

# CHAPTER 1

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## THE CURRENT ARRANGEMENTS

1. The terms of reference for this Inquiry require the Commonwealth Grants Commission to review the operation of the *Local Government (Financial Assistance) Act 1995*. This chapter provides an overview of the arrangements under the Act, a copy of which is at Attachment A.

## COMPONENTS OF THE ACT

2. The Act has the following components:
- **Objects of the Act** — which specify the purposes of the Commonwealth in providing the financial assistance for local government (section 3). These are to improve horizontal and vertical equity, improve certainty of funding, improve performance and improve services to Indigenous communities.
  - **Goals of the Act** — which are to increase transparency and accountability of the States<sup>1</sup> in allocating the funds, and to promote consistency in the methods used by the Local Government Grants Commissions (LGGCs) (section 3).
  - **Two national pools of funds** — General Purpose and Local Roads grants<sup>2</sup> (sections 9 and 12).
  - **A mechanism for determining the annual increase in grants** — to determine the size of each pool (sections 7 and 8). Unless the Treasurer decides otherwise, the quantum of each pool is adjusted each year in line with changes in the consumer price index and the national population — that is, the pools are maintained in real per capita terms. When the size of the pools are first calculated for a year, only expected values of the consumer price index and the national population are

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<sup>1</sup> In this Volume, the word State(s) includes the ACT and the Northern Territory unless the context indicates otherwise.

<sup>2</sup> As indicated in the Main Volume of this Report, this review has not involved any consideration of the grants to local government under the *Roads to Recovery* Program announced by the Prime Minister in November 2000.

known, so the size of the pools are based on expected values. The grants actually paid to local governing bodies (LGBs)<sup>3</sup> in the particular year reflect the estimated size of the pool for that year, plus an adjustment if the actual size of the national funds pools for the previous year is different from what was expected when the initial calculations were done.

- **An interstate funds distribution mechanism** — to distribute each national pool of funds between the States (sections 9 and 12). The General Purpose pool is allocated on an equal per capita basis and the Local Roads pool is allocated on an historical fixed shares basis.
- **An eligibility condition** — to establish which bodies are LGBs and therefore entitled to receive Commonwealth grants (subsection 4(2)).
- **A set of National Principles** — to guide the LGGCs in the distribution of funds between LGBs in their State (section 6). They are formulated by the Commonwealth in consultation with the States and local government and become disallowable instruments<sup>4</sup> under the Act. The Act requires the National Principles for the distribution of the general purpose components to include a statement that the grants should be distributed between LGBs on a horizontal fiscal equalisation basis, but also ensures that all LGBs receive at least a minimum level of funding based on their population.
- **Local Government Grants Commissions (LGGCs)** — established under State legislation for the primary purpose of determining the grant allocations to LGBs in their State (section 5).
- **A grant allocation process** — to require LGGCs to allocate grants to LGBs in accordance with the National Principles and the *Local Government (Financial Assistance) Act 1995* (sections 11 and 14).
- **A grant approval process** — to ensure certain conditions placed on the LGGC and the State have been met before grants are paid to a State (sections 11 and 14).
- **A quarterly payment process** — once grant allocations have been approved for a State, to require the Commonwealth to make equal quarterly payments to the State, with the payments made around the middle of each quarter (sections 9 and 12).

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<sup>3</sup> 'Local governing bodies' is the term used in the Act to define those bodies eligible for financial assistance grants. It includes mainstream councils as well as other bodies established under or by State legislation, and bodies declared to be local governing bodies by the Commonwealth Minister on the advice of the State Minister.

<sup>4</sup> This means that once formulated by the Commonwealth Minister, they must be tabled in both houses of Parliament and lie before each house for 15 sitting days. After that time, if neither House has passed a motion to disallow them, the National Principles come into force.

- **State payment conditions and penalty provisions** — to require the States to pass on the quarterly payments to LGBs without undue delay and without conditions, and in accordance with the allocations approved by the Commonwealth. If the State fails to fulfil conditions in the Act governing the payment of grants to LGBs, the State is required to repay the funds to the Commonwealth (section 15).
- **Transparency and accountability provisions** — placed on the Commonwealth and State Governments and the LGGCs. They include:
  - a requirement for the **LGGCs** to hold public meetings and to accept submissions from LGBs in relation to their methods (sections 11 and 14);
  - a requirement for the **Commonwealth** to provide annually to the States the basis upon which the escalation of the grant pools has been determined and the population estimates used to distribute the General Purpose grant pool between States (sections 8, 10 and 13);
  - a requirement for the **States** to pass on to the Commonwealth without amendment the grant allocations recommended by the LGGCs (section 11 and 14);
  - a requirement for the **States** to provide to the Commonwealth after the end of each financial year, an audited statement of payments made to LGBs in that year (section 15); and
  - a requirement for the **Commonwealth** to table in Parliament an annual report (the National Report) assessing the extent to which the allocation of funds to LGBs has been on a full horizontal equalisation basis, assessing the methods used by LGGCs and assessing local government performance (section 16).
- **A consultation requirement** — to require the Commonwealth to consult with the States and local government on the National Principles, the National Report and the review of the Act (sections 6, 16 and 17).
- **An Act review process** — to require the Commonwealth to review the operation of the Act by 30 June 2001 (section 17).

## THE QUANTUM OF FUNDS

3. The calculation of the quantum of local government financial assistance grants to be paid by the Commonwealth each year under the Act is:

$$\text{current year grants} = \text{previous year grants} \times \text{factor}$$

Prior to 1 July 2000, the factor was calculated as:

$$\text{factor} = \frac{\text{current year State grants}}{\text{previous year State grants}}$$

where the State grants are the sum of the financial assistance grants and the special revenue assistance grants paid to the States by the Commonwealth in each relevant financial year.

4. Because of a real per capita guarantee given by the Commonwealth for the State grants, the State grants in the current year were calculated as:

$$\text{current year State grants} = \text{previous year State grants} \times \frac{\text{current year CPI}}{\text{previous year CPI}} \times \frac{\text{current year population}}{\text{previous year population}}$$

where the CPI for the current year was for the March quarter of the current financial year and the population for the current year was the estimate for 30 December of the year immediately before the current financial year. For example, the CPI used for the 2000–01 grant year would be for the year ending with the March quarter 2001 and the population used would be that at 30 December 1999.

5. In amendments that were necessary because of the New Tax System that came into effect on 1 July 2000, the factor is now determined as:

$$\text{factor} = \frac{\text{current year CPI}}{\text{previous year CPI}} \times \frac{\text{current year population}}{\text{previous year population}}$$

which is effectively the same as the previous formula.

6. Complications arise with the application of these formulae because estimates are required for both CPI and population before the start of the year, and the actual values are not known until close to the end of the financial year. Inevitably, the estimates differ from the actual value. Adjustments are made to the payments in the next financial year for the difference between actual and estimates in the year just completed.

7. The Act provides the Federal Treasurer with a discretion to adjust the factor up or down if the Treasurer considers there are special circumstances for doing so (section 8 as amended with effect from 1 July 2000). In deciding whether to adjust the factor, the Treasurer must have regard to the objects of the Act (section 3) and ‘any other matters the Treasurer thinks relevant’.

## **INTERSTATE DISTRIBUTION**

8. Once the quantum of the grants pools is known, the distribution of the grants between States is straightforward. For the general purpose component, the States receive a share based on their population share as at 30 December in the year before the financial year to which the quantum relates (section 9). For the local roads component, each State receives the Local Roads grants from the previous year escalated by the factor (section 12). This arrangement maintains the historical shares for the distribution of the Local Roads grants between States.

## **THE NATIONAL PRINCIPLES**

9. The Commonwealth Minister, after consulting with State Ministers and Local Government Associations, must formulate National Principles (section 6) to guide the LGGCs in the development of their methods for allocating both the General Purpose and the Local Roads grants. As explained earlier, these are introduced into the Parliament by way of a disallowable instrument. Varying the National Principles requires a similar process of consultation and tabling of the instrument.

10. The Act specifies two of the National Principles for the General Purpose grants. They are that:

- the allocation of funds must be on a full horizontal equalisation basis; and
- there must be a minimum grant for all LGBs equal to its per capita share of 30 per cent of the State's allocation of General Purpose grants.

11. The Act defines full horizontal equalisation as an allocation of funds that ensures that:

each LGB in a State is able to function, by reasonable effort, at a standard not lower than the average standard of other LGBs in the State. It takes account of differences in the expenditure required by those LGBs in the performance of their functions and in their capacity to raise revenue.

12. The Act gives no principles for the Local Roads funding.

### ***The Current National Principles***

13. The current National Principles came into effect for the 1996–97 grant distribution. It was intended that the application of common principles would ensure (subject to some differences in the allocation methods of the LGGCs) that similar LGBs would receive similar grants, at least in relative terms. The current principles are:

- those applying to General Purpose funding:
  - Horizontal Equalisation;
  - Effort Neutrality;
  - Minimum Grant;
  - Other Grant Support; and
  - Aboriginal Peoples and Torres Strait Islanders;
- the one applying to Local Roads funding:
  - Identified Road Grants.

14. A copy of the instrument for the current National Principles is at Attachment B.

### **LGGCS AND THEIR METHODS**

15. For all States except the ACT, one of the pre-conditions to receiving grants under the Act is that they have a LGGC (paragraphs 11(2)(a) and 14(2)(a)). The ACT is not required to have a Grants Commission to receive grants (section 5) as it has no separate local government sector.

16. The Federal Minister may declare a body to be a LGGC for the purposes of the Act (section 5). Such declarations appear as notices published in the Commonwealth Government Gazette. The body may be declared by the Minister if:

- (i) the body is established by a law of the State;
- (ii) the principle function of the body is to make recommendations to the State Minister on local government grants; and
- (iii) the Minister is satisfied that the membership of the body includes at least 2 people 'who are or have been associated with local government in the State, whether as members of a LGB or otherwise'.

17. Where a body had been declared a LGGC under the 1986 Act, the 1995 Act provided that a further declaration was not required (section 22).

18. Other pre-conditions to the State receiving grants are that the LGGC:

- (i) has held public hearings in connection with its recommendations;
- (ii) accepts submissions from LGBs or Local Government Associations in relation to its recommendations; and

- (iii) operates according to the National Principles in arriving at its recommendations.

19. All LGGCs have a rolling program of public meetings with LGBs. They also visit all LGBs in their State within a set period of between two and four years.

### ***LGGC Methods***

20. The National Principles require LGGCs to develop two separate models.

- (i) **Identified Local Roads Model.** This should allocate the road grants on the basis of the relative needs of each LGB for expenditure on their local roads, and to preserve their local road assets. Relevant factors that are to be used in the model to determine road needs include the length, type and usage of roads. [**Identified road component**]
- (ii) **General Purpose Model.** This model should allocate grants to achieve, to the extent possible, a distribution consistent with full horizontal fiscal equalisation. That is, the model should assess revenue raising capacity and expenditure needs of all LGBs in the State. The grants should be determined on the basis of the shortfall between expenditure needs and revenue raising capacity for each LGB. [**Horizontal equalisation**]

21. In developing their General Purpose Models, LGGCs are subject to three additional requirements.

- (i) The model must be constructed so that, to the extent possible, the policies a LGB pursues should not influence the grant it receives [**Effort neutrality**]. This means that the revenue raising capacity and expenditure needs for each LGB are calculated so that they exclude the impact of factors which are within the control of the LGB. The LGB can not, by its own policies, influence the size of its grant.
- (ii) When determining revenue raising capacity, all grants to a LGB, whether from the Commonwealth or the State, and which can be used to fund normal local government services, should be included as a revenue source available to the LGB [**Other grant support**].
- (iii) When determining expenditure need, the costs LGBs face in providing their services should take into account the costs of providing services to Indigenous people located within their boundaries [**Aboriginal People and Torres Strait Islanders**].

22. In allocating the grants, the LGGC:
- (i) determines the allocation of Identified Local Roads grants;
  - (ii) determines an initial allocation of General Purpose grants based on the revenue raising capacity and expenditure needs of LGBs;
  - (iii) checks the initial General Purpose grants to ensure that each LGB receives at least their population share of the grants, had 30 per cent of the funding been allocated on a per capita basis — for those LGBs that do not meet this test, their grants are increased up to the 30 per cent level [**Minimum grant**];
  - (iv) reduces grants to non-minimum grant LGBs so that only the total amount of funding is allocated — the grant is distributed to these LGBs so that the allocation is, as far as possible, based on the principle of horizontal equalisation; and
  - (v) rechecks the minimum grant condition at step (iii) to ensure that the reduction of grants to LGBs in step (iv) has not resulted in other LGBs' grants going below the minimum grant.

## **THE ANNUAL APPROVAL AND PAYMENT CYCLE**

### ***Before the Start of the Financial Year***

23. Before the Commonwealth budget is presented, the Treasurer makes a determination of the estimated factor for the coming financial year (section 7). This is done in the context of the Budget preparation and the estimated factor is based upon Budget estimates of:

- the national population growth (in the 12 months to December of the previous calendar year) — provided by the Commonwealth Statistician; and
- the Budget estimate of the growth of the CPI (using capital city CPI over the 12 months to the March quarter of the coming financial year) — provided by the Commonwealth Treasury.

24. The Treasurer provides the Federal Minister with written notice of the estimated factor, together with details of the basis on which the estimate has been made.

25. The Federal Minister provides each State Treasurer with a copy of the Treasurer's notice (section 7) and a copy of the Statistician's estimates of the population of the State and of all States (section 10).

26. For the Commonwealth Budget, an estimated final factor for the then current financial year is also obtained using revised estimates of population and CPI growth. Using this estimate, the estimated final entitlement for the current financial year for both the General Purpose and Local Roads grants can be calculated. The estimated adjustment for the current year for both components can then be calculated, along with the estimated State entitlements for the coming financial year.

27. In June, the Statistician releases final estimates of:

- the population of each State for December in the calendar year previous to the current financial year; and
- the March quarter CPI.

28. Before 30 June, the Treasurer determines the final factor for the current financial year. The Treasurer provides written notice of the factor and an explanation of the factor to the Federal Minister. The Federal Minister then provides a copy of the determination to State Treasurers.

29. The estimated entitlement for both General Purpose (section 9) and Local Roads (section 12) grants for the coming year can then be calculated, along with the adjustment to the General Purpose (section 10) and Local Roads (section 13) grants for the then current year. From these, the actual cash payments and the estimated entitlement for the States for the coming year can be calculated.

### ***Early in the Financial Year***

30. In July or August, the LGGCs have, for their State:

- estimated General Purpose grants (section 9 payments);
- actual adjustments to their General Purpose grants for the previous year (section 10 payments);
- estimated Local Roads grants (section 12 payments); and
- adjustments to their Local Roads grants for previous year (section 13 payments).

31. LGGCs are required to allocate the section 10 and section 13 adjustments to LGBs in the same proportions as the section 9 and section 12 payments paid to the LGBs in the previous year (subsection 15(a)).

32. The LGGCs determine an allocation of the estimated General Purpose grant entitlements and estimated Local Roads grant entitlements to LGBs in their State. These allocations are required to be made in accordance with the Act and the National Principles (section 11 and section 14).

## *Chapter 1*

33. Each LGGC is required to provide to their State Minister, their recommendations of the grant entitlements for General Purpose and Local Roads grants for LGBs in their State (section 11 and section 14).

34. The State Minister is required to forward these recommendations to the Federal Minister (section 11 and section 14).

35. If the requirements of the Act are satisfied, the Federal Minister can then approve the allocation to the LGBs in the State (sections 11 and 14). Under the Act, a State is entitled to grant payments if:

- there is a LGGC in the State;
- the LGGC has made recommendations with respect to the allocation of grants among LGBs in the State;
- the LGGC has held public hearings and accepted submissions in respect of its recommendations;
- the LGGC's recommendations are in accordance with the National Principles;
- the State Minister has provided the Federal Minister with the proposed grant allocations;
- the Federal Minister is satisfied that the State has adopted the recommendations of the LGGC; and
- the State has allocated the funds to LGBs in accordance with the approved allocation.

### ***In August***

36. Once all conditions of the Act have been met<sup>5</sup>, the Commonwealth pays the first quarterly instalment for the current year to each State. The State is then required to make unconditional payments of the grants to LGBs without undue delay, and in accordance with the approved allocation (section 15).

### ***In November, February and May***

37. On or after the 15th day of these months, the Commonwealth pays quarterly instalments to the States. The State is then required to make unconditional payments of the grants to LGBs, again without undue delay and in accordance with the approved allocation (section 15).

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<sup>5</sup> One of the conditions is that the first instalment cannot be paid before 15 August (sections 9 and 12).

***After the Financial Year***

38. As soon as practicable after the financial year, the State Treasurer is required to provide the Federal Minister with a statement setting out the payments made by the State during the year, and the dates of those payments (subsection 15(b)). The statement must be accompanied by a certificate from the State Auditor-General certifying its content.

39. The Federal Minister is required to have a report prepared (called the Local Government National Report) as soon as practicable after the end of the financial year. This report, which must be tabled in Parliament, must cover the operation of the Act in respect of the previous financial year (section 16) and include, amongst other things, an assessment by the Minister, based on comparable national data, of:

- the extent to which the grants have been made on a full horizontal equalisation basis; and
- the methods used by the LGGCs in making their recommendations.

## CHAPTER 2

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### STATE LEGISLATION ESTABLISHING LGGCS

1. Under the *Local Government (Financial Assistance) Act 1995*, a State is not entitled to a payment of financial assistance for local government purposes unless it has established a LGGC (section 11 and 14). The Act also requires (section 5) that, for a body to be declared a LGGC, it must:

- be established by a law of the State;
- have, as its principal function, the making of recommendations to the State ‘with respect to the provision of financial assistance to LGBs in the State’; and
- have ‘at least two people who are or have been associated with local government in the State, whether as members of a LGB or otherwise’.

2. The Act does not specify how relationship between the State (or the State Minister) and the LGGC might operate. The only reference to it is that before a State can receive its grants, the Commonwealth Minister

‘must be satisfied that, in determining the manner in which the State proposes to allocate the amount among local governing bodies in the State, the State has adopted the recommendations of the LGGC’ (sections 11(2)(f) and 14(2)(e)).

3. This chapter examines how the LGGCs are established under the States’ Acts. It also examines the arrangements under those Acts to identify aspects of the relationship between the State Ministers and the LGGCs.

### A COMPARISON OF STATE LEGISLATION

4. Some States have passed separate Acts that establish their Grants Commissions while others have used their Local Government Act. A summary of the main legislative features relating to each of the Commissions is in Table 2-1.

5. Some of the important differences within the Acts are as follows.

- All States except Victoria and South Australia require a State Government employee to be one of the Commissioners, often appointed as the Deputy Chairman:
  - in South Australia, the State Minister nominates one member and in practice this has been a State bureaucrat.
- All States except Victoria allow the State Minister to ask their LGGC to reconsider the recommendations they make:
  - in Victoria, the State Minister cannot intervene — the Act requires the State Minister to advise the Commonwealth Minister what grants the Commission has decided.
- All States except New South Wales and Queensland require the State Minister to accept the LGGC recommendations or resubmitted recommendations:
  - in New South Wales, the State Minister decides the grants, taking account of or accepting the Commission's recommendations; and
  - in Queensland, the State Minister decides the grants, but must take into account the Commission's recommendations and comply with the Commonwealth Act.
- In Western Australia, South Australia, Tasmania and the Northern Territory, the State Local Government Association is involved in the appointment of Commissioners:
  - in South Australia, the Association nominates one Commissioner and, with the State Minister, nominates the Chairman.
- The requirement for a minimum grant is specified only in the Victorian legislation, where it is called the 'as-of-right entitlement'.
- In Tasmania, a member or employee of a LGB must resign before they can become a Commissioner.

**Table 2-1** LGGCS' LEGISLATION

	NEW SOUTH WALES	VICTORIA	QUEENSLAND
<b>What is the name of the State Act?</b>	<i>Local Government Act 1993</i> [Part 11 and schedule 5]	<i>Victoria Grants Commission Act 1976</i>	<i>Local Government Act 1993</i> [Part 3]
<b>What is the name of the Commission?</b>	LGGC	Victoria Grants Commission	LGGC
<b>What are the functions of the Commission?</b>	To recommend to the State Minister the grants for LGBs. To report on any matter that the State Minister asks.	The Commission decides the grants for LGBs. The State Minister can ask the Commission to inquire into and report on any local government finance issue.	The Commission recommends to the State Minister the grants for LGBs. The State Minister can ask the Commission to advise on the Finances of 1 or more LGBs.
<b>How many Commissioners?</b>	4	3	5
<b>Who appoints Commissioners?</b>	The State Governor	The State Governor in LGB	The State Governor in LGB
<b>How are Commissioners selected?</b>	The State Minister nominates 3 Commissioners, one of them being the Chairman. The 4 <sup>th</sup> Commissioner is the Deputy Chairman and is an officer of the Department.	Not mentioned.	4 of the Commissioners must have knowledge of local government, with one of these being the Chairman.

<b>WESTERN AUSTRALIAN</b>	<b>SOUTH AUSTRALIA</b>	<b>TASMANIA</b>	<b>NORTHERN TERRITORY</b>
<i>Local Government Grants Act 1978</i>	<i>South Australian LGGC Act 1992</i>	<i>State Grants Commission Act 1976</i>	<i>LGGC Act</i>
Western Australian LGGC	South Australian Local Government Grants Commission	State Grants Commission	Northern Territory Grants Commission
The Commission recommends the grants for LGBs to the State Minister.	To recommend to the State Minister the grants for LGBs.	The Commission recommends the grants for LGBs to the Treasurer.	The Commission recommends to the Territory Minister the grants for LGBs.
The State Minister may request the Commission to report on matters to do with local government finances	To perform other functions given to it under the Act or by the State Minister.  The State Minister may ask the Commission to inquire into and report on local government finance matters.	If asked by the State Minister, the Commission is to investigate and report on non-compliance of a LGB with the GST law.	The Territory Minister can ask the Commission to look at the finances of LGBs.
5	3	4	4
The State Governor	The State Governor	The State Governor	The Territory Minister
The State Minister nominates the Chairman and 3 other members.	The State Minister and the Local Government Association jointly nominate the presiding member of the Commission.	The State Minister nominates to the Governor 2 people from a list of 4 names submitted by the Local Government Association, but if the Association does not nominate them by the Deadline, the Governor may appoint 2 persons.	The Territory Minister appoints 3 Commissioners and the 4 <sup>th</sup> is the Chief Executive Officer of the Agency, or his or her nominee.
The Deputy Chairman is an officer of the Department nominated by the Permanent Head of the Department and approved by the State Minister.	The State Minister and the Association each nominate one of the other two members.	The Secretary of the Department nominates a person who is an employee or former employee of the Department. The State Minister must agree with the person nominated by the Secretary. If no one is nominated, the Under Treasurer will be the member.	

**Table 2-1** LGGCS' LEGISLATION (continued)

	NEW SOUTH WALES	VICTORIA	QUEENSLAND
<b>Are there conditions on the appointment of Commissioners?</b>	At least 2 of the 3 Commissioners nominated by the Minister must be familiar with local government in New South Wales. This can be gained either as a LGB or in some other way.	At least two members of the Commission are to have had an association with local government.	If an Act says a person must devote all of their time to a job and the Act stops the person from being employed elsewhere, this does not stop that person from being a Commissioner.
<b>What is the term of office for Commissioners?</b>	Up to 5 years, with possible reappointments.	Up to 5 years, but may be reappointed.	Not longer than 3 years.
<b>What does the Act say about Commission Staff?</b>	Not mentioned	The Commission can have a secretary and other staff needed to carry out its functions.	The Chief Executive of the Department must give the Commission enough staff to allow it to operate effectively.
<b>What does the Act say about determining grants allocation?</b>	Recommendations are to comply with the Commonwealth Act and any principles approved under that Act.	LGBs must not get less than the 'as-of-right entitlement'. In deciding grants, the Commission must ensure that the grants are, as far as practicable, on a full horizontal equalisation basis. The approach takes into account differences in the funds LGBs' need to provide services and in the LGBs' capacity to raise revenue.	The recommendations of the Commission are to comply with the Commonwealth Act.

WESTERN AUSTRALIA	SOUTH AUSTRALIA	TASMANIA	NORTHERN TERRITORY
<p>For the 3 members nominated by the State Minister, one is selected from the nominations of the Local Government Association of Western Australia, another from the nominations of the Country shire LGBs' Association of Western Australia and the third from the nominations of the Country Urban LGBs' Association.</p>	<p>Not mentioned.</p>	<p>The Chairman is to have appropriate experience in business or financial or local government matters.</p> <p>The people nominated by the Association must be or have been associated with local government in the State.</p> <p>A member or employee of a LGB can be nominated but they cannot accept appointment unless they first resign from that position.</p>	<p>The Territory Minister asks the Local Government Association to provide the names of 3 people to represent municipal LGBs and 3 people to represent community government LGBs.</p> <p>The Territory Minister then appoints:</p> <p>1 person who represents municipal LGBs and</p> <p>1 person who represents community government LGBs.</p> <p>The Territory Minister appoints one Commissioner as the Chairman.</p>
<p>Up to 5 years, but Commissioners can be reappointed.</p>	<p>Not exceeding 5 years but eligible for reappointment.</p>	<p>The term cannot exceed 3 years but the Commissioners may be reappointed.</p>	<p>Up to 5 years but they are eligible for reappointment.</p>
<p>Not mentioned.</p>	<p>The Commission has staff as necessary. Staff are employees of a government department, agency or instrumentality.</p>	<p>An employee of the Department can be the Secretary of the Commission and may hold the position while having a position in the State Public Service.</p>	<p>The Commission may employ the staff it needs, including Territory public servants.</p>
<p>Recommendations are to comply with the Commonwealth Act and any principles approved under that Act.</p>	<p>The Commission's recommendations must comply with principles formulated by the State and with the Commonwealth Act.</p> <p>The Commission may take special needs of a LGB into account.</p>	<p>The grants determined by the Commission must be consistent with the Commonwealth Act.</p>	<p>As far as possible, the Commission is to ensure that the amount recommended to a LGB is enough to enable it 'by reasonable effort' to operate at a standard not far below that of other LGBs.</p> <p>In making recommendation, the Commission may take into account the special needs or disabilities of a LGB.</p>

**Table 2-1** LGGCS' LEGISLATIONS (continued)

	<b>NEW SOUTH WALES</b>	<b>VICTORIA</b>	<b>QUEENSLAND</b>
<b>What are the powers of the State Minister regarding grant recommendations?</b>	<p>The State Minister may ask the Commission to reconsider its recommendations.</p> <p>The State Minister decides the grants LGBs are to receive. In doing this, the Minister is to either take account of or accept the recommendations of the LGGC.</p>	Not mentioned.	<p>The State Minister may accept the Commission's recommendation or refer them back for reconsideration. The Minister must give the Commission reasons for asking it to reconsider its recommendations.</p> <p>In allocating the grants, the State Minister must take into account the Commission's recommendations and comply with the Commonwealth Act.</p>
<b>What are the requirements for reporting grant recommendations?</b>	Not mentioned.	<p>First, The State tells the Commonwealth Minister the grants the Commission has decided for each LGB. Then, the State minister tells the Treasurer, each member of State Parliament and each LGB of the grant amounts.</p> <p>By 30 November, the Commission provides a report to the State Minister. The report describes the Commission's activities for the year ending 31 August.</p> <p>Within 30 days of the State Minister receiving a report from the Commission, it must be tabled in each House of Parliament.</p>	The Minister must table the Commission's recommendations in the Legislative Assembly.

<b>WESTERN AUSTRALIA</b>	<b>SOUTH AUSTRALIA</b>	<b>TASMANIA</b>	<b>NORTHERN TERRITORY</b>
<p>The State Minister may approve the Commission's recommendations or refer them back for review. The Minister must provide reasons for asking the Commission to review its recommendations.</p> <p>The State minister must approve resubmitted recommendations without amendment.</p> <p>After the State Minister advises the Commonwealth Minister of the recommendations, the Commission is to let LGBs know their grants.</p> <p>The Minister tables the Commission's annual report in each House of Parliament. It includes details of the Commission's recommendations, methods and activities over the preceding year.</p>	<p>The State Minister may approve the Commission's recommendations or refer them back for reconsideration. The State Minister must give reasons for returning the recommendations.</p> <p>The Commission must prepare a report by 30 September on its activities during previous financial year. The State Minister must table the report in each House of Parliament.</p>	<p>The Treasurer may accept the Commission's recommendations or may ask it to reconsider them. The Minister must provide reasons for returning the recommendations.</p> <p>The Treasurer must accept resubmitted recommendations.</p> <p>The Treasurer may accept the Commission's recommendations or may ask it to reconsider them. The Minister must provide reasons for returning the recommendations.</p> <p>The Treasurer must accept resubmitted recommendations.</p>	<p>The Territory Minister may accept the Commission's recommendations or return the report and ask the Commission to reconsider a recommendation.</p> <p>After accepting the Commission's recommendations, the Territory Minister will table the report in the Legislative Assembly within 6 sitting days.</p>

**Table 2-1** LGGCS' LEGISLATION (continued)

	<b>NEW SOUTH WALES</b>	<b>VICTORIA</b>	<b>QUEENSLAND</b>
<b>Other relevant provisions</b>	<p>The Commission is to pay LGBs the amounts allocated to them, without delay and without conditions.</p> <p>The Commission can hold hearings and make inspections.</p> <p>The Commission may require LGBs to provide information to them.</p> <p>LGBs and Associations may make submissions to the Commission about the grants.</p>	<p>The Commission may require LGBs to provide information.</p> <p>The Commission may make inspections, conduct hearings, take evidence and make investigations relating to its functions.</p>	<p>The Commission may inform itself in the way that it considers best.</p> <p>The Commission must accept and consider submissions by LGBs or Associations.</p> <p>The Commission may hold inquiries.</p>

<b>WESTERN AUSTRALIA</b>	<b>SOUTH AUSTRALIA</b>	<b>TASMANIA</b>	<b>NORTHERN TERRITORY</b>
<p>Commissioners are to have regard to the general interests of local government in the State.</p> <p>The Commission can carry out inspections, conduct hearings and take evidence and make investigations in relation to its functions.</p> <p>The Commission is to give LGBs and Associations the opportunity to make written submissions about the grants.</p> <p>The State will pay grants to LGBs in line with those approved under the Act, promptly and without conditions.</p> <p>The State will review the Act every five years.</p>	<p>The Commission must pay the approved grants to LGBs without delay.</p> <p>Commissioners must not benefit personally from information they obtain as Commissioners.</p> <p>The Commission may hold inquiries.</p> <p>LGBs must supply information annually.</p>	<p>The Commission may hold inquiries and undertake investigations.</p> <p>The Commission can check the compliance of LGBs with GST law.</p>	<p>The Commission may conduct inquiries and carry out investigations.</p> <p>LGBs are to provide information annually to the Commission.</p> <p>The Commission may recommend special grants to LGBs.</p> <p>The Territory Minister may declare a body to be a 'local governing body'.</p>

## CHAPTER 3

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### ELIGIBILITY FOR ASSISTANCE

1. Only organisations that are ‘local governing bodies’ are eligible for financial assistance grants under the *Local Government (Financial Assistance) Act 1995*. Section 4 provides the definition of a local governing body (LGB).

Local governing body means:

- (a) a local governing body established by or under a law of a State, other than a body whose sole or principal function is to provide a particular service, such as the supply of electricity or water; or
- (b) a body declared by the Minister, on the advice of the relevant State Minister, by notice published in the Gazette, to be a local governing body for the purposes of this Act.

#### *Eligibility for Funding under Previous Legislation*

2. The 1976 legislation first introduced the term ‘local governing bodies’<sup>1</sup>. Section 3 of that legislation defined ‘local governing bodies’ in identical terms to those in part (a) of the current Act. That is, LGBs had to be ‘established by or under a law of a State’.

3. The decision to extend the eligibility of bodies able to receive grants arose from recommendations of the Self Inquiry. Its recommendations relating to the eligibility for General Purpose grants included:

In respect of unincorporated areas, suitably representative community bodies should be eligible for grants in exceptional cases subject to agreement between the Commonwealth and the State government;

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<sup>1</sup> The 1973 legislation used the term ‘local government authority’. This was defined as ‘an authority, established by or under a law of a State, that is, in accordance with provision made by the regulations, a local government authority for the purposes of this Act’.

The Northern Territory Government should be encouraged in its efforts to integrate Aboriginal local governments within the Territory's local government system. Appropriate adjustments to the level of funding should be made with the purpose of ensuring that the new local governments are not financially disadvantaged (p337).

4. Eligibility of declared bodies first appeared in the *Local Government (Financial Assistance) Act 1986*. The 1995 Act uses an identical definition for LGBs. The 1986 Act also required the review of that Act to examine the eligibility of declared LGBs for assistance.

5. The 1994 Australian Urban and Regional Development Review (AURDR) considered the issue of declared LGBs and said<sup>2</sup>.

It is reasonable to assume that where organisations such as land councils, ATSIC and community governments find common ground, there will be increasing interest in their being declared eligible for financial assistance grants. It is also possible that regional organisations in local government will also seek to be declared eligible.

The existing procedures for such a declaration are sound, recognising the position of the creating authority which is the State or Territory in most cases.

Nevertheless, the Commonwealth, the States and the Northern Territory should discuss jointly what principles might apply to granting eligibility status as local governing bodies to land councils, ATSIC regional councils or regional organisations of local government.

6. We understand that no general principles have been developed under which to assess the eligibility to such bodies under the 1995 Act.

### ***Current Situation***

7. At June 2000, there were 690 LGBs established by or under a law of the State. A further 40 were declared LGBs.

8. The 690 LGBs established by or under the law of the State include traditional municipal and shire councils established under the State local government legislation, and other bodies. The other bodies are:

(i) in New South Wales:

- the Lord Howe Island Board — established under the *Lord Howe Island Act 1953*;

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<sup>2</sup> Macklin, J 1994, *Financing Local Government*, Australian Urban and Regional Development Review Discussion Paper 1, p.104

(ii) in Queensland:

- the Shires of Aurukun and Mornington Island — established under the *Local Government (Aboriginal Lands) Act 1978* — and
- the 32 Deed of Grant in Trust (DOGIT) LGBs — established under the *Community Services (Aborigines) Act 1984*; and

(iii) in the Northern Territory:

- 32 Community Governments — established under the Northern Territory *Local Government Act* — and
- the special purpose town of Jabiru — established under the *Jabiru Town Development Act*.

9. Table 3-1 shows the number of LGBs, including declared bodies, in each State. Only New South Wales, Victoria, South Australia and the Northern Territory have made use of the provision to declare bodies. In all cases except for Victoria, the declared body is servicing communities in the unincorporated areas of a State. Table 3-2 lists the declared bodies.

**Table 3-1** LOCAL GOVERNING BODIES BY STATE, JUNE 2000

State	LGBs established by or under State law	Declared bodies	Total local governing bodies	Proportion of declared bodies
	No	No	No	%
New South Wales	178	2	180	1.1
Victoria	78	1	79	1.3
Queensland	156	0	156	0.0
Western Australia	142	0	142	0.0
South Australia	68	6	74	8.1
Tasmania	29	0	29	0.0
Northern Territory	39	31	70	44.3
Total	690	40	730	5.5

Source: National Office of Local Government and 1998–99 Local Government National Report.

**Table 3-2** DECLARED LOCAL GOVERNING BODIES BY STATE, JUNE 2000

<b>New South Wales</b>	Aherrenge (Arunga)	Minjilang
Tibooburra Village	Ali Curung	Nganmarriyanga (Palumpa)
Silverton Village	Amoonguna	Ntaria
	Aputula	Nyirripi
<b>Victoria</b>	Areyonga	Papunya
Docklands	Galiwinku	Peppimenarti
	Gapuwiyak	Ramingining
<b>South Australia</b>	Gulin Gulin and Weemol	Tennant Creek Remote
Anangu Pitjantatjara	Ikuntji	Umbakumba
Gerard Community LGB Inc	Imanpa	Urapuntja
Maralinga Tjarutja	Kaltukatjara	Walungurru
Nepabunna Community LGB	Kardu Numida	Warruwi
Outback Areas Community Trust	Northern Territory Roads Trust	Willowra
Yalata Community LGB	Maningrida	Yirrkala/Dhanbul
	Milingimbi	Yuelamu
<b>Northern Territory</b>	Milyakburra	

Source: National Office of Local Government

10. Currently, community LGBs — both Indigenous and non-Indigenous — are the main types of declared bodies. There are 29 Indigenous community LGBs in the Northern Territory and 5 in South Australia.

11. Tibooburra and Silverton Villages are the only non-Indigenous community LGBs to have been declared. These community LGBs are located in the unincorporated area of New South Wales and provide services to populations totalling less than 200 people. They were declared in 1998 and receive General Purpose grants but not Local Roads grants.

12. The other declared bodies are:

- trusts providing services in unincorporated areas — the Outback Areas Community Development Trust in South Australia, the Northern Territory Roads Trust<sup>3</sup> (managed by the Local Government Association of the Northern Territory, and the Tennant Creek Remote Trust Fund (managed by Tennant Creek LGB); and
- the Docklands Authority in Victoria<sup>4</sup>.

<sup>3</sup> There are roads on Aboriginal land in the Northern Territory for which no LGB has responsibility. LGANT administers a trust fund set up to maintain these roads. This Road Trust was declared a LGB for this purpose. Each year, the Northern Territory LGGC allocates Local Roads grants to this trust fund. Up until 2000–01, the Tennant Creek LGB administered a separate trust fund for roads on Aboriginal land near Tennant Creek. LGANT now also administers these funds.

<sup>4</sup> The Docklands Authority is established under Victorian legislation — the *Docklands Authority Act 1991* — and under this legislation has municipal functions. For this reason, a declaration may not have been required.

13. Declared LGBs receive a very small share of the grants available nationally. Table 3-3 shows that in 1999–2000, \$6.2 million in grants or around 0.5 per cent of total funding went to the declared LGBs. For those States with declared LGBs, the share of grants going to these LGBs varies from 0.003 per cent in Victoria to 26 per cent in the Northern Territory.

14. In 1999–2000, the declared bodies provided services to around 24 000 people or 0.13 per cent of the national population. On a per capita basis, they received on average about \$150 in General Purpose grants and \$100 in Local Roads grants. This is around three and five times the national per capita averages, respectively<sup>5</sup>.

**Table 3-3** FINANCIAL ASSISTANCE GRANTS TO DECLARED LOCAL GOVERNING BODIES, 1999–2000

State	Number of bodies	Resident population	General Purpose grant	Local Roads grants	Total grants	Share of total grants
	No	No	\$	\$	\$	%
New South Wales	2	182	56 056	0	56 056	0.01
Victoria	1	n.a.	3 000	6 000	9 000	0.00
South Australia	6	8 573	1 192 503	125 245	1 317 748	1.45
Northern Territory	31	15 607	2 335 544	2 450 194	4 785 738	26.50
Total	40	24 362	3 587 103	2 581 439	6 168 542	0.49 <sup>(a)</sup>

(a) Proportion of funding for declared LGBs relative to funding for all States and Territories including the ACT.

Source: 1998–99 Local Government National Report.

### *Issues Raised in the Review*

15. Very few submissions to the Review raised the issue of eligibility for the grants or the arrangements for declaring LGBs.

16. The Central Local Government Region of South Australia asked the Commission to consider the case for making regional bodies working with rural communities eligible for assistance. Their submission contended that ‘these bodies do not have access to funds to support their general activities ... apart from contributions from their Member LGBs, and this places a burden on small rural LGBs in particular which is not shared by their metropolitan counterparts’.

17. Redland Shire LGB in Queensland raised the special needs of Indigenous communities that have management responsibility for lands acquired in native title determinations. It argued that under native title legislation, these communities would have

<sup>5</sup> The per capita averages for 1999–2000 are \$46.60 for General Purpose and \$20.70 for Local Roads grants.

a responsibility to undertake capacity building initiatives to support self-determination. It suggested two alternative approaches to address the community's special needs:

- (i) the use of disability factors in Grants Commission methods for LGBs affected; or
- (ii) to fund the communities directly by making them eligible for financial assistance grant funding.

18. Nhulunbuy is a mining town in the Northern Territory operating on a special purpose lease. The Nhulunbuy Corporation is a public company providing a range of local government-type services for the community, and raising funds by imposing a rate-like charge on residents. A partially elected town board advises the Corporation. The Corporation believes it should be declared as a LGB but the Northern Territory government does not support this.

19. In their submission, the Corporation argues that:

- (i) either the Federal Government should decide eligibility; or
- (ii) legislation should explicitly allow for Corporations 'who clearly do carry out the functions of a local government nature even though they are a non-elected public company' to be eligible.

In discussions in Darwin, representatives of the Northern Territory Government told the Commission that the Territory receives a reduced royalty payment from the mining company, recognising the costs to the mining company of providing municipal-type services to the Nhulunbuy community.

20. The submission from the Department of Transport and Regional Services also commented on eligibility arrangements under the Act. It said that the current arrangements appear appropriate and suggested the Commonwealth and the States should consider establishing principles to apply for granting eligibility status. It also raised the possibility of the Commonwealth having the reserve power to declare, or propose, organisations eligible for assistance.