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Discussion Paper

Local governments and indigenous Australians: developments and dilemmas in contrasting circumstances

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ABSTRACT

This paper examines developments and dilemmas in relations between local governments and indigenous Australians over the last quarter century. It establishes a framework for analysis based on differences in local government systems, circumstances and populations. It then examines two sets of developments in relations which have occurred in contrasting circumstances. The first is ongoing poor relations in incorporated local government areas, focusing on a complex of issues surrounding land ownership, rates and services. The second is discrete predominantly Aboriginal or Torres Strait Islander communities which have been themselves becoming local governments. Both of these sets of developments are seen as being accompanied by significant dilemmas. In relation to the first, the major dilemma identified is how superordinate levels of government should best proceed in attempts to improve relations. In relation to the second, major dilemmas are identified relating to indigenous 'ownership' of the resulting local government structures and the weakness of the financial position of these newly-emerging local governments. The paper suggests there have been some very significant and quite complex developments in relations between local governments and indigenous Australians over the last quarter century. However, these developments have only tentatively moved relations in a more positive direction, if indeed at all. Poor relations still predominate between local governments and indigenous Australians.

Acknowledgments

Research for this paper was undertaken primarily by literature search and by telephone conversations with officials involved in Australia's local government systems. I owe a particular debt to these officials many of whom shared considerable knowledge with someone they had never met who simply approached them by telephone. They are too numerous to mention by name, nor would it necessarily be appropriate. Their openness and trust is to be commended. I hope the outcome does it justice and helps in some way to raise the level and quality of debate about a topic which they and I seemed to agree was both important and inadequately analysed. The overview nature of the current paper has meant that much detail is glossed over or simply omitted. I have concentrated more on general lines of argument. Several of my colleagues at CAEPR read and provided comments on a draft of the paper and Krystyna Szokalski, Linda Roach and Hilary Bek assisted with final layout and editing.

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A quarter of a century ago, Charles Rowley portrayed relations between local governments and Aborigines in Australia as ones of indifference, neglect and at times outright hostility. That was a time when State government welfare authorities had been attempting to move Aborigines from reserves in rural areas to predominantly non-Aboriginal areas of towns. The process had met with considerable resistance from established town residents and local governments were often seen as having given sanction and support to this resistance. At the same time, local governments had seemed keen to rid their areas of informal Aboriginal town camps, often by invoking health regulations and encouraging campers to move out of towns to reserves (Rowley 1971a: 247-66).

Rowley attributed these poor relations to the 'political insignificance of Aboriginal groups' and the 'nature of the local government body'. Local governments, he noted, had in the past often been 'representative of the ratepayers only' and had developed a propensity both to keep rates low and only spend money on services to ratepayers and 'minor construction'. Even where the local government franchise had been extended to residents more generally, this had not, Rowley argued, 'yet had much impact'. There was still a strong propensity for local governments to identify rather narrowly with ratepayer interests. Rowley went on to argue that in order to improve relations, it might be necessary to go beyond the adult franchise and grant Aboriginal groups in local government areas some form of 'special interest' representation (Rowley 1971a: 258-61).

Rowley's portrayal of relations between local governments and Aborigines a quarter of a century ago was, perhaps even then, somewhat over-simplified. There were at that time over 800 local governments in Australia, operating in a wide variety of circumstances. Rowley's comments related mainly to relations in the more densely settled parts of Australia, where Aboriginal groups were small minorities within the populations of local government areas. When Rowley wrote about the more sparsely settled areas of Australia, in which the Aboriginal demographic presence was greater, he had virtually nothing additional to say about relations with local governments (Rowley 1971b). Despite this omission, there was considerable substance in Rowley's analysis and certainly relations between local governments and Aborigines a quarter of a century ago were not good.

Since that time, much has changed in government approaches towards Aborigines and towards Australia's other indigenous minority, the Torres Strait Islanders. The Commonwealth government has become a far more active national player in indigenous affairs and the old policy of 'assimilation' has been abandoned by all governments in favour of 'self-determination' and 'self-management'. Land rights for indigenous Australians have been introduced and so too have national and regional elected representative structures. Much has been written about many

aspects of these changes in Aboriginal and Torres Strait Islander affairs, but not that much specifically about relations between local governments and indigenous Australians. What has been written tends to be restricted to single state or territory local government systems (see Mowbray 1986a, 1986b; Rumley 1986; Rumley and Rumley 1988; Fletcher 1992; Rowse 1992; Crough and Christopherson 1993). One valuable attempt to go beyond this, on its own admission, fell short of being a national overview of these relations (Gerritsen 1994).

The aim of this paper is to work towards a general national overview of developments in relations between local government and indigenous Australians over the last quarter century. The paper approaches the task by first providing a framework for analysis focussing on local government systems, circumstances and populations. This demonstrates the great variety of basic demographic and geographic circumstances in local government areas across Australia and suggests the potential for different political relations as well. The paper then examines two sets of developments in relations between local governments and indigenous Australians in contrasting circumstances.

The first of these two sets of developments involves ongoing poor relations in 'incorporated' local government areas, focussing on a complex of issues surrounding Aboriginal land ownership and local government rates and services. It generally relates to the more settled areas of Australia where Aborigines and Torres Strait Islanders are a small demographic presence, but also includes some reference to sparsely settled areas with more significant indigenous populations where these are incorporated within local government areas. Developments in New South Wales (NSW) are used as an empirical focus for this section of the paper. However, developments elsewhere and general issues and dilemmas are also discussed.

The second set of developments concerns discrete, predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas of Australia which have themselves been in the process of becoming local governments. This has occurred most extensively outside existing incorporated local government areas, but has also occurred to some extent by creating new divisions within incorporated areas. Although this set of developments in relations has generally been somewhat more positive than the first, it has not been without its own controversies, issues and dilemmas. These too will be examined.

Local government systems, circumstances and populations: a framework for analysis

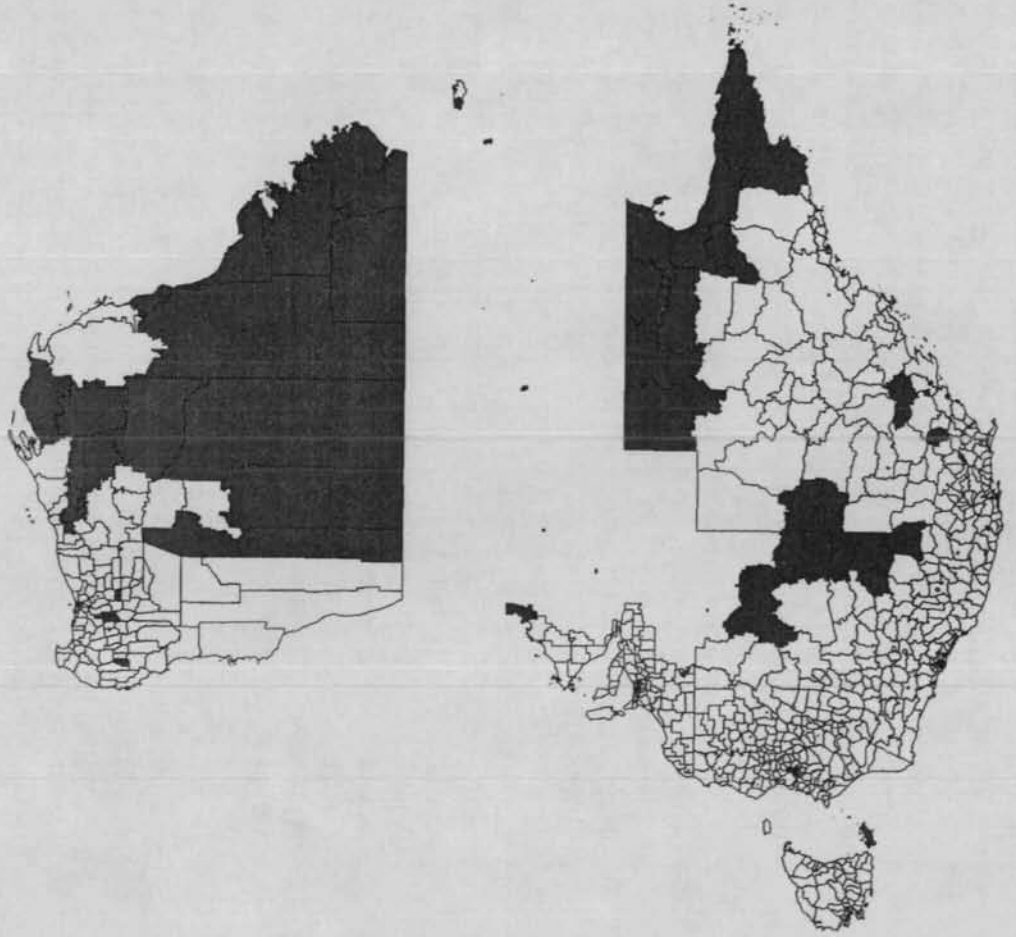
Australia has not one, but seven local government systems; one in each State and the Northern Territory (NT) (Power et al. 1981). Although these

systems share many characteristics, they differ on one important dimension of considerable relevance to relations between local governments and indigenous Australians; the incorporation of state or territory lands into local government areas. In four States, Victoria, Tasmania, Queensland (Qld) and Western Australia (WA), virtually all lands are incorporated into local government areas. In NSW, South Australia (SA) and the NT, this is not the case. NSW and SA have substantial areas in their west and north respectively which fall outside the established system of incorporated local government areas. The NT, on the other hand, has opted for a system in which only small parcels of land around settlements are incorporated into local government areas, while the vast majority of land is left unincorporated. This difference has led to somewhat diverse recent developments in relations between local government and indigenous Australians, particularly in sparsely settled areas.

Another important framework dimension is recognition that within these seven systems there are local governments operating in very different circumstances. These range from local governments in major urban areas with relatively large populations and small land areas, to those in sparsely settled areas with small populations and sometimes very large land areas. This range of circumstances is reflected in Table 1, which groups by population size the 832 local government areas identified by the Australian Bureau of Statistics (ABS) in the 1991 Census. The second column of the table gives each group's mean land area and demonstrates very clearly that small local government populations correlate strongly with large land areas and vice versa. Indeed the contrast could hardly be more stark. In many ways all that these organisations have in common is that they are local governments. In practice they inevitably operate in very different scales and modes, offering different types of services and political forums.

Another fact which can be read from the third column of Table 1 concerns the uneven proportions of Aborigines and Torres Strait Islanders in local government areas across Australia. Whereas the mean proportion of indigenous Australians in local government populations is around 1-2 per cent for urban local governments with large populations, this proportion rises substantially to over 8 per cent in the mainly rural group of local governments with total populations of less than 1,000. There are, in fact, as Table 2 indicates, a small though significant number of local governments in Australia with quite high proportions of Aborigines and Torres Strait Islanders in their populations; above 10, 20 or even 50 per cent as measured in the 1991 Census. Maps 1 and 2 show the geographic location of these local governments with high proportions of their population identifying as Aboriginal or Torres Strait Islander and it is notable that they are almost exclusively in sparsely settled central and northern Australia.[1]

Map 1.[1] Local government areas with >10 per cent Aboriginal or Torres Strait Islander population in the 1991 Census.



Map 2.[1] Local government areas with >20 per cent Aboriginal of Torres Strait Islander population in the 1991 Census.

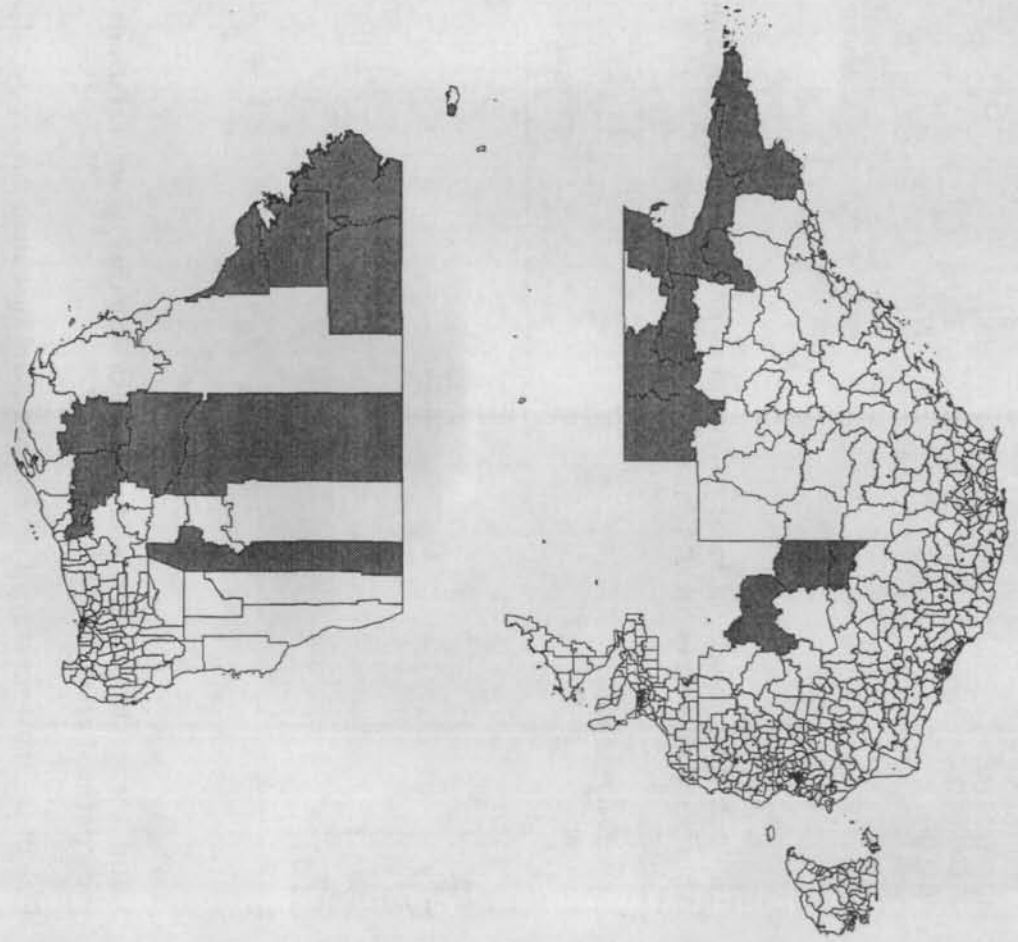


Table 1. Local government areas identified in the 1991 Census, grouped by population size.

Population size	Number of LGAs[a]	Mean area (million ha)	Mean per cent of population identifying as Aboriginal or Torres Strait Islanders
<1,000	60	1.30	8.3
1,000-5,000	304	.84	3.6
5,000-10,000	152	.65	3.4
10,000-20,000	107	.81	2.5
20,000-50,000	116	.18	1.4
50,000+	93	.05	0.9
Total	832		

a. Local government areas.

Table 2. Proportions of local government populations identifying as Aboriginal or Torres Strait Islander in the 1991 Census.

Proportion identifying Per cent	Number of LGAs[a]
<1	444
1-2	154
2-5	128
5-10	57
10-20	23
20-50	19
50+	7
Total	832

a. Local government areas.

Land ownership, rates and services: ongoing poor relations in incorporated areas

One of the most substantial developments in Australian indigenous affairs over the last quarter century has been a rapid increase in indigenous land ownership. This has occurred both through recognition of indigenous rights over land formerly regarded as unalienated crown land and through land acquisition. It has occurred at different speeds in various States and Territories and, until the Commonwealth *Native Title Act 1993*, under the influence of quite different legal and administrative models.

One consequence of this increasing Aboriginal land ownership has been an expanding liability for local government rates among indigenous

Australians. This rates liability has come as something of a shock to some indigenous Australians, who have not always paid the rates that local governments have required. The issue has proven to be a source of ongoing poor relations between local governments and indigenous Australians and to be rather resistant to amelioration. Indeed, it has not been just one issue, but rather a complex of issues involving ideas about local government services and responsibilities to residents, as well as rates. Just how resistant to amelioration relations surrounding this complex of issues have been can perhaps best be appreciated by focusing on developments in NSW.

Developments in NSW

Substantial amounts of land were first placed in Aboriginal ownership in NSW with the establishment of the NSW Aboriginal Lands Trust in 1974. Over the next few years some 200 parcels of land which had formerly been crown reserves dedicated to Aboriginal use were passed to the Trust (Peterson 1981: 16-27). By the early 1980s, as Aboriginal land rights in NSW was progressing through its next iteration, the issue of unpaid local government rates was already arising. The issue caused some 'confusion and misunderstanding' in the change from the Trust to the NSW Aboriginal Land Council (ALC) system in 1983 (NSW ALC 1985). In 1985, the NSW Aboriginal Land Rights Act (ALRA) was amended so as to require the state-level ALC to pay rates notices submitted to it by local governments if they had not been paid by the relevant local ALC within 12 months of falling due.[2] While this may have appeared a conclusive solution to the problem, it was in fact far from that. First, there were a number of Aboriginal groups in NSW who, through mainly Commonwealth funding sources, had acquired land and dwellings outside the NSW ALC structure. These were mainly community-based Aboriginal housing associations. Second, the 1985 amendment to the ALRA was not greatly brought to local government attention and many local governments remained unaware that they could submit outstanding local ALC rates notices to the state-level ALC for payment after 12 months. At the local level, rates notices often remained unpaid and relations strained.

This whole complex of issues gained new prominence in NSW in 1988 with the publication of the *Toomelah Report* by the Commonwealth's Human Rights and Equal Opportunity Commission (HREOC). Toomelah is a discrete, former Aboriginal reserve community of about 500 people in north western NSW within the incorporated area of the Moree Plains Shire Council (MPSC). It is reasonably close to another community of similar size, Boggabilla, where the Aboriginal component of the population is approximately 10 per cent. The HREOC report compared the two communities extensively and was highly critical of the MPSC for not providing services at Toomelah that it did at Boggabilla. The MPSC's justification for this difference related to the idea that Toomelah was a 'private settlement' on a single parcel of land within the boundaries of which the local government had no responsibility to provide or maintain

services. The HREOC rejected this idea noting that the MPSC had not provided such services even to the Toomelah community boundary and that the MPSC's view of Toomelah as a single private settlement had not stopped it levying rates there on an individual dwelling basis since 1987. The HREOC also noted a lack of uniformity in the rating of multi-dwelling Aboriginal land in NSW, with some local governments rating such communities as a single entity and others as individual dwellings. HREOC was highly critical of the MPSC for changing from the former to the latter at Toomelah in 1987, not only because it had massively increased the amount of rates to be paid but also because it had been done 'without any consultation with the community'.[3] These and earlier rates had not been paid by the Toomelah ALC and in 1988 the MPSC was in the process of recovering unpaid rates back to 1985 from the state-level ALC (HREOC 1988: 34-36).

The MPSC's other justification for not providing services at Toomelah related to its lack of 'financial capability'. In this regard, the HREOC was keen to point out that not all local government revenue came from rates and that significant proportions also came from general and specific purpose grants from Commonwealth and State governments. Commonwealth general purpose payments to local governments, the HREOC noted, were allocated on a 'horizontal equalisation' basis, which could be adjusted by reference to 'greater needs' or 'reduced revenue raising capacity'. The MPSC, it argued, was 'entitled to petition for a larger appropriation' on the basis of a 'lack of standard services at Toomelah' and had already more generally so petitioned 'on the basis of its substantial Aboriginal population'. The MPSC was also, the HREOC argued, entitled to apply for specific purpose grants in areas such as water supply and sewerage which would be applicable at Toomelah, but unacceptably had not done so (HREOC 1988: 31-35).

The HREOC was critical of the MPSC on a large number of grounds and appeared to be placing on it a substantial portion of blame for poor relations at Toomelah. It was also keen to point out that local government authorities more generally are responsible for providing services and representation to all residents of their areas and not just ratepayers.

One other issue that the HREOC raised in its *Toomelah Report* was the applicability of rates, based on a valuation of land, to 'inalienable communal' title; as is the case with much NSW ALC land. There was, it argued, 'no semblance of a market for the sale or purchase of houses at Toomelah', yet a rate was being 'levied on the fiction of a capital value'. The HREOC recommended that the NSW Valuation of Land Act 'be amended to exclude from its provisions the rating of Aboriginal Land Council land at least until the standard of dwellings and services reach levels comparable to those in the respective local government areas'. In case this did not come to pass, the HREOC also recommended that the

local Toomelah ALC be given an exemption from rates under 'special circumstances', as provided for in s.43 of the NSW ALRA, and that this exemption be backdated so as to effectively rebate Toomelah's outstanding unpaid rates (HREOC 1988: 36).

Like its Labor predecessor which had established the NSW ALC system, the Liberal/National NSW government elected early in 1988 wanted to maintain the position that Aboriginal-owned land, including inalienable communal title, should in general be part of the rateable estate of local governments. It did not amend the Valuation of Land Act, as recommended by the HREOC, nor did it grant an exemption to Toomelah ALC when this was applied for under the 'special circumstances' provision of the ALRA. It did, however, undertake some review of the guidelines for granting exemptions from rates under s.43 of the ALRA.

In response to the *Toomelah Report*, the NSW government also convened a State, Commonwealth and local government committee on Aborigines and Local Government in NSW. This committee, chaired by the Office of Aboriginal Affairs (OAA) within the NSW Premier's Department, presented a confidential report to the NSW government early in 1989. Later in 1989, the OAA took over the chair of a Toomelah Coordinating Committee which had been established by the MPSC. In this role the OAA oversaw some significant construction programs at Toomelah, funded primarily by the Commonwealth's Aboriginal and Torres Strait Islander Commission (ATSIC).

The next outbreak of public activity in NSW on this complex of issues surrounding Aboriginal land ownership and local government rates and services began in 1991 when 15 local governments in western NSW made a joint submission to the NSW Department of Local Government on the rate-indebtedness of Aboriginal-owned land in their areas. The local governments contended that they were owed approximately $1.5 million from rates on Aboriginal-owned land, half of which related to ALC land and half to Aboriginal community housing cooperative land (Office of the NSW Ombudsman 1992: 52). With regard to the first half of this debt, some local governments had been unaware that after 12 months they could legally require payment of local ALC rates debts by the state-level ALC. However, through their collaboration on this submission, they were now aware of this provision and accordingly the state-level ALC began receiving rates bills dating back to 1985. The second half of the debt was of far more concern to local governments. This portion of the debt appeared to be growing and fell outside the provisions of the ALRA. The local governments concerned had little idea how to go about retrieving it. Moving to sell up the properties of Aboriginal housing cooperatives in order to recover unpaid rates would certainly cause outrage and even worse relations.

The response of the NSW government to this submission was to convene, once again, a State, Commonwealth and local government committee on Aborigines and Local Government. The Commonwealth Office of Local Government (OLG) then funded a series of workshops on the issue in western NSW. Although this met with some success in opening channels of communication, there were still many unresolved issues and differences of perspective.

In 1992 a NSW Ombudsman's report refocussed attention on the situation at Toomelah (Office of the NSW Ombudsman 1992). The specific event which had initiated the inquiry was the winding up of the Toomelah Coordinating Committee by the NSW OAA in 1991. The OAA believed that the Committee had achieved its objectives and was no longer necessary, but the Toomelah ALC felt otherwise. The Ombudsman's findings were critical of the OAA, identifying many remaining unresolved issues at Toomelah even though major construction of services had occurred. These issues revolved around funding and responsibility for ongoing maintenance of services. They also related to local government rates, which were still being levied on an individual dwelling basis. The Ombudsman suggested that the land of Aboriginal land councils and cooperatives was frequently used for 'charitable purposes' and as such should be eligible for exemption from local government rates under s.132 (1)(d) of the NSW Local Government Act. The Ombudsman was influenced here by recent court proceedings in which an Aboriginal housing cooperative on the north coast of NSW had won itself such an exemption and by a similar view expressed in the unpublished 1989 report of the State, Commonwealth, local government committee on Aborigines and Local Government (Office of the NSW Ombudsman 1992: 39, 48). He was also picking up on differing practices among local governments around the State in granting exemptions from rates to organisations providing 'welfare housing'. One notable example, which was contrasted strongly with Toomelah, was the exemption from rates granted by South Sydney local government to the Aboriginal Housing Company and other Aboriginal community organisations in Redfern (Office of the NSW Ombudsman 1992: 44).

The Ombudsman recommended that a circular be issued by the NSW Department of Local Government reminding local governments of the potential applicability of 'charitable purposes' rates exemptions to Aboriginal land councils and cooperatives and also that a 'summit' be convened to 'discuss strategies to assist' these bodies to claim such exemptions (Office of the NSW Ombudsman 1992: 73).[4] However, the Ombudsman's report also contained an advice from the NSW Crown Solicitor's Office suggesting that NSW Aboriginal land councils could not be eligible for exemption from rates under s.132 (1)(d) because their own enabling legislation made it clear that they were not 'public benevolent institutions' or 'public charities' (Office of the NSW Ombudsman 1992:

Appendix E). With this conflicting opinion being expressed by its legal counsel, it was perhaps not surprising that the NSW government did not take up the Ombudsman's recommendations. However, a new forum for discussion of these issues was soon established, involving the OAA, the state-level ALC, the NSW Department of Local Government and the NSW Local Government and Shires Association. Two years on, discussions in this forum were continuing but there were 'still areas where agreement' could not 'be reached' (OAA correspondence with the author 13 March 1995).

One other development which occurred during 1993 and 1994 was funding, by the Commonwealth OLG, of a survey of NSW local governments on issues of rating and rate indebtedness on Aboriginal land. The survey, carried out by the NSW Department of Local Government, found that 113 of NSW's 177 local governments could identify 2,800 parcels of Aboriginal land within their areas. These parcels had an estimated total rateable value of some $77 million and an annual rates liability of approximately $0.87m. Slightly less than 10 per cent of these parcels of land had been granted rates exemptions; slightly more under the Local Government Act than the ALRA. Another $1.08 million annually was levied by local governments on this Aboriginal-owned land in the form of water and sewerage charges. The report noted that this level of rates and service charges on Aboriginal land represented only a very small proportion of local government income state-wide; less than 1 per cent in all but three local government areas.[5] On the issue of rates (and service charges) indebtedness in respect of Aboriginal-owned land, the local governments reported some $2.6 million of outstanding debt. This represented some 2 per cent of total current arrears and again was seen as only a very small proportion of a more general state-wide problem (NSW Department of Local Government and Cooperatives 1994a: 1-6). This indebtedness figure could, however, have been presented as the equivalent of more than one year's total rates and service charges on all identified Aboriginal land, which would have put a rather different complexion on the severity of the problem.

Developments elsewhere, issues, strategies and dilemmas

Developments elsewhere do not precisely mirror those in NSW. Indeed in some ways NSW represents a 'worst case' scenario. The NSW Aboriginal population is large in comparison to other States and Territories and Aboriginal ownership of parcels of land has become more extensive in NSW than elsewhere due to the well established NSW Aboriginal land rights system. In Victoria, Tasmania and SA, by contrast, Aboriginal populations are far smaller. In WA and Qld, on the other hand, Aboriginal land rights processes have been slower to progress and hence Aboriginal land-ownership is less widespread. In these latter jurisdictions, there are even still a significant number of reserves dedicated to Aboriginal use which gain exemption from rates as a result of their crown land status. The

same general issues about land ownership, rates and services do, however, arise all over Australia in incorporated local government areas with an Aboriginal presence. In the future they will increasingly do so as the Commonwealth's Native Title legislation and its Indigenous Land Fund legislation of 1995 result in more Aboriginal and Torres Strait Islander land ownership.

The most fundamental issue to arise from these developments is whether Aboriginal-owned land *should* be subject to local government rates. Generally it has become so, despite some suggestions that this should not be the case. It now seems unlikely that this trend towards rating Aboriginal land will be radically reversed. Nor arguably would such a reversal necessarily be beneficial for relations between local governments and indigenous Australians. Historically, local governments have identified strongly with ratepayers and, even though they have moved in recent years towards more general identification with local residents, rates and ratepayers still loom large in local government perspectives. Rates are a potent symbol of the independence of local governments, giving them a revenue source and a taxing power of their own. Even service charges, which are an increasingly important revenue source for local governments, are not as important symbolically as rates. For this reason, it may well be inadvisable, strategically, for Aboriginal land-owners and their sympathisers to attempt to remove Aboriginal land from the rateable estate of local governments. This may only serve to perpetuate and worsen already poor relations between local governments and indigenous Australians.

One alternative strategy for Aborigines and their sympathisers would be to concede the general rateability of Aboriginal-owned land in incorporated local government areas, but push hard for appropriate rates concessions and exemptions in common with other local residents. This would appear to be the strategy of the NSW Ombudsman in developing ideas about the 'charitable purposes' of many Aboriginal community organisations. Although such a strategy will not go uncontested, it may have some potential for gaining reductions in rates liabilities for Aboriginal organisations in circumstances comparable to those of non-indigenous community organisations. This would be very different, strategically and politically, from attempting to gain an exemption from rates for Aboriginal-owned land per se.

One other possible strategy for multi-dwelling community land would be to seek agreement with local governments that rates be charged on a community rather than individual dwelling basis, if this effectively reduced the level of rates payable as at Toomelah. In making such an agreement, local governments might also seek to reiterate their view of responsibilities for services within community land holdings, noting that a single community rate reinforces the idea of internal community responsibility for

services. It may be, on the other hand, that local governments and their Aboriginal group constituents would prefer individual dwelling rating (and service charges) on community land holdings. But then some move towards greater individual servicing by local governments would probably need to be made.[6]

These issues are clearly complex and strategies for dealing with them are far from simple. Local governments cannot be expected to easily make concessions on their rates base, which is generally their only taxing power and still contributes around 40 per cent of local government revenue Australia-wide (Australian Urban and Regional Development Review 1994: 3). Nor can they be expected to easily overcome concerns about their financial capacity to take on servicing responsibilities in areas that are presently poorly provided with services and require major capital and recurrent expenditure in order to be upgraded. These concerns on the part of local governments are legitimate and will not disappear in the foreseeable future. However, anything would seem to be an improvement on the situation in recent years in which local governments have been receiving much of the blame for inadequate services to indigenous Australians, but not, it would appear from the recent NSW survey, receiving all that much of the rates revenue due to them from Aboriginal-owned land. Making a few rates and servicing concessions in order to improve relations with indigenous Australians, may well provide net gains for local governments in both financial and public relations terms.

These suggested strategies are based on the premise that indigenous Australians and local governments will each act pragmatically in relations with each other, rather than simply taking principled stands on legal, moral or ideological grounds. If Aboriginal people simply refuse to pay rates and local governments refuse to examine issues relating to levels of servicing or rates concessions, then there is little hope for improvement in relations. As in any process of political negotiation, points of give and take need to be both identified and then exploited in order for relations to improve. Unfortunately, there is little evidence to suggest that this is the way relations between local governments and indigenous Australians in incorporated areas have been moving. Although there have been some examples of better relations emerging through strategic interaction, the more usual scenario has been of stalemate and standoff. This can be observed, in retrospect, in recent Commonwealth attempts to progress relations in this area.

Over the last decade, the Commonwealth, through a number of agencies, has both analysed and expressed views on this complex of issues surrounding poor relations between local governments and indigenous Australians in incorporated areas. Apart from the HREOC, ATSIC and OLG, which have been mentioned in recounting developments in NSW,

other Commonwealth agents have also contributed some significant statements and analyses.

In 1987, the Commonwealth Minister for Aboriginal Affairs issued a discussion paper entitled *Aboriginal Participation and Equity in Local Government.* It argued that because of the 'minority situation' of most Aboriginals in local government areas and the 'historical separateness of Aboriginal missions and reserves', local governments had generally 'not become involved' with the provision of services to Aboriginal communities. It also argued that if local governments were providing 'services and facilities' to such communities 'on the same basis as they provide them to the rest of the community', then many 'special' Commonwealth and State programs for Aborigines 'would not be necessary' or 'would have greater and more lasting success' (Minister for Aboriginal Affairs 1987: 12). Later the paper attempted to develop some 'general policy' about rating of Aboriginal community land. This tended towards the idea that 'community' or 'public reserved' areas of this land should not be rated and that parcels dedicated to individual exclusive use should be rated individually (Minister for Aboriginal Affairs 1987: 25). This had been roughly the approach of the NSW Aboriginal Lands Trust and was part of the reason why some local governments in NSW were rating individual dwellings on Aboriginal community land in the late 1980s (NSW Aboriginal Lands Trust 1981). Although the policy idea clearly had some potential, as the Toomelah example suggested, it could also have unappreciated outcomes. The idea was not generally taken further.

In 1989 the House of Representatives Standing Committee on Aboriginal Affairs (HRSCAA) turned its attention to these issues in a report entitled *Aboriginal People and Mainstream Local Government.* Among other things, this report emphasised the tension in local governments between their financial and legal dependence on 'superordinate' levels of government and their 'de facto' position as independent, democratically elected third tier governments. Calls for the Commonwealth or States 'to use their superordinate position in relation to local government to intervene to ensure that Aboriginal people obtain equitable treatment' may, it argued, be counterproductive. Intervention may be seen as 'autocratic and undermining of democratically elected local institutions' and not, as a consequence, in the 'long term ... interests of Aboriginal people' in local government areas. This line of argument led the Standing Committee to a preference for improved 'Aboriginal representation' and 'participation' in local governments, rather than policy direction from above (HRSCAA 1989: 3-4).

A later House of Representatives Standing Committee report, in 1992, identified some encouraging developments in the direction of greater Aboriginal representation and participation in local governments (House of Representatives Standing Committee on Aboriginal and Torres Strait

Islander Affairs (HRSCATSIA) 1992: 30-2, 47-56). However, in that same report, issues of rates, rate indebtedness and levels of services on Aboriginal-owned land appeared to be as significant a source of poor relations between local governments and indigenous Australians as in earlier years. The Standing Committee was now drawn to the idea of developing some national 'guiding principles' to address this 'major obstacle to improving relationships' and recommended the establishment of a 'taskforce to determine sound rating practices for Aboriginal and Torres Strait Islander community land within mainstream local government areas'. These practices, it continued, 'should clearly indicate the entitlements of all residents to specified services' (HRSCATSIA 1992: 36).

These statements and analyses by Commonwealth parliamentary actors over the last decade all appear to have been to relatively little effect. In a sense they capture the major dilemma for superordinate levels of government in attempting to improve relations between local governments and indigenous Australians surrounding this central complex of issues in incorporated areas. It is in the end local governments and local indigenous Australians themselves who must find ways of improving these relations. However, relations between these parties have been poor for so long that self-directed improvement is hard to envisage or initiate. Gentle suggestions or prodding from Commonwealth or State governments can easily fall on deaf ears, while more concerted intervention risks being ineffective through local reaction to superordinate direction. Just how to proceed is a major dilemma for the Commonwealth and State levels of government.

Some more positive developments

Lest the argument thus far be interpreted as overly negative and pessimistic, it is perhaps necessary to also point out that there have been some more positive developments in relations between indigenous Australians and local governments in incorporated areas in recent years.

The Royal Commission into Aboriginal Deaths in Custody singled out the situation in Alice Springs for particular mention. There, the Tangentyere Council had been developed to represent and service Aboriginal town camps within the Alice Springs local government area. Representatives of both the Alice Springs Town Council and the Tangentyere Council gave evidence to the Royal Commission that they had:

> reached an arrangement entirely satisfactory to both for the delivery of local government services. The Town Council accepted that it would not interfere in the operations of the camps, and Tangentyere would provide the municipal services required by those camps. The campers paid rates to the council in return for the general benefits which they shared as part of the municipality (Commonwealth of Australia 1991: 34).

The main critic of this situation which the Royal Commission identified was the NT government's Office of Local Government, which was

concerned about the arrangement perpetuating 'a divide between mainstream society and Aboriginal communities' as evidenced by the 'increasingly prominent Aboriginal agenda of sovereignty and self-government'. However, the Royal Commission was dismissive of these 'ideological' concerns and focussed instead on the practical success and cooperative complementarity of the two organisations in 'delivering local government services'. It also noted the successful work of a formal Town Campers Advisory Committee involving the two organisations (Commonwealth of Australia 1991: 31-36).

Although somewhat more advanced than elsewhere in its management of relations between local government and indigenous Australians, Alice Springs is by no means unique. Aboriginal advisory or consultative committees have been established in a number of local government areas around Australia over recent years. These have typically involved quite large numbers of members of local Aboriginal communities meeting regularly with local government councillors or officials. In NSW in 1994, there were almost 20 such committees in various states of operation and more were being encouraged. Some of these committees dated back to the mid-1980s (NSW Department of Local Government and Cooperatives 1994b).

Either in conjunction with consultative or advisory committees or as an alternative to them, some local governments have employed Aboriginal community development or liaison officers. Some of these positions were established as far back as the early 1980s, as in Townsville Qld, and have quite well-established roles. Others, however, are more recent, more exploratory positions and have been more dependent on the greater availability of Commonwealth funds for Aboriginal employment in recent years.

Another more positive development of recent years has been an increased propensity for Aboriginal and Torres Strait Islander people to seek election to local governments. Many State agencies with responsibility for local government have run programs to encourage this development and to support those elected. One 1992 Commonwealth report noted that 42 Aboriginal and Torres Strait Islander candidates stood at the 1991 NSW local government elections and that eight had been elected. It also noted that the NSW Department of Local Government had for some time been providing resources for a local government Aboriginal network, to help keep both elected Aborigines and Aboriginal liaison officers in NSW local government in contact with each other (HRSCATSIA 1992: 54-56).

Many of these more positive developments in relations between local governments and indigenous Australians were reported to a National Local Government and Aboriginal and Torres Strait Islander Conference, with the theme *Let's Work Together*, held in Townsville in 1991 (Office of

Local Government 1991; Pope 1991). As a result of that conference, a National Reference Group on Local Government and Aboriginal and Torres Strait Islander people was established under the auspices of the Australian Local Government Association (ALGA), the national umbrella body of local government associations. With members drawn from both the elected and official ranks of local government, and from Commonwealth and State government agencies, this group has attempted to provide some ongoing national leadership in this area. In 1992, it saw the ALGA become a signatory to a *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders* (Council of Australian Governments 1992). Since then, it has overseen the appointment of Aboriginal policy officers in most of the ALGA's constituent state and territory local government associations and has produced a guide to better relations between local governments and indigenous Australians entitled *Building a Partnership* (ALGA 1994). The reference group has been serviced by an Aboriginal policy officer of the ALGA who was first elected to a local government in NSW in the early 1980s and has remained involved with local government in various roles since.

A final more positive development in relations between indigenous Australians and local governments was the attendance of indigenous representatives and attention to indigenous issues at the first National Assembly of Local Government convened in Canberra in November 1994. Sixty indigenous Australian delegates attended and the 'national policy framework' which emerged from the Assembly made a number of commitments on indigenous issues (Council for Aboriginal Reconciliation 1995: 12-13).

All these more positive developments may seem to suggest that local government, as a process occurring in a number of different contested arenas (Colebatch and Degeling 1986), may be becoming more open and responsive to Aboriginal participants and interests. However, the pervasiveness of ongoing poor relations involving the complex of issues surrounding land ownership, rates and services somewhat belies this more positive image. Poor relations still predominate between indigenous Australians and local governments in incorporated areas.

Discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas: becoming local governments

The story is altogether different in regard to relations between local governments and indigenous Australians living in discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas of Australia. Here the major development of the last 20 years has been Aboriginal and Torres Strait Islander communities themselves becoming local governments. This has occurred most systematically and extensively

in the NT, by creating new local governments outside existing incorporated local government areas. It has also, however, occurred in a rather different way in Qld and to a lesser extent in SA and WA. This set of developments is perhaps somewhat more positive than those surrounding land ownership, rates and services in incorporated local government areas, but it has not been without its own controversies, tensions and dilemmas.

Developments in the NT

With the coming of NT self-government in 1978, the new Territory government moved quickly to upgrade and develop its inherited system of local government. It passed a new Local Government Act in 1979 which provided for two strands of local government. The first was a conventional municipal strand, of which the NT already had four in urban areas. The second, community government, was a somewhat less elaborate but potentially wide-ranging strand intended for smaller communities, including discrete predominantly Aboriginal communities in sparsely settled areas. Over the next six years, in what one commentator has described as a 'laissez-faire' approach by the NT government, six small communities took up this community government option; two open highway towns with relatively mixed populations and four predominantly Aboriginal communities. From 1985, following some revision of the enabling legislation, a period of more active 'promotion' then began (Wolfe 1989). By 1994 there were 25 community governments in the NT and six municipalities (NT Department of Lands, Housing and Local Government 1994).

The 1991 Census data from which Tables 1 and 2 were generated only included one of these community governments in the NT as a 'legal local government area'. Had it included the others, this would have added another 20 local governments to the group with populations less than 1,000 and four to the 1,000-5,000 group. This addition would also have significantly increased the mean figures for the proportions of the populations in these groups of local government areas that were Aboriginal or Torres Strait Islander, since these community governments all have high indigenous populations. Indeed in Table 2, perhaps 20 of these community governments would, have to be added to the group of local governments with more than 50 per cent Aboriginal or Torres Strait Islander population, and the other four possibly to the 20-50 per cent group. Adding these 24 NT community governments to Table 1 would also substantially reduce the mean land area of the less than 1,000 and 1,000-5,000 groups, since in the NT, unlike elsewhere, only relatively small land areas are incorporated into local government schemes and the vast majority of land remains unincorporated.

Developments in Qld

The other local government system in which discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas

have gone furthest in recent years to becoming local governments is in Qld. This began in rather acrimonious circumstances in 1978, when the Qld State government was attempting to wrest control in two such localities, Aurukun and Mornington Island, from established mission-influenced community councils. The Qld government achieved its aim by changing the status of these localities from Aboriginal 'reserves' to local government areas on Aboriginal land (Tatz 1979: 66-81). In 1984 the existing community councils in another 14 Aboriginal and 17 Torres Strait Island reserve communities in Qld were also given local government status. This again caused controversy, as the Qld government was effectively excluding the residents of these 31 communities from voting and other rights within the larger more conventional local governments which encompassed them. However unlike the 1978 exercise, the 1984 exercise was not brought into effect under a local government act or from within the local government portfolio. It was achieved by the enactment of two Community Services Acts from within the former Aboriginal and Islander affairs portfolio.[7]

A legal challenge and a Human Rights Commission inquiry were mounted in 1985, both of which *inter alia* questioned the Qld government's ability to exclude the residents of these areas from rights within the larger encompassing local government areas. However judgement in the court case vindicated the Qld government approach.[8] The Human Rights Commission inquiry, while considerably more critical, refrained from 'making a formal recommendation' on the issue (Human Rights Commission 1985: 11). Although still somewhat contested, the issue gradually died away.[9]

These 33 newly recognised local government bodies in discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled Qld have not been treated in all ways like other local governments. They have been more closely supervised financially and administratively than other Qld local governments and, apart from the first two, their land areas have not been formally excised from those of the larger encompassing local governments; even though their residents have been excluded from voting rights in those larger local government areas. The 31 local government bodies created in 1984 have also not been identified as separate entities in the ABS's census tabulations by legal local government area, despite some recent recommendations to this effect (Queensland Electoral and Administrative Review Commission 1991). Their populations are included in the populations of the larger encompassing local government areas in Table 1 and 2.

Were the 31 local governments created in Qld in 1984 under the Community Services legislation included as separate entities in census tabulations, like the NT community governments, they would need to be added to the group of local governments with populations of less than 1,000 (probably 25) and to the 1,000-5,000 group (probably six). As in the

NT, this addition would also considerably decrease the mean land area of these groups of local governments, since all 31 have small land areas which would be carved out of the land area of other existing local governments. The addition would also considerably increase the mean proportions of the populations of these groups of local governments that are Aboriginal or Torres Strait Islander. All 31 would need to be added to the above 50 per cent Aboriginal or Torres Strait Islander population group in Table 2. With these NT and Qld additions, the numbers of local governments in Tables 1 and 2 would effectively have changed as follows:

Table 1	
<1,000	60+20+25 = 105
1,000-5,000	304+4+6 = 314
Table 2	
50 per cent+	7+20+31 = 58
20-50 per cent	19+4 = 23

This would clearly be a very significant addition at one end of the population spectrum of Australian local governments, whether grouped by total population size or by proportion of the population that is Aboriginal or Torres Strait Islander.

Controversy, issues and dilemmas

Before describing other developments of relevance to discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas becoming local governments, it may be useful to reflect further on these NT and Qld developments. Both sets of developments have been the source of considerable controversy. The Qld controversy has been roughly sketched above. However, the NT controversy has not been touched upon and needs to be understood in order to gain an overall appreciation of developing relations between local governments and indigenous Australians. The controversy leads back, in part, to the subject of indigenous peoples' land ownership and land rights.

In the NT, Aboriginal land rights was introduced by Commonwealth legislation in 1976. This established a quasi-judicial mechanism for Aborigines to claim unalienated crown land on the basis of traditional ownership and a number of Aboriginal land councils to assist traditional owners in both preparing claims and managing land holdings. On the granting of NT self-government in 1978, power over this Aboriginal land rights process was retained by the Commonwealth. The new NT government did not agree with this retention and went on to contest Aboriginal land claims wherever they were made. This did not endear the NT government to the emerging NT Aboriginal land councils. As a consequence, when the NT government began promoting its community government model for Aboriginal and other small communities, the NT Aboriginal land councils were understandably suspicious.

During the late 1980s, land council opposition to the community government idea became increasingly strongly advocated. Concerns were articulated about the degree of NT government control over community governments and also about community governments being used to introduce user charges for services in Aboriginal communities as a way of compensating for cutbacks in the NT government's funding from the Commonwealth (Mowbray 1986a, 1986b). Equally important in the stance of the NT land councils, however, was probably their general suspicion of the NT government arising from the land rights process, plus a more specific suspicion concerning the potential for community governments to become competing authorities to land councils and traditional owners in relation to Aboriginal land (Rowse 1992: 60-80). Some of these new community governments were being established on inalienable Aboriginal land over which the land councils and traditional owners already had some statutory jurisdiction. However that jurisdiction was not as local government bodies and so the NT government could relatively easily justify promoting community governments in addition to land councils and organisations of traditional owners.

The Royal Commission into Aboriginal Deaths in Custody, in reviewing this controversy over community government in the NT, was drawn to conclude that it illustrated 'how ideological fears and hostile communications' could 'derail policy and prevent rational discussion'. The Royal Commission was generally supportive of Aboriginal communities either becoming local governments or entering cooperative arrangements with local governments in order to facilitate better representation and service delivery (Commonwealth of Australia 1991: 31-39). It did not, therefore, entirely go along with the concerns of the NT land councils about community government, although it did clearly recognise the reasons for those concerns.

Despite the NT land councils continuing only slightly mollified opposition, the community government option in the NT has begun to be taken up by increasing numbers of predominantly Aboriginal communities. Seven such communities took up the option in the second half of the 1980s and another eight in the early 1990s (NT Department of Lands, Housing and Local Government 1994). Several more communities are still exploring possibilities.

Although the trend in the NT is clearly for Aboriginal communities to take up the community government option and for controversy over it to wane, there have still been some very pressing issues and dilemmas for discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas engaged in processes of becoming local governments. Probably the two most pressing of these have related to Aboriginal 'ownership' of these new local government structures and the weakness of their financial positions. Some brief comments about both are in order.

Recent developments in discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas are not the first time that institutions of local government have been promoted in these localities. There has in fact been a long history of attempts to promote local government-type institutions in such communities (see for example Loveday 1989). A general critique of these early attempts has developed which argues that they were not very successful partly because they were not greatly congruent with traditional Aboriginal decision making and community representation processes (for a summary of this critique see Rowse 1992: 44-58). Even where Aboriginal adaptability to these new organisational forms was more positively analysed, questions still remained about the extent to which such developments had simply been imposed by superordinate levels of government on Aboriginal people, rather than in any way sought by them. This problem of a lack of Aboriginal ownership of these local government structures remains in more recent attempts. The Royal Commission into Aboriginal Deaths in Custody commented of local government experiments in 1991 that:

> When structures and organizational formats are imposed and thrust upon Aboriginal people, there is no sense of ownership developed. Such things tend to come from outside Aboriginal considerations and initiatives. When there is no sense of ownership, there is no pride. For pride to be advanced, there needs to be control and sensitivity to enable delivery and participation. Without these dynamics being put in train, there will be repetition of past patterns of rejection, failure and resistance (Commonwealth of Australia 1991: 37).

These are clearly still problems for both the NT and Qld local government developments of recent years. The Qld local government structures created in discrete predominantly Aboriginal or Torres Strait Islander communities in the late 1970s and early 1980s could hardly be portrayed as other than State government imposed. The NT structures sought to avoid this opprobrium by simply offering an option, which communities might or might not take up and which had within it considerable flexibility. Flexible boundary and electoral provisions were cited, in particular, as allowing for congruence with Aboriginal tradition and greater Aboriginal ownership (Turner 1986; Wolfe 1989: 49-67). However such claims were cast into doubt by the NT land councils and others, and there was no getting away from the fact that it was the NT government, rather then the Aboriginal communities themselves, that had developed and promoted community government. Aboriginal ownership of these local government structures remains problematic and a major dilemma for superordinate levels of government in knowing how to proceed.

A second major dilemma has to do with the limited abilities of these new local governments to generate their own revenues and the potential consequences of this weak financial capacity for their viability and independence. This weak financial capacity is partly because most of these new local governments are on Aboriginal community land and have little

opportunity to levy local government-type rates. It is also partly because their constituents are generally socioeconomically disadvantaged and are neither used to paying nor have a great capacity to pay various service charges. Such a weak independent financial capacity is not atypical of Australian local governments with small populations in sparsely settled areas more generally (Australian Urban and Regional Development Review 1994). However, the degree of such dependence may be even greater for these new local governments in discrete predominantly Aboriginal or Torres Strait Islander communities. Three elements which have alleviated this financial problem to some extent and in some cases are the Community Development Employment Projects (CDEP) scheme, control of alcohol outlets and income from mining ventures.

The CDEP scheme is a Commonwealth-funded work-for-the-dole program which has operated in Aboriginal communities since 1977 (Sanders 1993). Since the mid 1980s it has expanded enormously and become a major source of recurrent income for many local Aboriginal community organisations. A Qld Auditor-General's report for the 1990-91 financial year on the operations of the 31 Aboriginal and Torres Strait local governments established under the Community Services Acts suggested that the CDEP scheme constituted 45 per cent of their income (see Table 3). Although slightly over two-thirds of this amount is essentially committed to meeting the wages of CDEP scheme participants, and hence involves largely non-discretionary expenditure, the 'capital' and 'on-cost' components of CDEP scheme payments, which do allow for more discretionary expenditure, are still a significant portion of income; perhaps 15 per cent. Although CDEP payments are not strictly 'own-source' income for these Aboriginal and Torres Strait local governments, they are reasonably well assured and difficult for the Commonwealth to withdraw largely because of their notional link with the social security entitlements of community members.

Table 3 also suggests that another 15 per cent of the income of these 31 Qld Aboriginal and Torres Strait local governments comes from 'canteen and other enterprise' receipts. This includes alcohol retailing, which although providing significant income, also puts these local governments in a rather difficult and 'not disinterested' position in relation to local debate about alcohol consumption and control. This is one of the most contentious public issues in these communities and although revenue derived from alcohol retailing is genuine own-source income, it is not without political costs.[10] Table 3 also shows the very limited extent to which these 31 Qld local governments were able to raise revenue from 'other levies and charges'; a mere 6 per cent in 1990-91.

A third factor contributing to own-source revenue in some communities, which does not appear in Table 3, is income derived from mining developments on Aboriginal land. This can in some communities be

substantial and take some pressure off alcohol retailing and the CDEP scheme. However, its presence as an additional source of income varies from community to community and depends, to some extent, on accidents of geology.

The financial positions of NT community governments are probably not very different from those of the Qld Aboriginal and Torres Strait local governments. Certainly most NT community governments rely heavily on the CDEP scheme, other Commonwealth and Territory grants and some have mining related income. Own-source income in the NT may be even less than in Qld, because alcohol retailing in the NT is frequently undertaken by bodies other than the community governments. This has the advantage of putting those community governments for which this is the case in a more disinterested position in relation to local debates about alcohol consumption and control, but deprives them of potential income. Levies and charges on local residents are most certainly only a small income source for NT community governments and arguably have only a limited capacity to expand.

Table 3. Income sources of the 31 Qld Aboriginal and Torres Strait local governments in 1990-91.

Source	Amount $ million	Per cent
Commonwealth grants		
General purpose local government revenue sharing	2.2	2
CDEP scheme	53.4	45
Commonwealth/ State Housing Agreement grants	4.8	4
Operating cost grants	1.9	2
Local authority roads grants	.9	1
Other	15.7	13
Qld State Government grants	15.5	13
Own-source income		
Canteen and other enterprises	17.6	15
Other levies and charges	7.0	6
Total	119.1	100

Source: Qld Auditor General Audits of the Aboriginal and Island Councils for the Financial Year ended 30 June 1991.

Clearly these newly emerging local governments in discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas do face some very significant issues and dilemmas. A lack of Aboriginal 'ownership' of these local government structures and their weak independent financial capacity are two important sets of issues, each of which involves significant dilemmas.

Developments in Commonwealth general purpose financing

Discussion of the financial circumstances of these newly emerging local governments in predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas, is an appropriate point at which to refer to some relevant recent developments in Commonwealth general purpose financing of local governments. Although Australian local government systems are essentially state and territory based, since the 1970s the Commonwealth has become increasingly involved in general purpose financing of local governments. This has been done through state and territory Local Government Grants Commissions (LGGC) which, as mentioned in the Toomelah discussion above, have been charged with distributing Commonwealth funds between local governments within their jurisdictions on the basis of 'horizontal equalisation'.

In reviewing this system of general purpose funding of local governments in 1984-85, a Commonwealth-appointed inquiry recognised that a number of discrete predominantly Aboriginal or Torres Strait Islander communities which had become local governments, or had other organisations performing local government-type functions, were not being included in these financing arrangements. The inquiry recommended that the newly emerging local governments should be included in these arrangements and that 'suitably representative community bodies' outside formally incorporated local government areas should also be eligible for funding (National Inquiry into Local Government Finance 1985: 333-37). This was provided for in the Commonwealth's *Local Government (Financial Assistance) Act 1986*. This new source of general purpose financial assistance now became available not only to NT community governments and Qld Community Services Act local governments, but also potentially to other Aboriginal community organisations outside incorporated local government areas which had local government-type structures and functions. These latter bodies would need to be recognised as having local government-type status by their state or territory LGGC, but could in principle also receive funding. By 1993, the NT LGGC had recognised 35 such bodies, in addition to the 28 it recognised because of their incorporation under the NT Local Government Act (NT LGGC 1993).

This source of general purpose Commonwealth funding for local governments is identified in the first line of Table 3. Clearly it has been only a small contribution to the incomes of the 31 Community Services Act local governments in Qld in recent years; some 2 per cent in 1990-91. However debates have begun regarding whether the new local governments or local government-type bodies in discrete predominantly Aboriginal or Torres Strait Islander communities are receiving reasonable shares of the available funds under current approaches to 'horizontal equalisation'. Nationally this Commonwealth general purpose funding currently contributes about $1,000 million or 10 per cent of total local government income (Australian Urban and Regional Development Review

(AURDR) 1994: 1-10). It would, therefore, seem possible that in future years, through reworking of horizontal equalisation procedures, the contribution of this source of funds to these new local governments and local government-type bodies in discrete predominantly Aboriginal or Torres Strait Islander communities could increase.

Developments in SA and WA

Developments in the unincorporated areas of SA have been somewhat slower to progress towards Aboriginal communities becoming local governments than in the NT or Qld. In 1989 a report on Aboriginal community government by former SA Premier, Don Dunstan, identified a number of different options without conclusively supporting any. It preferred a flexible approach and was conscious of possible sources of tension between Aboriginal land authorities and community governments, as in the NT (Dunstan 1989). Such tension has been largely avoided in SA by working with Aboriginal land holding bodies in the development of proposals, rather than independently. Five such bodies operating outside the incorporated local government areas of SA, the Maralinga Tjarutja, Anangu Pitjantjatjaraku and three SA Aboriginal Land Trust communities, were in 1994 recognised for the first time by the SA LGGC as being 'local governing bodies' for the purposes of receiving funds under the Commonwealth *Local Government (Financial Assistance) Act 1986*. This gives these organisations, in part at least, the status of local governments. It may or may not lead to further developments towards fuller recognition as local governments, as well as land holding bodies. Although this may seem a rather slow series of developments compared to the NT and Qld, it has probably achieved a higher degree of Aboriginal ownership of the resulting structures and outcomes.

Developments in WA towards predominantly Aboriginal communities in sparsely settled areas becoming local governments have been somewhat different again and considerably more restricted than elsewhere. This is partly because the whole of WA is already included within incorporated local government areas and, short of changes similar to those in Queensland in 1978 and 1984, there seems little obvious scope for Aboriginal communities to become local governments in their own right. However, one development of potential importance was the extension of the local government franchise in WA in 1985 from ratepayers to residents. In several local government areas in sparsely settled WA this led to a major addition of Aboriginal voters and, potentially at least, a quite significant change in the local balance of electoral power (Rumley 1986; Rumley and Rumley 1988, Fletcher 1992: 112-38). In one shire, Wiluna, a majority of the local government councillors elected in 1987 were Aboriginal. Subsequent differences of interest between the eastern, overwhelmingly Aboriginal portion of the shire and the western, more pastoral portion led to the shire being divided in two in 1993. The eastern portion, now the Ngaanyatjarraku Shire, has effectively become WA's only instance of a

group of predominantly Aboriginal communities in a sparsely settled area becoming a local government (McLean 1994).

Other predominantly Aboriginal communities within existing shires in WA could conceivably also move in this direction. However, it is now a decade since the changes to the WA local government franchise and if changes in the local balance of electoral power which might lead to this development were going to ensue, they should perhaps have begun to emerge by now. One other possibility is that ongoing debates in WA about levels of services and rates in discrete predominantly Aboriginal communities within incorporated local government areas could be resolved, in some instances, by similar local government divisions which would effectively create new predominantly Aboriginal local governments (see Crough and Christopherson 1993: 122-52 on these debates). It is at least equally likely, however, that this will not be the case and that predominantly Aboriginal communities in sparsely settled areas of WA will remain within larger encompassing local governments.

Clearly SA and WA have been slower to move in the direction of discrete predominantly Aboriginal communities in sparsely settled areas becoming local governments than NT or Qld. They have, however, been slower for somewhat different reasons. SA has been cautious about offending Aboriginal land holding bodies and concerned more generally about Aboriginal ownership of the outcomes. WA, on the other hand, has simply found relatively little room for such developments in its local government system of already fully-incorporated state lands.

Conclusion

Clearly, there have been some very significant developments in relations between local governments and indigenous Australians over the last quarter century. As the structure of this paper suggests, those developments are quite varied and complex. Two sets of developments in contrasting circumstances have needed to be analysed.

One of these sets of developments, in incorporated local government areas primarily though not exclusively in more densely settled areas, has largely perpetuated and extended the history of poor relations between local governments and indigenous Australians which Rowley observed 25 years ago. The reasons which Rowley identified for those poor relations - the political insignificance of indigenous Australians due to their minority demographic status and the ratepayer orientation of local governments - may still, to a large extent, be relevant today. However, the particular relevance of these factors has changed considerably, as indigenous Australians living as small minorities in incorporated local government areas have become significant land owners in their own rights and hence

also ratepayers. Contemporary poor relations revolve primarily around service levels to Aboriginal community-owned land and rate indebtedness. This is a rather different configuration of poor relations from the conflict of ratepayer and non-ratepayer Aboriginal interests which Rowley observed. But it is clearly a continuation of poor relations and has been relieved only by some tentative more positive developments towards greater Aboriginal representation and participation in local governments. Some of these more positive developments, such as consultative or advisory committees, might even be construed as heeding Rowley's call for the granting of 'special interest' representation to minority Aboriginal groups in local government areas.

The second set of developments is of relevance to discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas. This is a circumstance about which Rowley had virtually nothing to say in his discussion of local government and Aborigines a quarter of a century ago. However, the idea of these sorts of communities themselves becoming local governments was around in Rowley's day and has flourished in the last 20 years. Developments in this direction have occurred in four state and territory local government systems and three in particular. These developments have not been without their own controversies and issues.

In both these sets of circumstances, developments have been accompanied by significant dilemmas. The major dilemma in incorporated areas has been how superordinate levels of government might best encourage better relations which, in the final analysis, must come from the local governments and local indigenous Australians themselves. What sorts of intervention might be both reasonably well received and effective? In the discrete predominantly Aboriginal or Torres Strait Islander communities in sparsely settled areas, the major dilemmas relate more to indigenous ownership of the resulting local government structures and their rather weak independent financial capacity. These dilemmas are likely to continue for some time to come. As a consequence, future developments in relations between local governments and indigenous Australians are likely to be only gradual outgrowths from those of the last quarter century. Radical changes seem highly unlikely.

Notes

1. The hole in the middle of maps 1 and 2 represents the areas of NSW, SA and NT which are not incorporated into local government areas. The proportion of the population in these areas identifying as Aboriginal or Torres Strait Islander in the 1991 Census was 2 per cent in NSW, 26 per cent in SA, and 57 per cent in the NT.

2. In the NSW ALC system, it is the 118 local ALCs that are the land holding bodies. The section of the ALRA outlining conditions for state-level ALC payment of overdue rates is s.44A(1).

3. The rates assessment for Toomelah as a single parcel in 1986 was $1,410. In 1987 this changed to 44 separate rates assessments which totaled $7,373. This increase was not primarily due to changed valuation of the land, but to the application of a 'minimum rate' of $165 to 43 of the 44 separate parcels (see Office of the NSW Ombudsman 1992: 35).

4. The Ombudsman's report also recommended that the ALRA be amended to provide for 'mandatory exemption from rates under the Local Government Act for land owned by an Aboriginal land council which has charitable purposes when that land is used for those charitable purposes'. The purpose of this amendment, as the Ombudsman saw it, was 'to avoid any problem with the difficult test of section 132(1) (d) of the Local Government Act, and to defuse any tension in community relations between Aboriginal land councils and local government' (Office of the NSW Ombudsman 1992: 73).

5. The three were Coonabarabran (1.6 per cent), Cowra (2.2 per cent) and Central Darling (13.1 per cent). The survey report argued that the last of these 'could be considered an exception' (NSW Department of Local Government and Cooperatives 1994a: 6).

6. Local governments sometimes raise legal issues about matters such a liability and workers compensation in their concerns about undertaking service work on private land. These can generally be overcome by entering into formal contracts for the work, leaving local government financial capacity as the major remaining constraint. Such contract work can, in most local government jurisdictions, be charged for on either a full or partial cost recovery basis. This leaves some room for manoeuvre between the imperatives of guarding local governments' financial capacities and making appropriate concessions to Aboriginal local government residents with poor existing levels of service.

7. The earlier exercise was legislated for by the *Local Government (Aboriginal Lands) Act 1978*, while the latter exercise was legislated for by the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*.

8. *Smallwood vs Queensland* (1985 1 Queensland Reports: 477-81).

9. For a recent article which still contests the post 1984 arrangements see Poynton (1992).

10. One Qld Aboriginal community, Aurukun, is currently experimenting with removing control over alcohol consumption from the local government body and investing it instead in a 'Law Council'. The Qld government has supported these moves through amendments to the Local Government (Aboriginal Lands) Act.

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