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**Australian fiscal federalism and
Aboriginal self-government: some
issues of tactics and targets**

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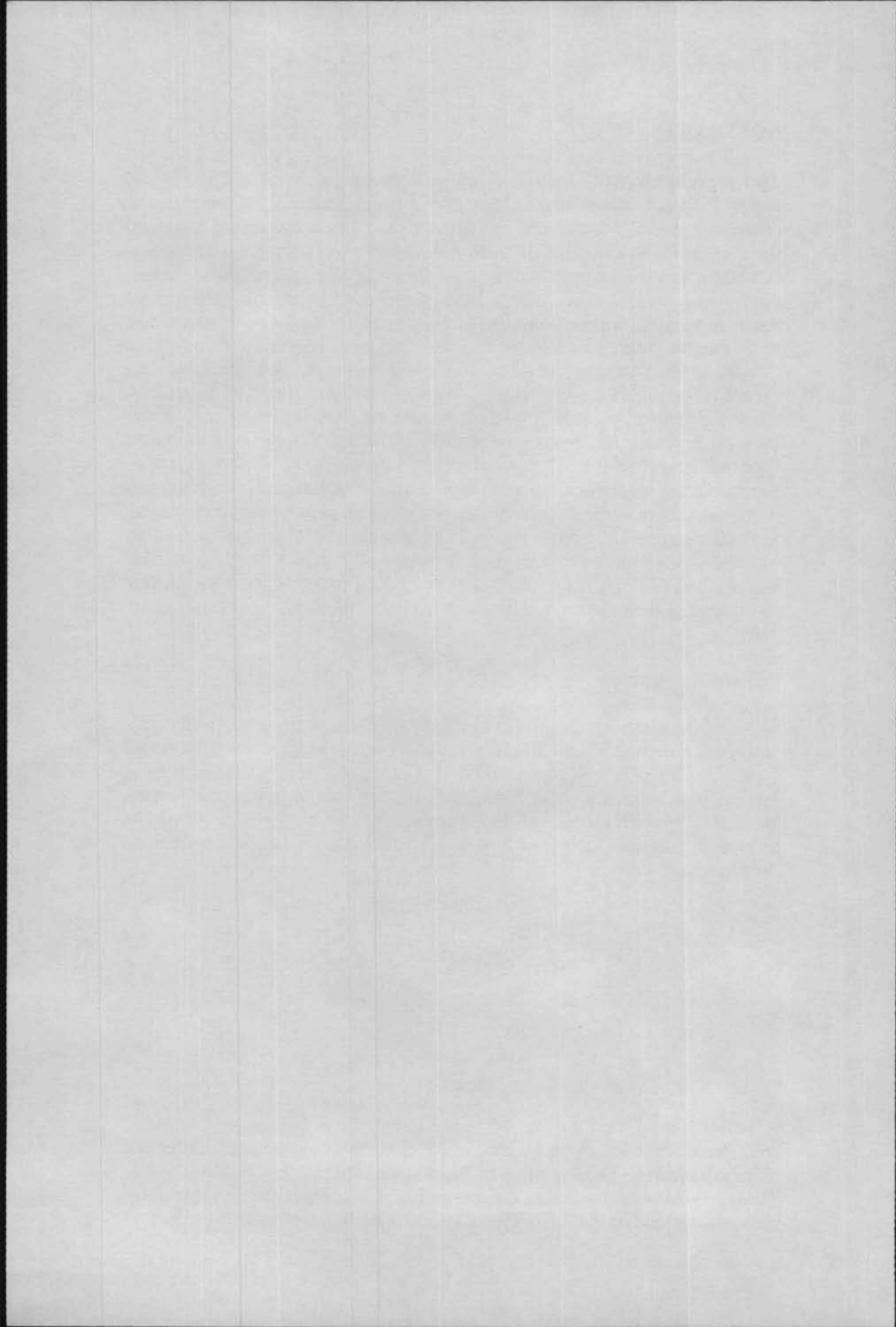
ABSTRACT

This paper documents, then analyses two encounters in the late 1980s and early 1990s between emerging ideas about Aboriginal self-government and Australian fiscal federalism, the system of intergovernmental financial transfers in Australia. One of these encounters involves local government financing and the other State/Territory financing. The paper asks whether Aboriginal organisations which have pursued ideas of self-government through these encounters have had a clear view of what they are attempting to achieve through which federal fiscal mechanisms and how they plan to achieve it. This question is addressed through a four part analysis focussing on grants commissions and grant conditions in the universe of Australian fiscal federalism; on tactics relating to specific purpose payments; on the lack of vigorous pursuit of an untied general purpose formula-based funding program for Aboriginal organisations; and on the potential inconsistency of advocating such a program for Aboriginal organisations while also advocating that conditions be placed on general purpose funding to the States and Territories. The paper concludes that there has been some lack of clarity among Aboriginal organisations pursuing ideas of self government through Australian fiscal federalism and that some significant rethinking of their tactics and targets is probably needed.

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Over the last 25 years, under policies of self-determination and self-management, Australian governments have increasingly funded Aboriginal community organisations for the delivery of various services to Aboriginal people and the conduct of Aboriginal community affairs. There are now several thousand Aboriginal community organisations Australia-wide which depend for funding on grants not only from the Commonwealth Aboriginal affairs portfolio but also from a growing number of other government agencies. Grants are generally subject-specific and made on the basis of applications from organisations which cover either a particular project or brief operating period.

This arrangement for the funding of Aboriginal community organisations has come under increasing attack of recent years. The multiplicity of government agencies involved has been seen as presenting Aboriginal organisations with a 'complex and unwieldy environment which is hardly conducive to effective self-determination and self-management' and as both wasteful and inefficient (Commonwealth of Australia 1991: 15). Many Aboriginal organisations would like more simplified and guaranteed funding arrangements. Some would also like more extensive responsibilities for the servicing of Aboriginal people and communities, often through taking over roles presently performed by government departments. Drawing on the experience of other indigenous minorities around the world, especially in Canada, some Aboriginal organisations, particularly in northern and central Australia, have begun to describe the reforms they desire in funding and jurisdictional responsibilities as Aboriginal self-government (see *Land Rights News* August 1993, October 1993, January 1994. See also Crough 1992 and various papers in Fletcher 1994).

This paper attempts to document and analyse some encounters between these emerging ideas about Aboriginal self-government and Australian fiscal federalism, the system of intergovernmental financial transfers in Australia. These encounters began in the 1980s and have intensified during the 1990s, but from the point of view of the Aboriginal organisations advocating self-government have, as yet, been largely unfruitful. Funding arrangements and service responsibilities for Aboriginal organisations have not yet been significantly changed. Yet the encounters persist and this apparent lack of progress raises some interesting questions about the tactics and targets being pursued by Aboriginal organisations interested in self-government. Do the Aboriginal organisations have a clear view of what it is they are attempting to achieve, through which federal fiscal mechanisms, and how they plan to achieve it? Or are they attacking federal fiscal targets somewhat indiscriminately? These are the questions which this paper attempts to raise for discussion. It does so first by documenting, then by analysing, two specific encounters, one involving local government financing and the other involving State/Territory financing.

Encounter I: local government financing

During the 1970s, when the Commonwealth first became involved in directly financing local government, it modelled its approach on previous experience of financing the States. It adopted, in part at least, a general purpose revenue-sharing approach under which grants were made to local governments to use for whatever purpose they saw fit, without explicit conditions being attached. To determine allocations of this revenue sharing between local governments, the Whitlam Government looked to the Commonwealth Grants Commission (CGC), which had been advising the Commonwealth on similar funding allocations between the States since the 1930s. The Fraser Government, as part of its new federalism, encouraged the States to establish Local Government Grants Commissions (LGGCs) to advise on intra-state allocations of the funds, while the CGC retained the role of advising the Commonwealth on inter-state allocations (CGC 1983).

The principles which governed general purpose allocations of Commonwealth funds to local governments during the 1970s and early 1980s were also borrowed from the CGC and its experience financing the States. These emphasised the idea of at least partial fiscal equalisation, which attempted to compensate for various population, geographic and other characteristics imposing relative service cost and revenue raising disabilities on local governments. By the early 1980s, the LGGCs had each developed a number of disability factors which referred explicitly to the presence within local government areas of Aboriginal people and discrete Aboriginal communities. A higher than average Aboriginal population proportion and the need to provide services to discrete Aboriginal communities were each seen as legitimate bases for claims from local governments for an increased proportion of funding from within the Commonwealth's general purpose local government assistance budget.

In 1984, the Hawke Government commissioned an inquiry into Commonwealth financial assistance to local government. The terms of reference for this National Inquiry into Local Government Finance (NILGF) referred to a review of:

local government tax sharing arrangements ... with reference to: ... the principles which should determine the level and allocation of the local government revenue sharing funds between and within States (NILGF 1985: v).

These terms of reference clearly envisaged that the general purpose revenue sharing nature of this Commonwealth assistance to local government would remain. Under review were the principles for the allocation of these funds. In its report, the NILGF strongly endorsed the principles of fiscal equalisation and, if anything, pushed for their stronger and less partial application. In the process, the NILGF made a number of observations and recommendations about detailed aspects of the revenue sharing system, including some about the position of Aboriginal people and communities within that system.

One of the NILGF's observations was that Aboriginal community organisations in sparsely settled areas of Australia were increasingly being incorporated as local governments or recognised less formally as local government-type bodies, but were not generally being included in the Commonwealth's general purpose local government financial assistance system. This led the NILGF to recommend that local governments in Aboriginal communities and other 'suitably representative (Aboriginal) community bodies' outside formally incorporated local government areas 'should be eligible' for Commonwealth general purpose local government financial assistance, with the latter's inclusion being 'subject to agreement between the Commonwealth and the State government' (NILGF 1985: 337). These recommendations were largely followed in the Commonwealth's *Local Government (Financial Assistance) Act 1986* and by 1994 almost 100 new local governments and local government-type bodies in discrete Aboriginal communities in sparsely settled areas of Australia had been included in the system; about 60 in the Northern Territory, 33 in Queensland, five in South Australia and one in Western Australia (see Sanders 1995: 25-6).

A second of the NILGF's observations was that conventional local governments throughout Australia did not generally 'cater adequately for Aboriginals' even though their general purpose grants from the Commonwealth were 'in part calculated on the basis of Aboriginal populations residing within their boundaries' (NILGF 1985: 333-4). This was a reference to the disability factors identifying Aboriginal populations and communities operating within the various LGGC's fiscal equalisation methodologies. The NILGF clearly saw it as somewhat ironic that while general purpose grants to local governments from the Commonwealth were made in part on the basis of disability factors specifically identifying Aboriginal populations and communities, the actual level of services to Aboriginal populations and communities from local governments was frequently very inadequate. This was not, however, something which the NILGF could readily change while ever the Commonwealth's system of local government financing remained one of general purpose revenue sharing. There was no recommendation in the NILGF report following from this observation and no subsequent Commonwealth action.

In response to this second NILGF observation, the Western Australian LGGC in the late 1980s introduced a procedure called the reduced service requirement, which attempted to disallow a local government from claiming the presence of disadvantaged Aboriginal people or communities within its boundaries as a disability if the local government did not then spend an equitable proportion of the general purpose grants received on these people or communities. The operation of the procedure was controversial as it was argued by some to be outside the guidelines for general revenue sharing set by the Commonwealth's *Local Government (Financial Assistance) Act 1986*. After some years of ongoing argument,

the Western Australian LGGC was forced to abandon the procedure in 1992 (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HRSCATSIA) 1992: 39).

During its brief reign, the Western Australian LGGC's reduced service requirement procedure received the attention and endorsement of the Royal Commission into Aboriginal Deaths in Custody (Commonwealth of Australia 1991: 31). Indeed the Royal Commission went on to recommend more generally:

That the Commonwealth Government negotiate with State and Territory Governments to ensure that where funds for local government purposes are supplied to local government authorities on a basis which has regard to the population of Aboriginal people within the boundaries of a local government authority equitable distribution of those funds is made between Aboriginal and non-Aboriginal residents in those local government areas. The Commission further recommends that where it is demonstrated that equitable distribution has not been provided that local government funds should be withheld until it can be assured that equitable distribution will occur (Commonwealth of Australia 1991: 38-9).

The Commonwealth government's response to this recommendation was not very positive. Although classified as 'qualified support', in the non-confrontationist language of the *Response by Governments to the Royal Commission* this was close to a clear rejection of the recommendation. The Commonwealth's response emphasised that 'in recognition that local government is an elected sphere of government in its own right' these are 'untied' grants for local governments to use 'to meet their own expenditure priorities'. Later the response also stated that while the 'general point' could be made that:

Aboriginal and Torres Strait Islander people are included in the population for the purposes of calculations, it is not possible to gain a directly proportionate figure which might appropriately be spent on Aboriginal or Torres Strait Islander residents (Commonwealth of Australia 1992: 765-6).

The Royal Commission and the West Australian LGGC were clearly being rebuffed. The Commonwealth was defending the practice of making untied general purpose grants to local governments in recognition of their status as independently-elected democratic spheres of government. The fact that allocation of these grants was determined through exercises which made reference to Aborigines in the measurement of disability factors in order to achieve some degree of fiscal equalisation between local governments was clearly regarded as of secondary importance to the principle of general purpose funding.

A third NILGF observation and recommendation was that consideration be given to an 'untied', 'formula-based' Commonwealth funding program for Aboriginal community organisations built on the 'consolidation of existing special purpose' programs. Such a program, the NILGF argued, could both

ensure 'reasonable stability' of funding 'over a number of years' and also potentially counter perceptions of arbitrariness in the allocations of existing funding programs for Aboriginal organisations (NILGF 1985: 336-7). This recommendation, however, was not followed through either by the Commonwealth or by local governments, and perhaps most surprisingly not by Aboriginal organisations. The idea was highly congruent with emerging ideas about the funding reforms required for Aboriginal self-government, but it was not an aspect of the NILGF's observations and recommendations which Aboriginal organisations took up.

Encounter II: the CGC and State/Territory financing

During the 1990s, a similar, but perhaps more concerted encounter between Aboriginal organisations and Australian fiscal federalism has begun to emerge over Commonwealth financing of the States and Territories. This encounter began during 1992 when the CGC was undertaking one of its regular reviews of the relativities governing the allocation of Commonwealth general purpose funds between the States and Territories. The less populous States had for many years successfully used these CGC deliberations to argue for a greater than per capita share of Commonwealth general purpose funding on the basis of their relative service provision and revenue raising disabilities (May 1971). During the 1980s, the newly self-governing and even less populous Northern Territory had enthusiastically joined this fray and had quickly won for itself the highest relativity of all. The Northern Territory received over five times the level of Commonwealth general purpose revenue sharing that it would have on a per capita basis and was, as a consequence, dependent for up to 80 per cent of its budget on Commonwealth funding.¹

During the 1970s and 1980s, Aboriginal organisations had not taken a great interest in CGC deliberations. However, in 1992 the Northern and Central Land Councils in the Northern Territory clearly decided that they should and so too, to a lesser extent, did the national-level Aboriginal and Torres Strait Islander Commission (ATSIC).² The Northern and Central Land Councils had by that time become highly distrustful of the Northern Territory Government, largely through their dealings over the previous decade in relation to land for Aboriginal people. They now perceived that while the Northern Territory Government argued enthusiastically before the CGC about major revenue raising and service delivery disabilities which it faced as a result of the Territory's proportionately large and geographically dispersed Aboriginal population, it did not, in the Land Councils' view, provide adequate or appropriate services to this Aboriginal population. The Land Councils suggested to the CGC that Aboriginal organisations, possibly as local or regional self-governing bodies, should be funded directly to deliver these services, rather than the Northern Territory Government. They also suggested that, as a prelude to this,

conditions relating to these underlying calculations of disabilities be placed on the Northern Territory Government's receipt of general purpose funds (CGC 1992; Crough 1992).

The CGC devoted a chapter of its 1993 grant relativities review specifically to the issues of 'Funding for Aboriginals and Torres Strait Islanders'. It argued that much of what was being proposed to it by the Land Councils fell 'outside the responsibility of the Commission'. Under its 'fiscal equalisation' charter, the CGC argued, it had no role to play in auditing the expenditures of State or Territory Governments to ensure that funding was 'directed to particular areas of assessed need' (CGC 1993: 63-4). Nor did it have any role to play in relation to the proposal:

That untied funding to the Northern Territory for provision of essential services to remote Aboriginal communities be provided in future direct to Aboriginal local governing bodies (CGC 1993: 67).

These, the CGC argued, were matters 'for governments to consider', not the CGC. However, the CGC did acknowledge that 'if taken up by governments', these proposals would have 'important implications for the present system of general revenue grants' (CGC 1993: 63-7).

Two years on from these CGC comments, debates on these matters appear not to have progressed. Two recent submissions to the Commonwealth government on proposed social justice measures for indigenous Australians, one from the Council for Aboriginal Reconciliation and the other from ATSIC, have once again canvassed these issues (Council for Aboriginal Reconciliation 1995: 66-9; ATSIC 1995: 75-84). Each has described the process of general purpose Commonwealth revenue sharing with the States and Territories and the CGC's use of disability factors relating to Aboriginal people within that process. Each then went on to recommend both that conditions be placed on general purpose grants relating to these disability factors and that consideration be given to greater use of direct funding of Aboriginal organisations.

Although a response to these social justice submissions has yet to be made, it will, in my view, be virtually impossible for the Commonwealth to respond positively to the call for the placing of conditions on general purpose grants allocated on the advice of the CGC. This judgement is based on a broader understanding of Australian fiscal federalism and the place within it of untied grants and grants commission exercises.

Analysis I: grants commissions, grant conditions and the universe of Australian fiscal federalism

The general purpose grants flowing from the Commonwealth to State, Territory and local governments as a result of the CGC's and LGGC's'

exercises are only one half of Australian fiscal federalism. The other half is a multiplicity of specific purpose payments flowing between government agencies operating at different levels of government in similar policy areas (Auditor-General 1995). It is these latter payments which have traditionally, in Australian fiscal federalism, had conditions attached, while the general purpose grants have remained untied.

This system of fiscal transfers has, in many ways, been built on the expectation of the States that they will receive a large proportion of their funds from the Commonwealth as untied general purpose grants. They regard the arrangement as an appropriate recognition of their status as sovereign independent elected levels of government and, in many ways, as a right. The States would clearly very strongly resist any attempt to place conditions on their general purpose grants.

Where the Commonwealth has sought to impose conditions on payments to the State, Territories and local governments, it has generally done so by building up specific purpose payments outside of grants commission exercises. It has done this to a very significant degree over the years. Specific purpose payments have risen from around 20 per cent of Commonwealth money flowing to the States in the early post-war years to slightly over 50 per cent in recent years (Groenewegen 1994; Sharman 1995). However, the other almost 50 per cent of intergovernmental fiscal transfers flowing from the Commonwealth to the States and Territories, some \$15 billion in 1993-94, remains in the form of general purpose revenue sharing allocated on the advice of the CGC in line with the principle of 'fiscal equalisation' and without conditions attached.³ The States and Territories regard this arrangement as extremely important and in 1994 negotiated with the Commonwealth for it not to further reduce general purpose allocations in real terms over a three-year period (Willis 1995).

Whether this degree of attachment by the States and Territories to the unconditional nature of general purpose grants distributed on the advice of the CGC is fully understood by the Aboriginal organisations pushing for self-government is not entirely clear. The Aboriginal organisations appear to have made the placing of conditions on these grants one of their central tactics and the CGC a central institutional target. However, in many ways, neither these conditions nor the CGC are central to the push for self-government reform. What the reformers ultimately want is a new deal for Aboriginal community organisations, both in relation to funding and jurisdictional service responsibilities. As the CGC has repeatedly pointed out, these are matters to be taken up with governments directly, rather than with the CGC (CGC 1993: 63-8; Searle 1994). Focussing on the CGC and the Aboriginal-related disability factors in its fiscal equalisation methodology may embarrass Commonwealth, State and Territory governments slightly, but it will not greatly advance negotiations with

them over a new deal in relation to funding and jurisdictional service responsibilities for Aboriginal organisations.

Analysis II: tactics relating to specific purpose payments

Rather than asking for conditions to be placed on the general purpose payments made to the States and Territories on the advice of the CGC, the Aboriginal organisations could perhaps more fruitfully be asking for more extensive use in fiscal federal relations of specific purpose payments relating to services to Aboriginal people. This could take the form either of more extensive use of conditions relating to services to Aboriginal people in existing specific purpose payments or the shifting of money from general purpose payments to specific purpose payments in Aboriginal service areas. Although both these tactics may meet with some State and Territory government resistance, such resistance would be mild in comparison to that encountered in a bid to impose conditions on general purpose payments.

ATSIC appears aware of these possibilities for the use of specific purpose payments. In its recent submission to the Commonwealth government on proposed social justice measures for indigenous Australians it recommended that:

The Commonwealth Government ensure that all Specific Purpose Payment (SPP) arrangements which have the potential to affect service delivery to Aboriginal and Torres Strait Islander peoples include conditions specifically aimed at ensuring that indigenous people have full access to and equitable treatment in, programs funded under those arrangements (ATSIC 1995: 83).

It also recommended that:

The determination of recurrent expenditure requirements of the States and Territories in respect of Aboriginal Community Services should be based on an independent assessment of community needs and excluded from the Commonwealth Grants Commission assessments for the purposes of General Revenue Grants to the States/Territories and

- a. Aboriginal and Torres Strait Islander Community Services be funded by Specific Purpose Payments; and
- b. an additional category of Specific Purpose Payments be established for funding of capital works (ATSIC 1995: 83-4).

However, Aboriginal organisations outside ATSIC interested in self-government appear to have been less enamoured with such tactics relating to specific purpose payments.

One reason why Aboriginal organisations interested in self-government may have failed to develop tactics involving specific purpose payments is that better use of these payments to the States and Territories would in many ways only represent an intermediate step towards their more

fundamental goal of winning new funding arrangements and jurisdictional servicing responsibilities for Aboriginal organisations. The organisations are, ultimately, somewhat opposed to the idea of State and Territory agencies, rather than Aboriginal organisations, delivering services to Aboriginal people and thus perhaps not greatly interested in the Commonwealth using special purpose payments to induce better service delivery by the States and Territories. However, this intermediate nature of the tactic is also the case with the placing of conditions on general purpose payments which, as noted above, the Aboriginal organisations pushing for self-government have taken up with some enthusiasm.

Analysis III: a surprising omission

Another tactic which the Aboriginal organisations interested in self-government have curiously not taken up with great enthusiasm, is to push for a general purpose revenue sharing arrangement with the Commonwealth for Aboriginal organisations. Although there has been some talk of 'block grants' among Aboriginal organisations in recent years, this has not been developed into any concerted push for a general purpose revenue sharing program of their own. This is a surprising omission, as it would clearly be the most direct route towards ideas of Aboriginal self-government within Australian fiscal federalism and there have been both suggestions and opportunities for the development of such a program.

One suggestion and opportunity mentioned above, was the NILGF's recommendation in 1985 that consideration be given to establishing an 'untied', 'formula-based' funding program for Aboriginal organisations through the 'consolidation' of existing specific purpose programs. However this was not taken up. Another opportunity presented itself from 1990, with the re-organisation of the Commonwealth's Aboriginal affairs portfolio into ATSIC. In 1993, one former longstanding CGC member reiterated the potential for such a general purpose formula-based funding approach focusing on ATSIC moneys as the basis for Aboriginal self-government (Matthews 1993: 9). The CGC itself has also noted that if such an approach were adopted, it may have some expertise to offer on issues of equalisation between Aboriginal community organisations, if an appropriate reference to it from government was forthcoming (CGC 1993: 67). However, these opportunities and offers have largely failed to be taken up by Aboriginal organisations interested in self-government and the issue has not greatly progressed.

Analysis IV: a potential inconsistency?

If Aboriginal organisations interested in self-government reform were ever to take up the push for a general purpose, formula-based funding program of their own in a more concerted fashion, they would, however, find

themselves in a rather difficult tactical position. On the one hand, they would be advocating an untied general revenue sharing approach in relation to themselves, as recognition of their status as self-governing entities, while at the same time advocating the imposition of conditions on general purpose revenue sharing grants to existing State, Territory and local governments within the Australian federal system. This inconsistency would be something of a liability for the Aboriginal organisations. It would seem difficult to be arguing for one's own general purpose revenue sharing arrangement, in recognition of being a tier of government, while at the same time condemning the general purpose revenue sharing arrangements of other tiers of government.

The way out of this inconsistency for Aboriginal organisations may be to reassess their tactical approach to general purpose revenue sharing arrangements with the States, Territories and local governments. Rather than asking for conditions to be placed on these because of underlying disability factor calculations relating to Aborigines involved in fiscal equalisation exercises, Aboriginal organisations could perhaps champion the general purpose nature of these arrangements as clear precedents for their own desired general purpose arrangement. This would clearly involve some major rethinking of the tactics and targets currently being pursued by Aboriginal organisations interested in self-government reforms.

Conclusion

The above analysis would seem to suggest that there has been some lack of clarity among Aboriginal organisations interested in self-government reforms in recent years over precisely what they are trying to achieve, through which mechanisms of Australian fiscal federalism and how they are trying to achieve it. The CGC and its methodology of fiscal equalisation appear to have been given inordinate attention, while other potential tactics and targets have remained undeveloped. An attempt to have conditions placed on general purpose revenue sharing with the States, Territories and local government, as a prelude to more direct funding of Aboriginal organisation, has distracted attention from more fundamental self-government goals. It has also meant that there would be a potential inconsistency in the self-government argument of the Aboriginal organisations, were they ever to focus more concertedly on the development of a general purpose revenue sharing arrangement of their own with the Commonwealth. The tactics and targets of Aboriginal organisations interested in working towards self-government through various mechanisms of Australian fiscal federalism do, I would argue, need some significant rethinking.

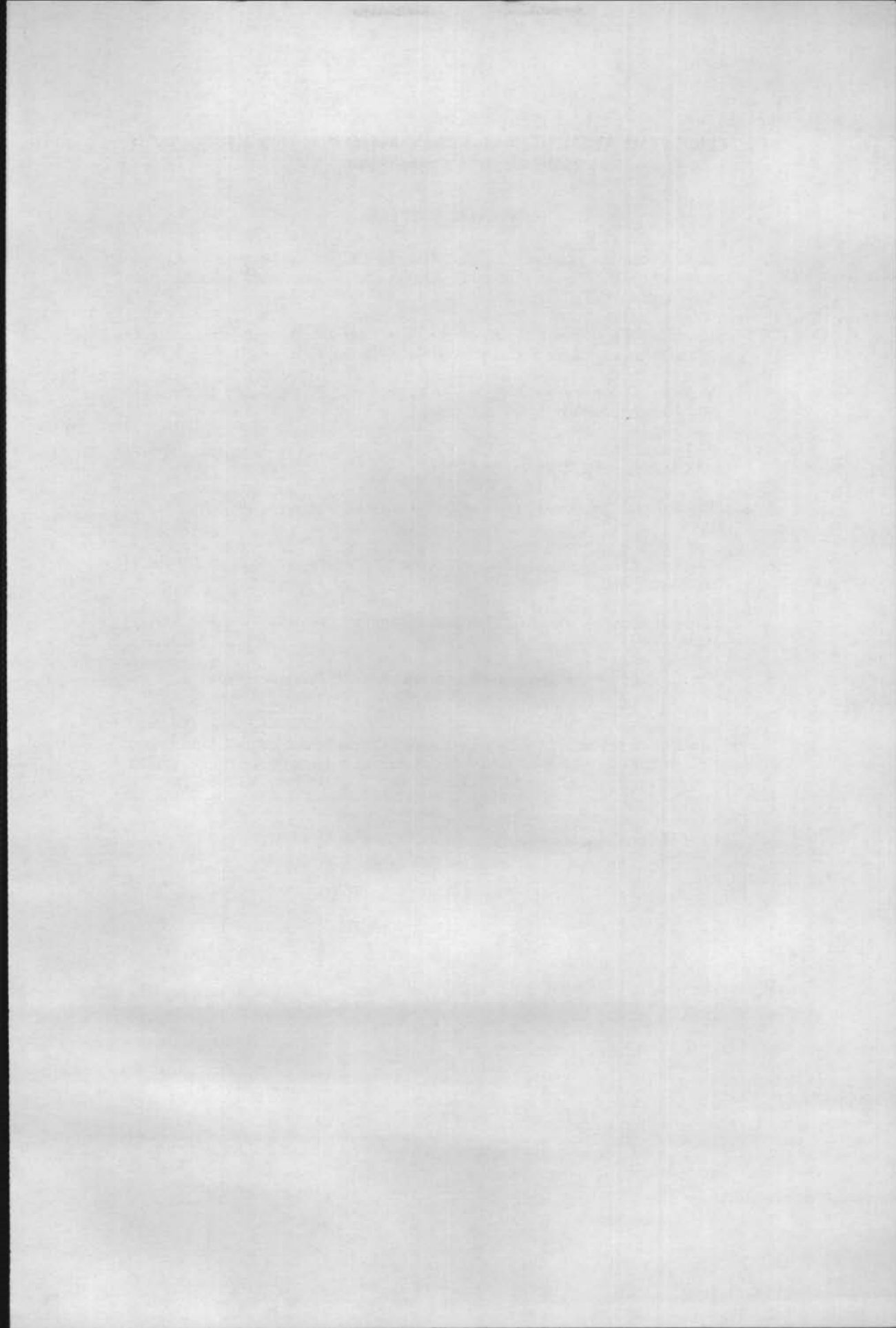
Notes

1. State levels of dependence on Commonwealth funding are around 50 per cent.
2. The Northern and Central Land Councils are statutory bodies established under the Commonwealth's *Aboriginal Land Rights (Northern Territory) Act 1976*. In addition to their land roles, they have become important regional political organisations for Aboriginal people in the Northern Territory and have even been termed 'paragovernmental' by some commentators (Altman and Dillon 1988). ATSIC is a national elected representative body for Aboriginal and Torres Strait Islander people statutorily established by the Commonwealth in 1989. It also administers a range of Commonwealth programs for Aboriginal and Torres Strait Islander people.
3. The \$15 billion figure is from Willis and Beazley (1994). This also gives a figure for specific purpose payments for the year at \$17 billion, so the percentage split for 1993-94 was around 47:53.

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