

5

AFTER RESERVES AND MISSIONS

Discrete Indigenous communities
in the self-determination era¹

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Introduction

Growing up in the northern suburbs of Sydney in the 1960s, my interactions with Indigenous Australians were few. Passing Purfleet community as we drove the Pacific Highway to our annual north coast beach holiday was one minor regular encounter; buying sandworms for fishing from the small group of Aboriginal houses at our destination of South West Rocks was another. In the 1970s, family beach holidays moved to the south coast of New South Wales, to a house near Jerrinja community, formally known as Roseby Park reserve or mission. While I did not come to know Indigenous Australians personally through these fleeting encounters, I did come to appreciate that there were small discrete Indigenous communities scattered across New South Wales. Known in the past as reserves and missions, these communities seemed to be changing

¹ My research for this paper draws on conversations with many public officials in Indigenous land councils, local governments and their associations, and state and territory governments. I thank them all for sharing their time and knowledge with a researcher from The Australian National University who just approached them out of the blue. You have maintained my faith in open public administration. My ANU colleague Ed Wensing must also be acknowledged for sharing his encyclopaedic knowledge of land law and local government. This paper's interpretations and inaccuracies are of my own making, but the knowledge on which it is based has been generously shared by others.

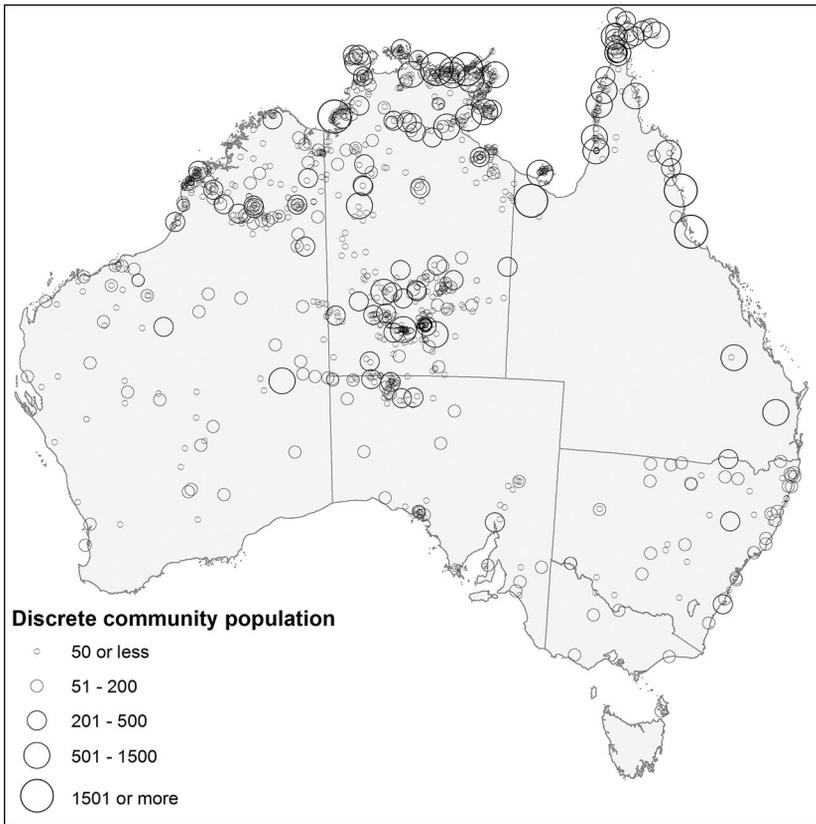
during the Whitlam Government years of my adolescence. New housing and related infrastructure started appearing at Purfleet, Jerrinja and other discrete Indigenous communities funded by the Commonwealth Government.

The land rights and self-determination era in Australian Indigenous affairs offered new potentialities for discrete Indigenous communities. From restrictive reserves and tutelary missions under ‘protection’ and ‘assimilation’, these places were becoming small self-servicing settlements, and some new discrete Indigenous communities were developing, as I became aware when attending the University of Sydney in the mid-1970s. The Block in Redfern, owned by the Aboriginal Housing Company, was then newly emerging as an urban centre of services and residence for Indigenous people.

This paper surveys discrete Indigenous communities during the first half-century (c. 1970–2020) of the self-determination era in Australian Indigenous affairs. It begins with the changing Commonwealth role as infrastructure funder for these communities nationwide. Developments in each state and territory are then discussed separately. While there is no single clear story nationally, there are commonalities in what has emerged conceptually from different policy histories. Discrete Indigenous communities have everywhere become ‘self-servicing corporate landholders’. Note that I do not use the terms ‘landowners’ or ‘self-governing’, though in some jurisdictions these terms may be justified. Some discrete communities have formed local governments, while others have adopted more ‘private’ corporate forms. How and why this has occurred will emerge during the survey of jurisdictions.

Commonwealth benevolence and withdrawal

The Commonwealth funded infrastructure for discrete Indigenous communities from 1972, first through the Department of Aboriginal Affairs and then via the Aboriginal and Torres Strait Islander Commission (ATSIC) established in 1990. Programs with the words infrastructure, community and housing in their titles funded water, electricity, roads and housing in both long-established and new discrete Indigenous communities across Australia. Commonwealth authorities also developed surveys of these communities to scope the task and identify priorities.



Map 5.1: Geographic distribution of 1,187 discrete Indigenous communities by population size, 2006.

Source: Francis Markham (Centre for Aboriginal Economic Policy Research, The Australian National University), using data from the ABS 2006 Community Housing and Infrastructure Needs Survey.

Table 5.1 shows findings from three surveys conducted by ATSIC and the Australian Bureau of Statistics (ABS) in 1992, 1999 and 2006. In the four south-eastern jurisdictions, numbers of discrete Indigenous communities were relatively stable, around 70, or possibly slightly in decline. In the four more sparsely settled jurisdictions, numbers of discrete Indigenous communities and their populations were more substantial and growing, at least in the first half of these 15 years. Somewhere between 1,100 and 1,200 communities with between 90,000 and 100,000 residents was the finding around the millennium for South Australia, Queensland, the Northern Territory and Western Australia combined.

Table 5.1: Numbers and populations of discrete Indigenous communities, 1992–2006.

	1992 No.	1992 Pop.	1999 No.	1999 Pop.	2006 No.	2006 Pop.
New South Wales	65	7,930	67	9,103	57	5,082
Australian Capital Territory	1	240				
Victoria	1	165	2	320	2	270
Tasmania	1	38	1		1	76
South Australia	94	4,549	106	5,254	91	4,567
Queensland	77	23,885	149	29,440	124	27,446
Northern Territory	489	36,299	681	48,716	641	41,681
Western Australia	178	15,342	285	17,161	271	13,838
Australia	906	88,448	1,291	109,994	1,187	92,960

Source: Australian Construction Services, *1992 National Housing*; Australian Bureau of Statistics, *Housing and Infrastructure 1999*; Australian Bureau of Statistics, *Housing and Infrastructure 2006 (Reissue)*.

Table 5.2: Numbers of discrete Indigenous communities reporting resident populations <50, 50–199 and 200+ in four jurisdictions, ATSI and ABS Survey, 1999.

	Pop. <50	Pop. 50–199	Pop. 200+
South Australia	79	18	9
Queensland	105	9	35
Northern Territory	550	67	64
Western Australia	200	65	20

Source: Australian Bureau of Statistics, *Housing and Infrastructure 1999*.

Table 5.2 divides the 1999 survey findings in the four more sparsely settled jurisdictions by size of population in discrete Indigenous communities. There were eight to 10 times as many ‘small’ Indigenous communities (population <50) as ‘large’ ones (population 200+) in the Northern Territory (550/64), South Australia (79/9) and Western Australia (200/20), while the ratio in Queensland was a lesser factor of three (105/35). Queensland’s relative preponderance of large communities reflects its practices of the ‘protection’ and ‘assimilation’ eras that moved many Indigenous people far off their land into large, consolidated and isolated Indigenous settlements. This relative concentration in a few, large discrete Indigenous communities has continued under Queensland’s approach to land rights and self-determination.²

2 Queensland policy has long distinguished strongly between Aboriginal and Torres Strait Islander circumstances. While Islanders have remained in small, discrete communities, Aboriginal people were moved during the early decades of the twentieth century into just a few, large consolidated communities.

While jurisdictional differences will emerge further in later analysis, an important commonality is the withdrawal of Commonwealth support for infrastructure in discrete Indigenous communities after the abolition of ATSIC in 2004–05. Since 2006, the Commonwealth has pressured state, territory and local governments to take responsibility for infrastructure in these communities. Responses have varied and have been complicated by a 10-year Commonwealth commitment to public housing in remote Indigenous communities under the 2008 National Partnership Agreement on Remote Indigenous Housing. Commonwealth withdrawal has stopped the surveys of discrete Indigenous communities and their infrastructure needs since 2006, so no more recent comparative data exists across the eight sub-national jurisdictions.

New South Wales: Conflict over local government rates

Aboriginal land rights reform in New South Wales occurred in two stages over a decade. In 1973, a Liberal–Country Coalition Government legislated to establish an Aboriginal Lands Trust (ALT) that would hold title to Aboriginal reserves.³ In 1983, after six years preparatory work, the Wran Labor Government legislated a new structure of Aboriginal land councils. The landholders of former reserves and other claimed land would now be 120 Local Aboriginal Land Councils (LALCs), overseen by the New South Wales Aboriginal Land Council (NSWALC) that would be divided into nine regions for purposes such as the election of representatives.

In 60 established reserve communities across New South Wales on the edges of towns or cities or in more isolated locations, the land rights reforms meant that LALCs began receiving rates bills from encompassing local governments – a surprise to some of them. The argument that they should be exempt wholesale from rates has been resisted, both by local governments and by the New South Wales Government.⁴ While Aboriginal land deemed ‘vacant’ and/or of ‘cultural or spiritual significance’ can be exempted from rates, Aboriginal land used for residential or commercial purposes incurs

3 Peterson, *Aboriginal Land Rights*, 16–27.

4 Sanders, ‘Local Governments’.

the obligation to pay rates.⁵ When providing ‘social housing’, LALCs can also gain exemptions from local government rates as ‘public benevolent institutions’, though they must still pay for water and sewerage.⁶

What infrastructure services could discrete Indigenous communities expect from local governments in return for rates? The question arose in 1987 when strained relations between Toomelah community and the Moree Plains Shire Council were the subject of a report by the Commonwealth’s Human Rights and Equal Opportunity Commission (HREOC). After noting that the ‘reserve era for Toomelah ended only in 1977 when the last manager left’ and that ‘in the decade since, the community has had to come to terms with a vast array of new rights and responsibilities’, the report found that:

The Toomelah community of five hundred Aboriginal people endures appalling living conditions which amount to a denial to them of the most basic rights taken for granted by most other groups in society, and by other Australian communities of a similar size.⁷

The report compared Toomelah with Boggabilla, a town 25 kilometres away, where the shire provided infrastructure services in return for rates. The shire argued not only that resource constraints prevented such servicing at Toomelah, but also that it was a ‘private settlement’ on a single communal block of land.⁸

Conflict over rates and services at Toomelah in 1987 pointed to unresolved policy issues in New South Wales. Local governments had not provided services to discrete Indigenous communities when they had been ‘reserves’ managed by the state government; in the 1980s, they were still coming to grips with their new responsibilities to Indigenous landholders as rate payers, and to the LALCs acting on behalf of discrete Indigenous communities. As well as resource constraints, there were some legal impediments to local governments providing infrastructure services on land held by others.

While conflict over rates has settled, the abolition of ATSIC threw into high relief the resources it had contributed to infrastructure in the discrete Indigenous communities in New South Wales. In 2008, NSWALC

5 ‘Rate Exemptions’, NSW Government, Aboriginal Affairs, 2018, accessed 1 January 2020, www.aboriginalaffairs.nsw.gov.au/pdfs/land-rights/Rates-Exemptions-July-2018.pdf.

6 New South Wales Aboriginal Land Council, *Submission*, 7–8.

7 Human Rights and Equal Opportunity Commission, *Toomelah Report*, 3, 61.

8 Human Rights and Equal Opportunity Commission, *Toomelah Report*, 34.

entered into a partnership with the New South Wales Government called the Aboriginal Communities Water and Sewerage Program. Overseen by that government's Industry department, this program aimed to invest \$200 million over 25 years in 62 eligible Aboriginal settlements.⁹ Other programs developed in conjunction with the state's Planning and Environment authorities attend to waste management and other infrastructure issues in these discrete Indigenous communities.¹⁰

This new model for resourcing infrastructure in discrete Indigenous communities in New South Wales recognises that, under the land rights system introduced in 1983, LALCs are independent landholders, overseen and supported by NSWALC.¹¹ These statutorily independent Aboriginal land interests now partner with New South Wales Government agencies and, to some extent, with local governments, to sustain infrastructure. While responsibility remains shared and unclear, infrastructure services in the former reserves and missions are being managed through these partnerships, albeit at lower standards than in urban areas.

The number of discrete Indigenous communities in New South Wales seems stable during the self-determination era. Apart from the Block in Redfern, Sydney, which lasted for about 40 years from the mid-1970s, before being reduced to vacant land in the 2010s, the 60 or so discrete Indigenous communities, having once been reserves and missions, are longstanding.¹² The physical infrastructure of such settlements does not quickly spring into existence or disappear, and it is likely that the variation for New South Wales shown in Table 5.1 reflects changing survey procedures as much as actual growth or decline.

9 'Aboriginal Communities Water and Sewerage Program', NSW Government, accessed 1 January 2020, www.industry.nsw.gov.au/water/water-utilities/infrastructure-programs/aboriginal-communities.

10 'Aboriginal Community Lands and Infrastructure Program', NSW Department of Planning, Industry and Environment, updated 14 June 2019, accessed 1 January 2020, www.planning.nsw.gov.au/About-Us/Our-Programs/Aboriginal-Community-Lands-and-Infrastructure-Program; 'Aboriginal Communities Waste Management Program', NSW Environment Protection Authority, updated 22 February 2019, accessed 1 January 2020, www.epa.nsw.gov.au/working-together/grants/illegal-dumping/aboriginal-communities-waste-management-program.

11 One indication of independence from government is the web domain of the NSW Aboriginal Land Council, accessed 1 January 2020, alc.org.au/. A 15-year levy on land tax from 1983 also gave NSWALC considerable financial independence.

12 The Block in Redfern has been vacant land for the last few years. The Aboriginal Housing Company has been seeking approval for a major residential redevelopment. The Block may yet re-emerge as a discrete Indigenous community, but this is far from certain.

Victoria and Tasmania

In the ATSI/ABS surveys reported in Table 5.1, Victoria had two discrete Indigenous communities and Tasmania had one. These are readily identifiable, of longstanding and remain to this day as self-servicing corporate landholders.

Lake Tyers and Framlingham were reserves, until Victoria's *Aboriginal Land Act 1970* made them into statutory trusts and self-servicing landholding communities. Each was included in a local government area and pays rates, as a single landholder, to that local government. This has not led to conflict, as in New South Wales, perhaps because, along with ATSI, the Victorian Government has always contributed significantly to the two trusts for community self-servicing. But both the Lake Tyers and the Framlingham Aboriginal Trusts have had periods of imposed administration, when Victoria's minister for Aboriginal affairs intervened to safeguard public resources. Nevertheless, the basic model of a statutory trust that is a landholder and responsible for internal community servicing is well established in Victoria. Thus, two former missions have survived to become modern discrete Indigenous communities.

In Tasmania, the long-recognised discrete Indigenous community is Cape Barren Island, declared a reserve under the *Cape Barren Island Reserve Act 1912*. Title over most of Cape Barren Island was transferred to the Aboriginal Land Council of Tasmania in 2005. However, the Aboriginal residents of Cape Barren Island live on land that had been alienated to Housing Tasmania (for public housing) and to some private owners of residences. The Cape Barren Island Aboriginal Association, established in 1975, owns a civic/cultural centre and service assets through which its annual turnover has been \$1.8 million in recent years.¹³ These landholders pay local government rates to Flinders Council, which conducts most of its service activities on the adjacent Flinders Island. Rates on Cape Barren Island are set lower than on Flinders Island, in recognition of differences in service levels and of landholder self-servicing. The Aboriginal Land Council of Tasmania (ALCT) pays rates for the airstrip on Cape Barren Island, but not for the vast majority of its landholding. This larger portion

13 'Cape Barren Island Aboriginal Association Incorporated', Australian Charities and Not-for-profits Commission, accessed 1 January 2020, www.acnc.gov.au/charity/d266a6e09e89b603b9f48aace45bc21f#overview.

of the ALCT landholding is seen as ‘land used principally for Aboriginal cultural purposes’ and is exempt from local government rates under Section 19(c) of Tasmania’s *Land Tax Act 2000*.

Wreck Bay and Australian Capital Territory

Originally a reserve community in New South Wales, Wreck Bay was transferred to the Australian Capital Territory in 1915 and became part of the Commonwealth’s responsibility in Indigenous affairs. The Commonwealth returned land at Wreck Bay to the Aboriginal community in two stages under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*. First was the village settlement of 403 hectares, then second, in 1995, a much larger area of land to be co-managed with the Commonwealth as a national park. The Wreck Bay Aboriginal Community Council (WBACC) was established as a Commonwealth statutory authority in 1986 as the governance structure to service the community. Since 1995, WBACC has also undertaken land management services for the national park, at an annual turnover of \$4 million, according to recent annual reports.¹⁴ While laws of the Australian Capital Territory apply at Wreck Bay, WBACC has power to make by-laws and is, in practice, a small separate local, or even territory, government for this land area.¹⁵ This village settlement of some 200 people is possibly the most autonomous and self-governing discrete Indigenous community in Australia.

Northern Territory: Challenging Commonwealth land rights by encouraging local government

In 1978, the Northern Territory was granted limited self-government by the Commonwealth. One matter over which the Commonwealth maintained clear control was the Aboriginal land rights regime instituted just two years earlier. The new Country Liberal Party (CLP) Government

¹⁴ ‘Publications’, Wreck Bay Aboriginal Community Council, accessed 1 January 2020, www.wbacc.gov.au/publications/.

¹⁵ ‘Jervis Bay Territory Governance and Administration’, Australian Government Department of Infrastructure, Transport, Cities and Regional Development, accessed 1 January 2020, regional.gov.au/territories/jervis_bay/governanceadministration.aspx.

in the Territory fought against this limitation, including challenging particular land claims and pushing for statehood, which it envisaged would give the Territory government control over land. As well, the Northern Territory Government challenged the land rights regime by promoting local government across the Territory.

Under direct Commonwealth administration up to 1978, formal local government in the Territory had been restricted to Darwin, Alice Springs, Katherine and Tennant Creek. The new Northern Territory Government began to offer local government incorporation to smaller urban centres and to remote communities under its *Local Government Act 1978*, which provided for flexible schemes of 'community government'.

The Northern and Central land councils, established under the Commonwealth's land rights statute, resisted this offer of local government. Their academic consultant argued that, by giving too much control to the Northern Territory minister for local government, community government schemes 'subverted' the authority of 'traditional owners' under Commonwealth land rights legislation.¹⁶ A visiting Canadian academic agreed, suggesting that the 'objective' of community government was the extension of the Northern Territory Government's 'jurisdictional authority'; she advised Aboriginal communities to exercise 'caution' and to consider 'more autonomous and self-determining forms of government'.¹⁷ The land councils' consultant argued that more powerful forms of incorporation for Indigenous communities were available through the Commonwealth's *Aboriginal Councils and Associations Act 1976*.

Despite these criticisms, Aboriginal communities across the Territory adopted community government schemes, so that by 2000 there were 32 community governments in the Northern Territory: five in small open highway towns and 27 in discrete Indigenous communities, either singly or in small regional groups.¹⁸ These were in addition to the Northern Territory's six municipalities and 29 'association councils'. Association councils were community associations that had been recognised since the late 1980s as performing some functions of local government; as such, they received local government funding, though they did not have formal authority over a land area. By 2000, 80–90 per cent of Territorians were

16 Mowbray, *Black and White*; Mowbray, 'Subverting', 12.

17 Wolfe, *That Community Government Mob*, 171.

18 Sanders, *Local Governments*, 3.

covered by 67 local governing bodies, though only 10 per cent of the Territory's land area was. Of these, 56 were Aboriginal-majority councils governing discrete Indigenous communities.¹⁹ Among the Territorians not covered by local governments were pastoral leaseholders who provided their own housing and infrastructure and many homeland Aboriginal communities that relied on 'resource agencies'.²⁰

In the first decade of the twenty-first century, Northern Territory governments reformed local government arrangements for small, Indigenous-majority communities. Initially, CLP and Labor governments encouraged amalgamations to create larger regional groupings, of which two emerged in 2001 and 2003. Judging progress too slow, the inaugural Territory Labor Government under Clare Martin abandoned persuasion and announced in late 2006 that the government would amalgamate remote area local governments into shires covering about 5,000 people. During 2007, nine potential shires were identified, alongside the Territory's six municipalities. Under pressure from urban fringe settlers, Labor dropped its plan to create a shire on the outskirts of Darwin, but proceeded with amalgamations that created eight shires in more remote areas in 2008. While the new shires still had Aboriginal-majority constituencies and were focused primarily on governing discrete Indigenous communities, many also embraced an unprecedented mix of non-Aboriginal interests, such as pastoralists and open highway towns.²¹ The critics of community government in the 1980s had been prescient in pointing to the power of the Northern Territory minister for local government. Indigenous Territorians felt betrayed and overridden as they lost the small local governments they had been encouraged to develop over the previous 30 years.²² The new shires were local governments not only for discrete Indigenous communities, but also for large tracts of land between communities and for settler interests as well.

19 Sanders, *Local Governments*, 3.

20 Altman, Gillespie and Palmer, *National Review*, 23.

21 Sanders, 'Changing Scale'.

22 Sanders, 'Losing Localism'.

Queensland: Becoming local governments to challenge Commonwealth policy, then as part of state policy

In Queensland's discrete Indigenous communities we see both parallels and contrasts with the Northern Territory from the 1970s to the 2010s. When the Whitlam and Fraser Commonwealth governments were exploring practices of Indigenous self-determination and self-management, Queensland, under National Party Premier Joh Bjelke-Petersen, offered the most resistance. The Australian Parliament passed two laws focused on Queensland: the *Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975* and the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978*. In the latter the Fraser Coalition Government sought to support new councils of residents in two discrete Aboriginal communities that had been missions on reserve land: Aurukun and Mornington Island. The Queensland Government's response was to de-gazette the two reserves and to pass the *Local Government (Aboriginal Lands) Act 1978*, creating local government shires at Aurukun and Mornington Island, thus moving the two communities outside the terms of the Commonwealth legislation.²³

In the 1980s, the Bjelke-Petersen Government changed the status of reserves and created small local governments in another 32 discrete Indigenous communities. Community Services legislation in 1984 established 15 Aboriginal councils and 17 Island councils. A change from 'reserves' to 'trust areas' was enabled by amendments to the *Land Act* in 1982 and 1984 and then, in 1986, Deeds of Grant in Trust (DOGITs) were issued to most of the 32 Aboriginal and Island councils.

Three aspects of the Queensland National Party's approach to discrete Indigenous communities drew criticism: the maintenance of reserve by-laws until the new councils made new ones, the exclusion of residents of trust areas from participation in the larger local government areas surrounding DOGITs, and the closer oversight of Aboriginal and Island councils compared to Queensland local governments more generally.²⁴ Responding to some of these criticisms became part of land rights reform under the Goss Labor Government in the early 1990s.²⁵ Although

23 Tatz, *Race Politics*, 66-81; Lippmann, *Generations*, 84-89.

24 Human Rights Commission, *Community Services (Aborigines) Act 1984*.

25 Brennan, *Land Rights*, 121-68.

Aboriginal people and commentators such as Frank Brennan remained critical of the Goss Government for not pushing land rights further, it was generally acknowledged by 1991 that the councils in Queensland's 34 officially recognised, discrete Indigenous communities had secure titles to land and, as local governments, were establishing a greater presence in Queensland public life.²⁶

After the millennium, the Beattie Labor Government made further changes to local government in Queensland's discrete Indigenous communities. The *Local Government (Community Government Areas) Act 2004* instituted a four-year transition period through which the 15 Aboriginal and 17 Island councils were to become more fully included in and compliant with the general *Local Government Act 1993*. As this transition was coming to an end, Beattie established a Local Government Reform Commission to make a case for amalgamations. This commission argued that Queensland's 157 local governments should be reduced to 73, and this happened in 2008.²⁷ Two of the 34 community governments – the Aurukun and Mornington Island local governments – remained, but the other 32 (known as Aboriginal and Island Councils) were reduced to 14 in the following ways. Fifteen Island councils were combined into one Torres Strait Island Regional Council.²⁸ Two Island councils on the tip of Cape York were combined with three Aboriginal councils to become a single unit, the Northern Peninsula Area Regional Council.²⁹ Twelve other Aboriginal councils with unchanged borders were renamed shires.³⁰ In short, in 2008, Queensland's 34 Indigenous community governments reduced to 16.

26 Brennan, *Land Rights*, 173.

27 Four amalgamations were reversed in 2013 under the Newman Liberal National Party Government, taking the total number of Queensland local governments up to 77. Queensland, Local Government Reform Commission, *Report*.

28 This new local government under Queensland legislation should not be confused with the Torres Strait Regional Authority that was created in 1994 as part of ATSIC. This regional elected Commonwealth Indigenous statutory authority survived the abolition of ATSIC in 2005, more by good luck and distance than strategy. Nonetheless, its survival is important and worth understanding, though that would be another paper.

29 This was effected by the *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Act 2007* passed by the Queensland Parliament in November 2007. The previous Acts from 1978 and 1984 were much reduced at this time and renamed the *Aurukun and Mornington Island Shire Leases Act 1978* and the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*. A rewrite of legislation at this time also produced a new *Local Government Act 2009*, which applied to all local councils across Queensland.

30 Longland described these 'donut' arrangements of Aboriginal shires within the land areas of larger encompassing shires as having 'inherent structural inefficiencies', and only argued against their amalgamation on the grounds of unresolved issues relating to DOGITs land and 'additional responsibilities undertaken by Aboriginal local governments'. This was a rather weak defence of the discrete Aboriginal shires. Local Government Reform Commission, *Report*, vol. 1, 64.

It should also be noted that Queensland has about a dozen discrete Indigenous communities that have *not* become local governments. For example, Mossman Gorge sits on two parcels of land, one of which is still a reserve held by a Queensland Government department and the other a block of private freehold held by an Aboriginal corporation. Just 80 kilometres from Cairns, Mossman Gorge has a successful tourism operation. The Aboriginal corporation delivers infrastructure services to around 30 households in the settlement, with funding assistance from the Queensland Government, and pays rates to Douglas Shire on its freehold block. The corporation and the encompassing local government work in collaboration on rates and services. In other parts of Queensland, however, there have been tensions between these discrete Indigenous communities and local governments over rates and services.

South Australia: Land rights leads to some local governing bodies and some self-servicing settlements

In South Australia, pushes for land rights, rather than reactions against it, have resulted in discrete Indigenous communities becoming local governing bodies.³¹ In the early 1980s, parliament legislated title to reserves in the north-west of the state: the *Pitjantjatjara Land Rights Act 1981* and the *Maralinga Tjarutja Land Rights Act 1984*. Each law raised the question of whether the resulting Aboriginal landholding corporation was also a local governing body. In 1987, amendments to the 1981 legislation gave the body corporate, Anangu Pitjantjatjara, the power to make by-laws.³² In later years by-law-making power was extended to Maralinga Tjarutja and to the renamed Anangu Pitjantjatjara Yankunytjatjara.

These policies of the 1980s built on an earlier wave of reform: a 1966 law creating the ALT, a statutory authority holding title to reserves in the south and east of South Australia. This led to the emergence of eight Aboriginal community councils in discrete Indigenous communities on these reserves in the 1970s.³³ Three of these community councils emerged *outside*

31 South Australia maintains a distinction between local governments under the *Local Government Act*, of which there are 68, and some other organisations recognised as local governing bodies.

32 Tedmanson, *Shifting State*, 73–76.

33 See Peterson, *Aboriginal Land Rights*, 117. Also Rowse, *Rethinking*, 62–79.

existing incorporated local government areas; they provided for their own internal infrastructure and public order in conjunction with the ALT, the Commonwealth DAA and later ATSIC. Five others fell *within* existing incorporated local government areas but did not pay local government rates. These five, too, have attended to their own internal public order and infrastructure services in conjunction with the trust, Commonwealth funders and, sometimes, encompassing local governments on a negotiated contract or fee-for-service basis. Although these arrangements continue to the present day, the Commonwealth has reduced its funding in the last decade.

Conceptually these 10 sets of governance arrangements for discrete Indigenous communities in South Australia push strongly towards the status of local government, particularly when considered in conjunction with the resources and authority of the ALT.³⁴ This is reflected in the three community councils on ALT land *outside* existing local government areas (Gerard, Nepabunna and Yalata) having been members of the Local Government Association of South Australia since the early 1990s. They are notably identified on the association's website along with Anangu Pitjantjatjara Yankunytjatjara and Maralinga Tjarutja.³⁵ In contrast, the five ALT communities and community councils *within* existing local government areas are not listed as members of the association, but they do still function as self-servicing corporate landholders and somewhat like local governing bodies.

Western Australia: Self-servicing settlements searching for resources

Like South Australia and New South Wales, Western Australia in 1972 created an ALT to hold title to lands reserved for Aboriginal use.³⁶ Unlike other jurisdictions, Western Australia went no further with land rights. Aboriginal reserves, covering about 10 per cent of this large jurisdiction, have remained outside the rateable land base of local governments though formally within their incorporated land areas. This has meant that Western

34 Sanders, 'Local Governments', 171. The ALT of South Australia has powers to make regulations for these communities and has done so in a number of instances, in consultation with community councils.

35 'Council Maps', Local Government Association of South Australia, accessed 15 August 2020, www.lga.sa.gov.au/sa-councils/councils-listing.

36 *Aboriginal Affairs Planning Authority Act 1972* (WA), section 10.

Australia's many discrete Indigenous communities have developed little relationship with their encompassing local governments and have looked to other public authorities to assist them with infrastructure and public order.

Western Australia's *Aboriginal Communities Act 1979* gave by-law-making power to councils of residents in reserve communities. Together with program resources from the Commonwealth DAA and later ATSIC, this enabled councils on reserve land to service themselves with basic infrastructure and public order. Since 2005, these arrangements have become fractious and contested. The new Commonwealth Indigenous affairs authorities have demanded that state and local government authorities pay for infrastructure services, and these authorities have typically argued that they cannot afford to do so.

In a 2016 report, the Western Australian Government insisted that it could not provide infrastructure services for all 305 identified discrete Indigenous communities. The government differentiated two groups of communities by location and policy 'direction'. One was '37 town-based reserves across 20 towns' with 'up to 3,000 Aboriginal residents'. For these, the policy 'direction' was to 'receive the same service opportunities, and share the same payment responsibilities, as other residents of the relevant town'.³⁷ The other group was 274 'remote communities' (each with about '12,000 Aboriginal residents'), 'about 165' of which the government claimed to have 'been supporting [with] essential and municipal service delivery' since 2015. In these communities, the policy 'direction' was 'progressively to meet minimum standards for essential and municipal services in larger remote Aboriginal communities'.³⁸ While cast positively, this was in fact a threat to withdraw infrastructure support by the Western Australian Government for most of the remote communities it then identified (274) or claimed to help service (165). Only 50 of these communities with over 50 permanent residents were clearly admitted to the 'larger' category, and beyond this the Western Australian Government's commitment was weak.

On public order in reserve communities, Brady has recently documented how a 2005 Law Reform Commission inquiry in Western Australia initially argued for abolition of the *Aboriginal Communities Act 1979*, but later supported its retention in light of Aboriginal community support

37 Regional Services Reform Unit, *Resilient Families*, 18.

38 Regional Services Reform Unit, *Resilient Families*, 16.

for its by-law-making power. The by-laws were, in the words of one council chair, 'our law in that we requested it for the protection of our well-being'.³⁹

Because Western Australia did not progress land rights in the 1980s, it is now experiencing land reform through the implementation of the Commonwealth *Native Title Act 1993*. Discrete Indigenous communities are slowly being recognised as having native title over the reserve lands on which they sit, and their prescribed bodies corporate are being recognised as landholders within the Australian land governance system. Discrete Indigenous communities in Western Australia are becoming self-servicing corporate landholders searching for resources to support their infrastructure and public order. Conceptually, such communities push towards a parallel, but impoverished Indigenous local government system. They have by-law-making power under the *Aboriginal Communities Act 1979* and some corporate authority under the Commonwealth *Native Title Act 1993*, but no secure resource or fiscal base like general local governments.

One regional group of discrete Indigenous communities on reserve lands in the central desert in the far eastern parts of Western Australia managed to become a general local government in 1993. This process commenced in 1984, when Aboriginal residents were included in the local government franchise in Western Australia. Ngaanyatjarra residents in 10 discrete communities with a total population of around 1,000 used this new voting right to gain representation on the Shire of Wiluna, first as a minority of councillors and then as a majority in 1987.⁴⁰ Their leadership then resulted in a move to form the Shire of Ngaanyatjarraku as a 'community of interest' distinguishable from the predominantly pastoral Wiluna Shire.⁴¹ Twenty-five years on, Ngaanyatjarraku is the only instance of discrete Indigenous communities in Western Australia being able to use electoral power to establish a local government under general legislation.

39 Brady, 'Law Reforming', 44.

40 Fletcher, *Aboriginal Politics*, 114–38.

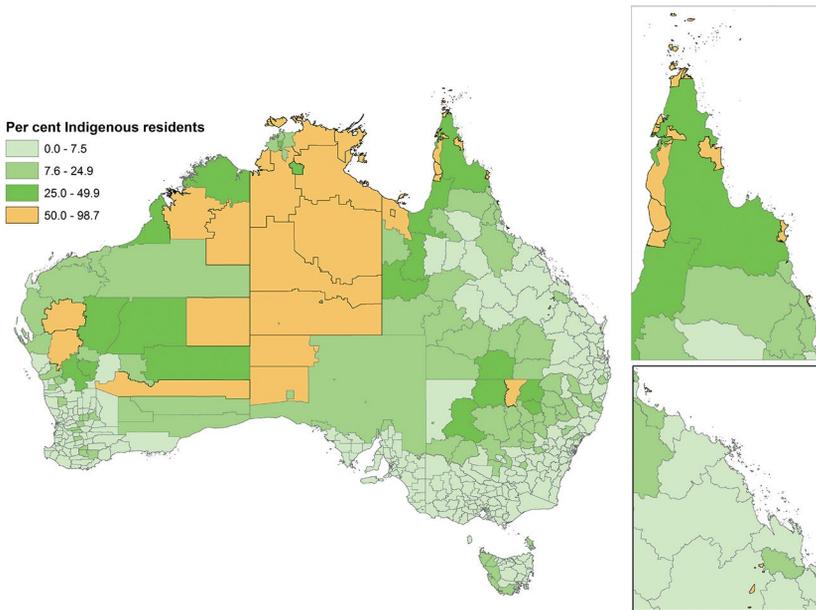
41 McLean, 'Aboriginal Local', 139–46.

Conclusion

While Commonwealth governments of the last half-century have sometimes been ambivalent about applying the term self-determination to Indigenous policy, Indigenous people around the world have been adamant that this right of peoples in international law applies to them. The resounding 2007 vote in the United Nations General Assembly in favour of the Declaration on the Rights of Indigenous Peoples has confirmed this stance. It is now possible to talk of the self-determination era in Indigenous policy as established fact, as much as hopeful claim. Together with developments in land rights and native title, this right of peoples in international law is slowly opening new potentialities for Indigenous people in Australia, both in discrete Indigenous communities and beyond.

My brief history of the eight sub-national jurisdictions demonstrates the diversity and the commonalities in the developing potentialities for discrete Indigenous communities. In three south-eastern jurisdictions, New South Wales, Victoria and Tasmania, about 70 discrete Indigenous communities have become 'private' corporate landholders, paying rates to encompassing local governments and seeking resource partnerships with parts of government to sustain internal community infrastructure. In the fourth south-eastern jurisdiction, Wreck Bay Aboriginal Community Council has developed partnerships with Commonwealth authorities that give it the status of a local government or small territory government operating under the laws of the Australian Capital Territory.

In the four more sparsely settled jurisdictions, over 1,000 discrete Indigenous communities have been left outside the rateable land base of existing local governments. As newly recognised corporate landholders, these discrete Indigenous communities have sought ways to sustain their infrastructure and public order and this has often been through becoming local governments, or quasi local governing bodies. This is not a settled solution, as major local government restructuring showed in Queensland and the Northern Territory in 2008. But it does create a public corporate form in which majority Indigenous populations can lead to Indigenous participation and influence, as voters and elected members.



Map 5.2: Local government areas by percentage Indigenous residents, 2016 Census.

Source: Heather Crawford (Centre for Aboriginal Economic Policy Research, The Australian National University), using data from the ABS 2016 Census of Population and Housing.

Using 2016 Census data, a map of local government areas differentiated by Indigenous proportion of residents (Map 5.2) shows that, of the 539 recognised local government areas in Australia, 37 have Indigenous-majority populations, 18 in Queensland, 10 in the Northern Territory, 6 in Western Australia, 2 in South Australia and 1 in New South Wales.⁴² The majority of these are instances in which discrete Indigenous communities have become recognised as local governments. In others, Indigenous majorities have emerged demographically in long-established local government areas. In both cases, Indigenous voters can hopefully use this demographic fact to both stand for public office and influence local government policies. While this is not Indigenous self-determination per se, these local governments should be acknowledged as public governance contributors towards that goal.

⁴² None of the Aboriginal Land Trust of South Australia communities is included in this ABS categorisation. Neither is Wreck Bay, which like the rest of the Australian Capital Territory is treated in this ABS categorisation as 'unincorporated' in a local government area.

I began by noting that as a child my first encounters with Indigenous affairs were through occasional observations of discrete Indigenous communities. Known as reserves and missions in past policy eras, these residential concentrations of Indigenous Australians appeared, in my adolescence, to be developing new potentialities in the emerging policy era of land rights and self-determination. After four decades of professional involvement in Indigenous affairs, these early impressions still strike me as having merit, though my faith in a benevolent Commonwealth has been strongly tested in the last 15 years. Under the combined influences of market liberalism, contractualism, new public management and a less centralist federalism, the Commonwealth has withdrawn resources for the infrastructure services of discrete Indigenous communities. To discrete Indigenous communities, the Commonwealth must now look fickle and unpredictable, rather than a benevolent provider. Indigenous corporate landholders, emerging in all jurisdictions across Australia, need assured financial resources to be self-servicing providers of infrastructure and public order in their discrete settlements. This is the big missing element in current arrangements, and has been since the abolition of ATSIC.⁴³

Residents of discrete Indigenous communities are probably a declining proportion of the total Indigenous population. We do not know for sure because the Commonwealth has not surveyed discrete Indigenous communities since 2006. My guess, as a professional observer, is that the number of discrete Indigenous communities and their populations have remained constant or declined just slightly. Meanwhile, the national Indigenous population has increased significantly from 455,028 in 2006 to 649,171 in 2016.⁴⁴ This means that the proportion of Indigenous people living in discrete Indigenous communities has probably declined from one in five to one in seven. Despite this relative decline in proportion of Indigenous population, discrete Indigenous communities are still an important part of Indigenous policy and politics. Their continuing physical dominance of even small portions of the Australian landmass is suggestive of Indigenous peoplehood and the right to self-determination.

43 This point was made quite strongly in Queensland Productivity Commission, *Service Delivery*.

44 See Time Series Profile at '2016 Census Community Profiles', Australian Bureau of Statistics, updated 12 July 2019, accessed 1 January 2020, quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/communityprofile/036?opendocument.

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