

The Australian Capital Territory does not have a "Local Government Grants Commission" because the ACT does not have a system of local government. The responsibilities of local government are administered by a department of the Territory Government. Notwithstanding the absence of a system of local government, the Territory Government has taken in support of the policy behind the recommendation through the establishment of the Aboriginal and Torres Strait Islander Elected Body (‘ATSIEB’). Amongst other things, ATSIEB provides the ACT Government with advice to ensure that Indigenous communities have the opportunity to participate in government processes, including access to infrastructure funding.

The Commonwealth Grants Commission is currently conducting a review into Improving the Impact of Financial Assistance Grants on Local Government Financial Sustainability and relevantly, to identify those measures that would improve provision of the assistance grants with respect to services required by residents of local communities.26 The report was due to be released by December 2013, but as at the date of this Report has not yet been made public.

1.2 Commonwealth Local Road Funds

A review of Commonwealth Local Road Funds looking particularly at inequities for Indigenous people in the provision and maintenance area of roads has not been established to date.

However, in November 2012, the Commonwealth Grants Commission established a review to focus on 'Improving the Impact of Financial Assistance Grants on Local Government Financial Sustainability'. Under the terms of reference, the Commission's task is to identify tangible measures to improve the impact of local

25 Ibid, page 156.
government financial assistance grants on the effectiveness of local governments and their ability to provide services to their residents within the current funding envelope.

The review will include reference to the needs of local governments, particularly those that service regional and remote communities.\(^{27}\) While the review will not address Recommendation 77 in the manner suggested by the RCIADIC, it may nonetheless provide significant answers.

2. **Queensland State Government Grants (Recommendation 78)**

**Recommendation 78:** That with respect to the provision of grants the Queensland State Government should ensure that Aboriginal and Islander Community Councils are considered against the average standards used for mainstream local government councils. Aboriginal Community Councils should have access to the Capital Works Subsidy Scheme available to mainstream local Government Authorities. The operation of the Aerodrome Local Ownership Scheme should be extended to Aboriginal Community Councils.

Recommendation 78 is confined to the State of Queensland.

In making Recommendation 78, the Report noted that certain Indigenous local government bodies (being Aurukun and Mornington Island) were constituted as local government bodies separate from other Indigenous communities, and different from mainstream local government councils.\(^{28}\) Since the Report was published, legislative changes in Queensland have resulted in the establishment of 16 Indigenous local governing bodies (including Aurukun and Mornington Island), all of which are local governing bodies for the purposes of the LGFA Act. This means that these Indigenous local governing bodies are eligible for both the general purpose component and local road component of the financial assistance grants.

The distribution of Commonwealth funding to local governments is organised through the Queensland Local Government Grant Commission (established under the *Local Government Act 2009 (Qld)*). Indigenous local governing bodies are recognised as qualifying for grants and receive funding based on the same formula applied to all other local governing bodies.

The methodology used by the Queensland Local Government Grant Commission is as set out in the National Report and the information paper published in September

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\(^{28}\) Royal Commission into Aboriginal Deaths in Custody, National Report, 1991, Volume 3, Chapter 20, paragraph 20.5.43.
In respect of the local roads component, the formula used by the Queensland Local Government Grant Commission is:

(a) 62.85% of the pool is allocated according to road length; and

(b) 37.15% of the pool is allocated according to population.\(^{30}\)

This applies equally to all local governing bodies, including the Indigenous local governing bodies.

In respect of the general purpose component, the grant provided to each local governing body is allocated as follows:

(a) 30% of the pool is distributed on a per capita basis, and is the minimum grant; and

(b) 70% of the pool is distributed according to need.\(^{31}\)

In determining the relative need of each local governing body, averages are calculated in respect of both revenue and expenditure. Once these averages are determined, cost adjustors are applied to recognise each local governing body’s differing circumstances.

Relevantly for Indigenous local governing bodies:

(a) When calculating revenue, as Indigenous local governing bodies do not charge rates, 20% of their State Government Financial Aid allocation is used as a proxy for rate revenue.\(^{32}\)

(b) Revenue is adjusted to allow for a local governing body’s capacity to raise rates, using the Index of Relative Socio-economic Advantage and Disadvantage, the Index of Economic Resources and the Index of Education and Occupation.\(^{33}\)

(c) Expenditure is adjusted using a number of services cost adjustors, including demography (proportion of Indigenous residents, as well

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\(^{31}\) Ibid, page 83.

\(^{32}\) Ibid, page 84.

\(^{33}\) Ibid, page 84.
as proportion of Indigenous residents aged over 50). These are applied towards public order and safety, education, health, welfare and housing and community amenities, recreation, culture and libraries.\(^{34}\)

(d) Certain categories of services expenditure are calculated on a per capita basis rather than per residential property basis for Indigenous local governing bodies (including administration costs, garbage and recycling, building control and town planning and environment).\(^{35}\)

The Capital Works Subsidy Scheme and the Aerodrome Local Ownership Scheme (as referenced in the National Report) are no longer operational to the extent described. Therefore, we consider that Recommendation 78 has been implemented in accordance with the current legislative framework.

\(^{34}\) Ibid, page 85.

\(^{35}\) Ibid, page 85.