



# Local Government Association of the Northern Territory

## Submission to the NT Legislative Assembly's Inquiry into Local Decision Making

13 August 2021

Aboriginal disadvantage is the greatest policy challenge facing the Northern Territory (NT). It is not a new policy problem and it is not one that any of us can walk away from. It is a classic 'wicked problem' – complex, resistant to easy solutions, and intractable. Such problems require innovative policy solutions. Local Decision Making (LDM) is such an attempt.

The LDM policy was endorsed by the Aboriginal Affairs Sub-Committee of Cabinet in August 2018. The decision of the NT Legislative Assembly's Public Accounts Committee to conduct an Inquiry into Local Decision Making (LDM) is timely. Three years of policy implementation is sufficient for initial lessons to be gleaned so that any needed adjustments can be made either to the substance of the policy or its implementation.

The Local Government Association of the Northern Territory (LGANT) is the peak body that represents the interests of the Territory's 17 Local Government Councils. Its members include municipal, shire and regional councils. Our submission focuses on the relationship between LDM and our member regional councils.

In advance of this submission, the LGANT Secretariat consulted with regional council administrators to discuss their experiences with and perceptions of LDM. LGANT also encouraged all regional councils to provide their own submissions to the Inquiry.

We welcome the opportunity to comment on the LDM policy and its implementation.

### Support for LDM Principles

LGANT supports the key principles on which LDM is based including:

- Empowering Aboriginal people in decision making that impacts them;
- Supporting decision making by Aboriginal communities to have greater say in how government services are delivered; and
- Applying service delivery models that work best for their community and region.

The above principles are consistent with the objectives set forth in the National Agreement on Closing the Gap. The Local Government sector (including LGANT) is a signatory to the Agreement through its national peak body, the Australian Local Government Association. LGANT recently collaborated with the NT Government and APO NT in the preparation of the first NT Closing the Gap Implementation Plan.

LGANT's commitment to the objectives of Closing the Gap is reflected in our strategic priorities. '*Assisting Aboriginal people to have greater voice to achieve better social, cultural and economic outcomes*' is one of the five priorities in LGANT's Strategic Plan (2021-2023).

## Community Accountability and Empowerment

LDM is described as a “NT Government commitment to provide opportunities to transfer government service delivery to Aboriginal Territorians and organisations, based on their community aspirations”. A broad range of services delivery areas and programs are identified that could be the subject of transfer. These include housing; education, training and jobs; health; children and families; law and justice; sports and recreation; and economic development. ‘Local government’ is also listed as a service delivery area that could be the subject of transfer.

It is unclear what is meant by ‘local government’ in this context. Does this refer to the potential transfer of services currently provided on a contractual basis on behalf of Territory or Commonwealth Government agencies (e.g., Homeland maintenance, Centrelink)? Does it refer to longstanding services traditionally provided by Local Government councils such as local road management or waste management? Does it also refer to the entire council and its functions? A lack of clarity about what is meant by ‘local government’ in the context of LDM contributes to a sense of apprehension within the Local Government sector.

In addition to traditional Local Government roles (e.g., local roads and waste management), regional councils in the NT provide a range of key services and community-based programs on behalf of NT Government and Commonwealth Government agencies. These are funded through a combination of interagency contracts for services and grants for community programs.

Our regional councils have been engaged in local decision making since long before there was an NT Government policy with the same name. It is a core practice of Local Government.

Regional Councils take pride in their delivery of services to Aboriginal communities despite having to operate within very tight budgets. They do not want to see service delivery transferred unless it will result in a net benefit to the serviced Aboriginal communities. If the transfer of service delivery is to occur, it must be to an organisation that has good governance, is accountable to the serviced community, and has the capabilities to be successful.

LDM promotes the transfer of service delivery to Aboriginal controlled organisations. Most of our regional councils view themselves as Aboriginal controlled organisations and question how transferring services from one Aboriginal organisation (i.e., a regional council) to an Aboriginal Corporation provides greater Aboriginal empowerment.

A large majority of the elected members on each of our regional councils are Aboriginal. In 2019-2020, the percentage of Aboriginal councillors on Regional Councils ranged from 60-100 percent. These council members have been elected by voters from populations that are predominately Aboriginal. For example, in the East Arnhem Regional Council area, 93.5% of the population is Aboriginal. If an Aboriginal community is dissatisfied with the performance of their democratically elected council member they can vote them off council at the next election. An Aboriginal Corporation may have a Board but it does not have the same level of public accountability of a Local Government Regional Council.

When regional councils are not viewed as Aboriginal controlled organisations, it means they are disqualified from being able to compete for grant funding targeting such organisations. Councils also report an increasing trend of being excluded from tendering processes even though they are often the largest employer of Aboriginal workers in their region.

At the most recent Australian Local Government Association (ALGA) National General Assembly (NGA) in June 2021, voting delegates from councils across Australia unanimously endorsed a motion that all Federal, State and Territory Governments recognise Local

Government councils with majority representation of both Elected Officials and Constituency of Indigenous Australians as Aboriginal controlled entities.

## **Good Governance**

LDM documents state that “Government services will only be transitioned to local organisations that have strong community and organisational governance systems in place. This is to ensure service delivery standards are maintained and the community’s readiness for the transition process” (*Local Decision Making Guidelines for Community*, n.d.).

We agree that good governance is essential and would point out that all elected Local Government Council members receive both mandatory training as a requirement under the NT *Local Government Act 2019* and through supplemental governance training provided by the Local Government sector, including training provided by LGANT.

For regional councils, Local Authorities (LAs) also play an important role with respect to good governance and community accountability. Local Authorities were formally established in 2014 under the NT’s *Local Government Act 2008* to provide a conduit for remote community members to have a structured way to advocate for their community. It provides an important pathway for community members to have a say in, and obtain information about, their respective council’s planning and service delivery in their community. The recently enacted *Local Government Act 2019* has further strengthened the role of Local Authorities within the Local Government system.

Regional councils point out that they engage in local decision making through their Local Authorities whose members are overwhelmingly Aboriginal. Each community has an elected Local Authority comprised of community members who are familiar with community issues and concerns and are best placed to inform Council of any actions. They have direct input to a range of Council business, including budgets, community priorities, community development activities and a Local Authority project fund.

In carrying out their roles, regional councils and the Local Authorities that directly advise them, demonstrate great respect for local voices. This is linked to strong ongoing recognition and respect of Clans, Traditional Owners and connections between them.

It is not clear how transferring service delivery from elected regional councils which are regulated under the *Local Government Act 2019* to an Aboriginal Corporation offers any advantages in terms of governance standards or community accountability.

## **Service Provision Capability**

LDM documents make the important point that local Aboriginal communities and Aboriginal controlled organisations need to be ready to take on the responsibility of service delivery. Some member councils have expressed concern that some communities and Aboriginal controlled organisations are being encouraged to take on service delivery responsibilities before they have the capability to do so successfully. It has been suggested that LDM decision making may be too driven by ideology with insufficient weight being given to making certain that the organisations that would be responsible for the transferred services are ready to be successful.

This is not to say that Aboriginal controlled organisations cannot be successful in delivering services. There are plenty of examples of such successes with Aboriginal Community Controlled Healthcare Services an acknowledged leader in this area. Yet, there are also instances of Aboriginal controlled organisations failing, including instances of their going into

administration. If an Aboriginal controlled organisation is not successful in delivering a transferred service due to insufficient governance or inadequate capacity, it is the community it serves that suffers. This only further sets back already disadvantaged communities.

## **Regional Council Sustainability**

When a service is transferred, it moves from the responsibility of one party to another party. For the party that originally provided the service it leaves a gap. The transfer of a service from a Local Government council leaves a gap that can be hard to fill by a regional council whose financial sustainability is already fragile.

Unlike their municipal counterparts, regional councils have a very limited ability to raise revenue through rates. They are dependent to a significant extent on a combination of contracts for service provision on behalf of Territory Government and Commonwealth Government service plus grant funding of community-based programs. The loss of service contracts can threaten the financial sustainability of a regional council.

Uncertainty about how LDM projects could impact on council service delivery just adds more stress onto an already highly constrained planning environment. The short-term nature of service contracts and program funding creates a lot of uncertainty for our regional councils. Year to year they worry about whether contracts and funding will be renewed. It makes it difficult for regional councils to plan for service provision and make investments in staff, facilities and equipment. The prospect of losing services through LDM processes is one more uncertainty. There is a negative cumulative effect.

The following statements by regional councils reflect the concerns they have about the impact of NT Government LDM processes on Local Government:

“They are only out to take something from us or cost shift to us”.

“Councils are major Aboriginal employers. Should be building not weakening the Local Government sector”.

“Councils would like to do more regional economic development and provide more services but there are not the funds to do it”.

“We are losing access to funding opportunities. It is like trying to survive with one hand behind your back”.

“How can I invest council funds in a piece of new heavy equipment if I do not know if the service contract will be renewed next year?”.

There are also concerns that the LDM process creates competitors of regional councils and Aboriginal corporations. It is creating a zero sum game. This is the opposite to what needs to happen. Given the limited resources on all sides and the magnitude and severity of the problem of Aboriginal disadvantage, we all need to be working more collaboratively to make the funding pie bigger rather than competing for the same piece of the pie.

In terms of a more collaborative approach, the Barkly Regional Deal, offers a more positive model in our view. Announced in 2018, the Barkly Regional Deal is the first pilot Regional Deal in Australia and brings together the three levels of government and local community members to create and implement a long term plan for the economic and social sustainability of the Barkly region. We would encourage a formal review of the Barkly Regional Deal so that lessons and experiences can inform LDM moving forward and help determine if a similar regional approach should be applied in other parts of the NT.

## Precedent Setting De-Amalgamation

In November 2018, the NT Government signed a nine-year Agreement with the Anindilyakwa Land Council (ALC) to progress LDM in priority transition areas of service delivery. The Groote Archipelago LDM Agreement identified as an “outcome sought” that Anindilyakwa people take responsibility for Local Government in the Groote Archipelago through the establishment of an Anindilyakwa Regional Local Government Council.

The Groote Archipelago would be taken out of the East Arnhem Regional Council area and a new Anindilyakwa Regional Local Government Council would be established for the Archipelago including the Alyangula township. The NT Government agreed in principle to the outcome sought but set forth pre-conditions including a detailed assessment of the future viability of each of the East Arnhem Regional Council and a newly formed Regional Council.

Subsequent political statements by ministers have given the impression that de-amalgamation is a *fait accompli* with respect to the Groote Archipelago. This has raised two concerns. The first pertains to the decision making process. LDM is to be based on “community aspirations”. Yet it is too often unclear who represents ‘community’ in a particular LDM context. In relation to LDM engagement, a regional council commented that. “Too often it has become a negotiation with a particular power group - yes this is easier but is that representative of the affected community?”.

If such a serious step as a regional council de-amalgamation is to be contemplated, residents of that council area must be able to have their say about the future of their council. There must be a transparent and fair process for assessing ‘community aspirations’. It is not clear to LGANT that such a process occurred.

The second issue of concern is the precedent that de-amalgamation and the creation of a new regional council would set. The Groote Archipelago LDM Agreement states that agreeing in principle to work towards the proposed service delivery model “does not represent a commitment of the NT Government to de-amalgamate Regional Councils across the NT”. Yet the precedent has been established and this is a concern to the Local Government sector.

In 2008, the Local Government sector underwent major reform resulting in the establishment of the current 17 councils including the nine regional councils. There are fears that the LDM decision regarding Groote Archipelago represents the thin edge of the wedge with more fragmentation of regional councils to come through LDM. There is concern this will lead to a collapse of the current Local Government system in regional areas and see a return to a less sustainable system - the type of system which the 2008 Local Government reforms sought to redress.

The creation of Victoria Daly Regional Council and the West Daly Regional Council in 2014, illustrated to the Local Government sector that the costs associated with de-amalgamation and establishing two regional councils were not offset by gains in servicing or greater sustainability. There was a net loss in funding, that is, less money for two councils than if they had stayed as one.

On 18 May 2021, LGANT’s President (Lord Mayor the Hon Kon Vatskalis) wrote to the Minister for Local Government (Hon Chansey Paech MLA) calling on the NT Government to not approve any amalgamation or de-amalgamation of any council without an independent assessment report on the sustainability impacts on the councils.

## Local Government Council Engagement

The Inquiry's call for submissions noted that a focus of the Committee will be on the impact of Treaty, Truth-telling and Voice on LDM development. The recent proliferation of these separate yet potentially overlapping processes can be confusing for stakeholders including Local Government Councils. It is important that it is made clear to stakeholders how these processes differ and how they might fit together. For example, both Local Indigenous Voice and LDM are place-based initiatives. If a Local or Regional Indigenous Voice structure was put in place where there was also a LDM project, how would that affect stakeholder engagement and decision making?

Some regional council administrators noted that while their council had been initially consulted on a specific LDM project which was a positive, over time they came away feeling that it was more of a "tick the box" exercise rather than meaningful engagement. They felt that way because they could not see how their input had been used.

In discussions with the regional councils, considerable frustration was expressed about the NT Government's LDM engagement efforts. These frustrations are evident in statements such as the following:

"They [NT LDM staff] just tell us what we need. They don't ask us what we need".

"There is initial consultation but then nothing happens. We have lost faith in what they say".

"They [NT Government] don't have enough people on the ground. Local people know our staff and managers because we live here".

## LDM Evaluation

LGANT supports efforts to evaluate the strengths and weaknesses of the LDM policy and its implementation. The NT Government's Local Decision Making Framework Policy (p.24) states the following with respect to monitoring and evaluation:

*Effective monitoring and evaluation is vital to the success of LDM. Monitoring and evaluation is flexible and does not reflect 'monitoring and evaluation' in a traditional sense. For each Project Site it is different, as each project is different. If the goals of a single Project Site change and evolve over time, this should not be considered failure.*

*Crucial to the success of monitoring and evaluation is flexibility and two-way communication. The use of the language of monitoring and evaluation is very important in LDM as it is about 'continuing the conversation' or 'two-way checking in' rather than making people feel they are being tested or monitored. The focus is how the project is going, not targets or data.*

The Policy Framework goes on to highlight the essential roles of cultural adaptivity and liaison. LGANT agrees that these are important roles but traditional evaluation is also important. We want to avoid cherry-picking winners and ignoring problems. It is a false dichotomy to suggest that traditional monitoring and evaluation cannot occur side by side with the 'two-way checking' approach described in the Framework.

Process is critically important but so too are outcomes. Monitoring and evaluation should be used to assist, to inform, to teach rather than to punish. Effective evaluation is needed to ascertain what is working, what is not and provide insights as to how any weaknesses can be

overcome. It is about informing how to do it better. If we don't know what is working or not working, then we run the risk of throwing good money after bad (i.e., sunk cost fallacy). In the absence of monitoring and evaluation, the public is left to judge LDM through 'evaluation by media' which tends to sensationalise both successes and failures.

## Recommendations

- A. That LDM evolve into a more collaborative process; one in which the Local Government sector and especially our regional councils have a more meaningful role. Our regional councils have deep connections with local Aboriginal communities. Most of their elected council members and Local Authority members are Aboriginal. Regional councils are major employers of Aboriginal people. They are experienced in service delivery, have capacity, and uphold strong governance standards. LGANT, as the Local Government sector's peak body, would welcome the opportunity to be a partner in the evolution of Local Decision Making.
- B. That no de-amalgamation of a local council be considered without the affected council and all its residents being a major stakeholder in the decision making process. That the potential impacts of any proposal to de-amalgamate a council be formally assessed and the outcomes be a key input to decision making rather than the assessment occurring after a political decision has been made.
- C. That an evaluation of the Barkly Regional Deal be conducted so that lessons and experiences can inform both LDM as well as how and where future Regional Deals might be implemented in the NT.
- D. That LDM take care not to create competition over limited resources but foster approaches that encourage key stakeholders to collaborate and collectively be more effective in meeting Closing the Gap objectives.
- E. That aspects of formal (i.e., 'traditional') monitoring and evaluation of LDM processes be included alongside 'two-way checking in' so that lessons can be learned and any weaknesses rectified in a timely fashion.
- F. That LDM stakeholder engagement be more transparent with stakeholders being able to see how their inputs (i.e., knowledge, issues and concerns) have been applied in the LDM decision making process.
- G. That the NT Government clarify its definition of an Aboriginal controlled organisation and the reasoning that underpins its definition.
- H. That the LDM Inquiry provide in its report clarity regarding how Closing the Gap, Treaty, Indigenous Voice and LDM can work together to address Aboriginal disadvantage and avoid being at cross purposes.