

# Central Land Council

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<b>To: Trevor Rowe</b>	<b>From: David Ross</b>
<b>Organisation: Secretary</b>	<b>Date: 9/12/02</b>
<b>Fax : 02 6277 4774</b>	<b>Total pages, incl: 11</b>

9<sup>th</sup> December 2002

Dear Mr Rowe,

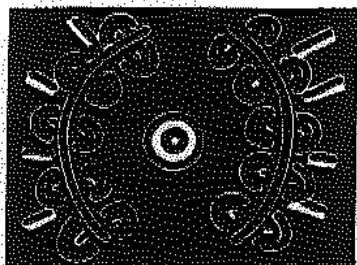
**Re: Inquiry Into Local Government and Cost Shifting**

Please find attached our Submission for the above inquiry. If you have any questions please contact me on 08) 89516202.

Yours sincerely,

Caralyn Pearce  
 CLC Directorate

House of representatives Standing Committee on Economics, Finance and Public Administration	
Submission No: .....	330
Date Received: .....	9/12/02
Secretary: .....	David Ross



# Central Land Council

33 Stuart Highway  
Alice Springs  
Northern Territory

P.O. Box 3321  
Alice Springs  
N.T. 0871

Mr Trevor Rowe  
The Secretary  
Standing Committee on Economics, Finance & Public Administration  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Mr Rowe,

**Re: Submission for Inquiry into Local Government and Cost Shifting**

Please find attached our Submission into the above Inquiry. If you have any questions or require any further information please contact me on 08) 8951 6202.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D M Ross', written over a horizontal line.

D M Ross  
DIRECTOR

3 December 2002

**Central Land Council**  
**Submission to the House of Representatives Standing Committee on**  
**Economics, Finance and Public Administration**

**Inquiry into Local Government and Cost Shifting**

**November 2002**

**Inquiry Terms of Reference**

The Minister for Regional Services, Territories and Local Government has asked the Committee to inquire into:

Cost shifting onto local government by state governments and the financial position of local government. This will include an examination of:

1. Local government's current roles and responsibilities.
2. Current funding arrangements for local government, including allocation of funding from other levels of government and utilisation of alternative funding sources by local government.
3. The capacity of local government to meet existing obligations and to take on an enhanced role in developing opportunities at a regional level including opportunities for councils to work with other councils and pool funding to achieve regional outcomes.
4. Local government expenditure and the impact on local government's financial capacity as a result of changes in the powers, functions and responsibilities between state and local governments.
5. The scope for achieving a rationalisation of roles and responsibilities between the levels of government, better use of resources and better quality services to local communities.
6. The findings of the Commonwealth Grants Commission Review of the Local Government (Financial Assistance) Act 1995 of June 2001, taking into account the views of interested parties as sought by the Committee.

The inquiry is to be conducted on the basis that the outcomes will be budget neutral for the Commonwealth.

**Introduction**

The CLC welcomes this opportunity to provide a brief submission to this Inquiry, particularly in light of comments made regarding the role of Land Councils during committee hearings in Katherine and Darwin.

The CLC is not in a position to comment on each of the terms of reference, and will instead focus on clarifying purpose of the *Aboriginal Land Rights (Northern Territory) Act 1976*, the role of Land Councils under this Act, and the issues surrounding the interaction between this Act and the *Local Government Act (NT)*.

The *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) is a pioneering piece of Commonwealth legislation which is unique in Australia. It is crucial the Committee

understand the basis and purpose of the Act, and its application in the NT. It was assented to in 1976 and gave Aboriginal people title to most of the Aboriginal missions and reserve lands in the NT, and the opportunity to claim other land not already owned, leased or being used by someone else.

In short, Land Councils have a statutory responsibility to ascertain and express the wishes of Aboriginal peoples in its region, and to protect their interests in land.

### **Role of the Land Councils**

The CLC is a statutory authority operating under the *Aboriginal Land Rights (Northern Territory) Act 1976*. It is also a recognised Native Title Representative Body (NTRB) under the *Native Title Act 1993*.

Under s.23 of the Land Rights Act, the Land Councils have specific statutory functions:

- To ascertain and express the wishes and the opinion of Aboriginals living in the area of the Land Council as to the management of Aboriginal land in that area and as to appropriate legislation concerning that land;
- To protect the rights and interests of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council;
- To assist Aboriginals in the taking of measures likely to assist in the protection of sacred sites on land (whether or not Aboriginal land) in the area of the Land Council;
- To consult with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land;
- Where the Land Council holds in escrow a deed of grant of land made to a Land Trust under section 12 –
  - (i) to negotiate with persons having estates or interests in that land with a view to the acquisition of those estates or interests by the Land Trust; and
  - (ii) until those estates or interests have been so acquired, to negotiate with those persons with a view to the use by Aboriginals of the land in such manner as may be agreed between the Land Council and those persons;
- to negotiate with persons desiring to obtain an estate or interest in land in the area of the Land Council –
  - (i) where the land is held by a Land Trust – on behalf of traditional Aboriginal owners (if any) of that land and of any other Aboriginals interested in the land; and
  - (ii) where the land is the subject of an application referred to in paragraph 50(1)(a) – on behalf of the traditional Aboriginal owners of that land or on behalf of any other Aboriginals interested in the land;
- to assist Aboriginals claiming to have a traditional land claim to an area of land within the area of the Land Council in pursuing the claim, in particular, by arranging for legal assistance for them at the expense of the Land Council;
- to negotiate and enter into agreements, as necessary, for the purposes of subsection 70(4);
- to compile and keep –
  - (i) a register recording the names of the members of the Land Council; and
  - (ii) a register recording the names of the members of the Land trusts holding, or established to hold, Aboriginal land in its area and descriptions of each area of such Aboriginal land; and
- to supervise, and provide administrative or other assistance for, Land Trusts holding, or established to hold, Aboriginal land in its area.

The CLC area covers 775,963sq km of the southern part of the NT, of which 381,792sq km is inalienable Aboriginal freehold land. There are approximately 18,000 Aboriginal people in the CLC area, and at least 15 different Aboriginal language groups.

The Council is made up of 90 elected traditional Aboriginal landowners from over 75 communities throughout Central Australia. The Council is the supreme policy making body, and meets three times a year.

**It is important to note that Land Councils are not direct service delivery agencies, nor do they distribute funds for service delivery. See the CLC Strategic Plan below.**

### **CLC Strategic Plan**

The CLC Strategic Plan 2002- 2007, is consistent with the functions under the Land Rights Act and the Native Title Act, and sets the following goals for the work of the CLC;

1. To protect and represent the rights and interests of the Aboriginal traditional landowners of the CLC area at a local, national and international level.
2. To maximise the capacity of Aboriginal peoples to direct and manage CLC activities at all levels of the organisation.
3. To develop a coordinated and strategic approach to land acquisition that reflects the values of Aboriginal people living in the CLC region.
4. To protect and assert native title rights and interests throughout the CLC area.
5. To protect land and sites of cultural and spiritual significance, and to support Aboriginal peoples' efforts to maintain culture and heritage.
6. To enable Aboriginal people to use and manage their land in accordance with their customs, laws and aspirations and promote cultural and environmental sustainability, in accord with relevant legislation.
7. To ensure that traditional landowners are fully informed and empowered to make informed decisions over developments proposed on their land and to support and maintain Land Trusts as established under the ALRA.
8. To work with other organisations to ensure Aboriginal land owners and communities achieve their economic aspirations including resource development, horticultural activities, pastoral activities, tourism and other commercial activities.
9. To increase public awareness of indigenous issues and the role of the CLC, and to inform constituents of the activities of the CLC.
10. To work with other Aboriginal organisations to assist Aboriginal people to build strong and healthy communities.
11. To ensure the CLC has the resources and capacity to achieve its goals.

### **Local Government in the NT**

Local Government in the NT is unique. Some key points are summarised here:

- With the exception of Queensland, no other State has a significant number of local governing bodies specifically set up to provide services to Aboriginal communities. Local government reform in the other States has been difficult enough, and this has been in an environment where local government is accepted as a legitimate form of local representation. Reorganising local government in the cultural context of the Northern Territory, and given its remoteness and high cost base, is bound to be fraught with difficulties. There are other significant differences between the situation in the Northern Territory and the States:
  - Aboriginal people in the NT are significant land-owners, through Land Trusts established under the Land Rights Act. Currently 44% of the NT is inalienable

Aboriginal freehold. This affects the rate base of local government thereby limiting the ability of local governing bodies to raise own-source revenue;

- the Northern Territory Aboriginal population is disproportionately located in remote and rural areas;
  - Northern Territory local governing bodies have a different pattern of expenditure compared to the States, with a significantly higher proportion of the Northern Territory expenditure being on housing and community amenities, and education, health, welfare and public safety.
  - Northern Territory Government policy during the past decade encouraged the proliferation of a relatively large number of small local governing bodies in remote and rural communities (Government policy has particularly been based on the establishment of Community Government Councils in the remote Aboriginal communities); and
  - a large proportion of the local governing bodies in the remote Aboriginal communities are small and are unlikely to meet the [viability and efficiency] criteria established by the Government.
- Community government councils, established under the *Local Government Act*, represent only about half of the recognised local governing bodies in Aboriginal communities. Most of these other bodies, which are still legally recognised as local governing bodies and receive financial assistance from both the Commonwealth and Northern Territory Governments, have explicitly rejected incorporation under the *Local Government Act*, despite the financial incentives offered by the Government to do so.
  - The previous Northern Territory Government's own local government policy resulted in an ever increasing number of small under resourced councils. The number of councils established in the Northern Territory is now approaching the number in Victoria.
  - The uneasy relationship between the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Local Government Act* – see below for detail.

For further details please refer to the attached paper "The Northern Territory Government's Local Government Reform Agenda" written by Greg Crough for the Central Land Council (17 May 2001).

#### **Local Government Funding Arrangements**

Given the CLC does not participate directly in funding for service delivery, we will not comment in detail on the issue of cost shifting and funding arrangements. This is best left to those organisations directly involved.

However, the CLC asks that the Committee note :

- There is often a focus on the fact that councils on Aboriginal land cannot charge rates. With 95 per cent of the Northern Territory's land area outside the jurisdiction of local government, there is often a failure to mention that pastoral leases, the overwhelming majority of which are owned by non-Aboriginal interests, are also not rateable.
- That rates, while still the most important source of revenue for local councils in the States, have declined in relative importance since the mid-1970s. Rate revenue in the Northern Territory, as a proportion of total revenue, is consistently well below the average for the States.

- That the Commonwealth allocation of funding to the States and the Northern Territory is allocated in an equal per capita basis, not the horizontal fiscal equalisation basis of the other Commonwealth financial assistance grants to these governments. Were the funding for local government to be allocated in a similar way, the Northern Territory would receive a higher level of local government funding. The net effect of that change, however, for small remote communities may not be more funding, since it is likely that the Northern Territory Government would reduce its own local government funding (such as Operational Subsidies) to compensate for the increase in Commonwealth funding.
- That there is no doubt that councils in remote communities are being forced to undertake a wide range of service delivery and in this way are subsidising many government services. Appropriate funding must be provided to ensure that remote councils are compensated for the provision of these services, thereby allowing them to deliver these services more effectively and efficiently.

### **Response to Findings of the Commonwealth Grants Commission's Review of the Operation of the Local Government (Financial Assistance) Act 1995.**

The CLC is not expert in these matters and has not considered the findings in detail, however we would like to offer the following initial comments on the findings:

- The CLC supports the recommendation that the Aboriginal Peoples and Torres Strait Islanders Principle be retained, and that it should be strengthened to make it explicit that relative need requires an assessment of the impact of Indigenous people on the expenditure requirements and revenue raising capacity of LGBs.
- The CLC supports the recommendation that the National Report should monitor and report on the extent to which LGGCs' assessment methods recognise the needs of Indigenous people, and the performance of LGBs in providing services to Indigenous people (performance measures should be developed for this purpose).
- The CLC also supports 'in principle' the concept of dividing Commonwealth funding into three distinct pools;
  - A Per capita pool to provide every LGB with a share of assistance;
  - A Local Roads pool to contribute towards LGBs costs of maintaining their local roads;
  - A Relative Need pool to improve equity by providing additional assistance to the more disadvantaged LGBs.However, this 'in principle' support is conditional on the development of the details of the arrangements (ie the amount allocated to each pool) and is premised on an assumption that this would deliver more, rather than less, funding to LGB's servicing remote Aboriginal communities.
- The CLC strongly endorses the finding that the Commonwealth should retain the right to declare bodies that are providing local government-type services but are not LGBs under state legislation, to be eligible to receive financial assistance grants. However, the CLC does not agree that both the Commonwealth and State Minister should both be required to agree to this decision. While the relevant State Minister should be consulted, the Commonwealth should retain the right to make a final declaration, with or without approval from the State. This is particularly important for Aboriginal organisation in the NT who may have a dispute with the NT Government, and require direct Commonwealth assistance.

### **Relationship between the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Local Government Act***

A lingering obstacle to the promotion, and effective operation of local government in Aboriginal communities is the structural and political conflict between the Land Rights and Local Government Acts.

Twenty five of the thirty community government councils in the NT are situated on Aboriginal land. The title to such land is held by an Aboriginal Land Trust (ALT) 'for the benefit of Aboriginals entitled by Aboriginal tradition to the use and occupation of the land concerned'. The Land Trust exercises its powers as owner of the land in accordance with directions from the Land Council for the area in which it is situated. The Land Council cannot give 'directions' unless it has consulted with traditional Aboriginal owners.

In shaping the Local Government Act the NT Government failed to consult with Land Councils or Aboriginal people in general. Over many years the Land Councils have proposed amendments which would seek to make the Local Government Act consistent with the Land Rights Act - these proposals were always ignored. The Local Government Act does not even recognise the Land Rights Act or its provisions for administration of Aboriginal land.

Instead of recognising the authority and rights of traditional Aboriginal landowners, the LGA provides for election of Councils by and from persons on the relevant electoral roll. This means that Aboriginal and non-Aboriginal people, who have no particular affiliation with the land in question, other than current residence, may vote and be elected to Council. The Council may in turn make decisions which are inimical to the interests of traditional Aboriginal landowners of land.

The Land Rights act establishes a regime which recognises the rights of traditional Aboriginal landowners to the use and occupation of land in accordance with Aboriginal traditional law and custom. The LGA fails to even mention the Land Rights Act, let alone recognise the rights of traditional Aboriginal landowners.

There are other more specific problems with the LGA:

- Section 98 purports to allow a community government scheme to provide for declaration of rates on Aboriginal land without the consent of its owners;
- Section 119 purports to allow members and officers and employees of councils to enter any land in the council area 'for the purpose of making an inspection or carrying out work required or authorised to be done' under the LGA. No provision is made for obtaining consent from the owners of the land.
- Council operations are subject to the authority of the NT Minister for Local Government. For example, under s.181A the Minister may direct a Council to take action in respect of 'an irregularity in the affairs of the council'. Just what constitutes irregularities is not defined in the Act.
- Councils may make by-laws which are consistent with the LGA under s.182. Such by-laws are not bound to have the consent of traditional Aboriginal landowners or reflect the wishes and interests of Aboriginal people. Appropriate consultation is not even necessary.

These matters give rise to serious conflicts between the Land Rights Act and the Local Government Act. The latter Act seeks to diminish the rights of traditional Aboriginal landowners and other Aboriginal people that are provided for in the Land Rights Act.

Previous CLP governments consistently turned the Local Government Act into a political tool to undermine the Land Rights Act and by-pass Land Councils. Thankfully, the election of the ALP Territory Government has created a new opportunity to resolve entrenched conflicts and



differences between the two statutes. The CLC will use this opportunity to seek amendments to the LGA to ensure the delivery of a high quality service, whilst also recognising the Land Rights Act and the rights of traditional Aboriginal landowners. These discussions may lead to a more comprehensive review of indigenous governance arrangements, and the possibility of the establishment of new regional governance structures, which deliver genuine control over services and resources to Aboriginal people.

#### **Recommendation**

- That the NT Government engage in urgent consultations with the Land Councils aimed at:
  - developing an agreed package of amendments to the Local Government Act to resolve the fundamental conflicts between the Land Rights Act and the Local Government Act; and
  - considering the need for a new legislative framework for indigenous regional governance structures.

#### **Kalkaringi Statement and indigenous governance aspirations**

Aboriginal peoples in Central Australia have long been arguing for self determination and the right to develop and control their own governance structures. The Kalkaringi Statement (attached) was developed in 1998 in response to the Northern Territory Government's referendum on Statehood. It is a clear articulation of the aspirations of Aboriginal peoples in this region. Regarding governance arrangements it states :

*That Aboriginal peoples, being the first peoples to own and govern this land, have the right to self-determination and that our inherent right to self government must be recognised and protected in any Constitution of the Northern Territory.*

*That a Northern Territory Constitution must contain a commitment to negotiate with Aboriginal peoples a framework agreement, setting out processes for the mutual recognition of our respective governance structures, the sharing of power and the development of fiscal autonomies.*

*That there must be direct Commonwealth funding of Aboriginal communities and organisations.*

Aboriginal people in central Australia have been considering options for regional governance structures which would have more scope and power than local government bodies. There is some development of ideas to suggest that these bodies could incorporate :

- existing local government functions
- health
- education
- community justice initiatives
- regional transport and roads
- broader family, youth and aged care programs and responsibilities
- housing and housing maintenance
- environmental health

Such bodies would require :

- A clear agreement with, and mandate from, the traditional land owners or native title holders;
- The ability to negotiate and reach agreements with all spheres of government and receive direct funding where appropriate;
- A secure and appropriate legislative framework
- Aboriginal control over the development and ongoing operations of the governance structure

- A structure which is sound and accountable, but also culturally appropriate and relevant.

The Local Government Act in its current form is not the most appropriate legislative framework for such a body. It is likely that a new legislative framework is required, although there is also consideration of the options used by the Torres Strait Regional Authority (a Regional Authority under the ATSIC Act).

### **CGC Indigenous Funding Inquiry**

The Commonwealth Grants Commission (CGC) Report on Indigenous funding is of great relevance to this current Inquiry into Local Government and Cost Shifting. For instance the report recognised that :

There are important principles and key areas for action that should guide efforts to promote a better alignment of funding with needs. These include :

- the full and effective participation of indigenous people in decisions affecting funding distribution and service delivery;
- a focus on outcomes;
- ensuring a long term perspective to the design and implementation of programs and services, thus providing a secure context for setting goals;
- ensuring genuine collaborative processes with the involvement of government and non-government funders and service deliverers to maximise opportunities for pooling of funds, as well as multi-jurisdictional and cross-functional approaches to service delivery;
- recognition of the critical importance of effective access to mainstream programs and services, and clear actions to identify and address barriers to access;
- improving the collection and availability of data to support informed decision making, monitoring of achievements and program evaluation; and recognising the importance of capacity building within indigenous communities.

*(summary recommendation 21.)*

It goes on to say that an essential feature of creating an effective partnership between service funders, service providers and indigenous people is: ....

- (iv) Indigenous control of, or strong influence over, service delivery expenditure and regional and local service delivery arrangements that emphasise community development, inter-agency co-operation and general effectiveness.

*(summary recommendation 23.)*

There is further elaboration on these issues in the attached paper 'Regional Governance Options for Aboriginal Communities in Central Australia, written by Greg Crough for the Central Land Council in May 2001.

#### **Recommendation**

That the federal government formally responds to the finding of the CGC Indigenous Funding Inquiry.

### **CLC response to some comments from the transcripts**

- "the land rights act is a constraint on the activities of councils" (Mr Bullemore, Darwin transcript, page EFPA 268) and
- "One of the principle questions that I pose to this inquiry is whether or not community government councils do in fact have any authority to govern at all. Under the Native

Title Act, the authority that would normally fall to these councils is transferred to the various councils, in this case the Northern Land Council, the Central Land Council, and other councils." (Mr Maisey, Katherine transcript, EFPA 191.)

**CLC response :** There are jurisdictional boundaries between the functions of the Land Councils under the Land Rights Act and the Local Government bodies under the Local Government Act. These need to be clearly understood. The term 'constraint' is not helpful. Local councils cannot and should not attempt to usurp the decision making powers of traditional Aboriginal landowners under the Land Rights Act. Councils cannot make decisions over Aboriginal land held by an Aboriginal Land Trust. However, this does not necessarily mean that a council cannot develop an idea for a business enterprise involving Aboriginal land. It simply means that due process needs to be followed, traditional Aboriginal landowners need to be consulted by the Land Council and an agreement reached. These perceived 'constraints' can be resolved through agreements, provided councils accept the rights contained in the Land Rights and Native Title Acts, and follow due process.

- "You made comment about the difficulty in getting investors to come along, because of the fact that the land is all under the NT land rights act. You suggested that that may need changing. Is there any support for that?" (Chair, Darwin transcript, page EFPA 273.

**CLC response :** The Land Rights Act allows for the leasing of Aboriginal land, provided there has been consent from traditional Aboriginal landowners. There is a clear process for consulting traditional Aboriginal landowners about any land use or development proposals on Aboriginal land, and many of these development proposals are approved. For example the Alice Springs to Darwin railway has been successful in attracting investor funding, and is based on 99 year leases for some portions of Aboriginal land. Again, the Land Rights Act and the Native Title Act do not hinder development or investment, they simply ensure that rights are protected in the process.

- "I think there is a big question there about the whole role of land councils in this respect because it seems to me that the local council is being short changed as far as services are concerned." (Mr Nairn, Darwin transcript, EFPA 274) and
- "Do the land council contribute to any of the services that you are providing, either separately or collectively?" (Chair, Katherine transcript, EFPA 158)

**CLC response :** Land Councils are statutory bodies with specific functions, they are not funding bodies or service delivery agencies. As described in detail above, the Land Councils have a clear role in protecting the rights of traditional Aboriginal landowners. Land Councils are not direct service providers, and there is no statutory role or mechanism for providing funding contribution to councils. These comments above demonstrate a complete misunderstanding of the role of Land Councils and the purpose of the Land Rights Act.