



**INTERIM RESPONSE TO
WESTERN AUSTRALIA LEGISLATIVE ASSEMBLY EDUCATION AND
HEALTH STANDING COMMITTEE
DISCUSSION PAPER ON REMOTE ABORIGINAL COMMUNITIES**

*Western Australian Local Government Association
PO Box 1544 WEST PERTH WA 6872
Contact
Jodie Holbrook
Policy Manager Community
Tel: 9213 2044
E Mail; jholbrook@walga.asn.au*

The Western Australian Local Government Association

The West Australian Local Government Association is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and the interests of 144 Local Governments.

The Association provides an essential voice for almost 1,400 elected members and over 12,000 employees of the 142 Local Governments in Western Australia and Christmas Island and Cocos (Keeling) Island Councils. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

Background

Over the past decade Commonwealth and State Government policy direction on serving remote Indigenous communities have largely been shaped by a view that reform should centre on transferring responsibility for essential and municipal services from specific Commonwealth programs to mainstream State agencies and Local Government. This approach is generally referred to as the 'normalisation' agenda. In essence the approach involved an expectation that the living conditions and governance in Indigenous Communities can be significantly improved if these communities receive essential services such as power and water and municipal services in a manner similar to other Australians who live in towns or cities.

Of course there are constraints with this policy direction and broader policy approaches which were developed to focus on capacity building of Indigenous communities.

This new Commonwealth approach to Commonwealth Indigenous Affairs provides for bilateral negotiations between the State and Local Government. Underpinning the development of the Bilateral is the Coalition of Australian Government's (COAG) *National Framework of Principles for Government Service Delivery to Indigenous Australians* of sharing responsibility; harnessing the mainstream; streamlining service

delivery; establishing transparency and accountability; developing a learning framework; and focusing on priority area.

In response to the new landscape for Indigenous Affairs and in preparation for negotiations with the State, the Association undertook a survey of the Membership in June 2005, on the Local Government Survey delivery to Aboriginal Communities in Western Australia. Subsequently a discussion paper was developed, though not released.

Information from the Association's survey indicated that a strategic approach, such as the current road and environmental health arrangements, has provided a consistent framework for service delivery.

The survey identified that to build on the strengths of Local Government as a service provider a number of impediments need to be addressed:

- A policy framework that provides leadership to Local Government and supports Council service provision at the local level.
- Agreement between the three spheres of Government on their roles and responsibilities in relation to services
- Agreement between Local Government and communities on Local Government service provision
- A normalisation approach addressing legislative and land tenure impediments
- Building the capacity of Local Government to understand the needs of Indigenous people within their community.
- Adequate funding to Local Government to support Councils to provide services to Aboriginal people
- Building the capacity of Aboriginal communities to respond to the provision of Local Government services
- The facilitation of information exchange between Councils on potential solutions that can be considered within local democratic processes.

Preamble – Local Government in Western Australia

Local Governments have a statutory obligation to provide services to the residents within the community, not only by way of access to town based services and facilities, but also directly to town based and discrete Aboriginal communities. Local Government is impacted upon by the economic and social arrangements of Aboriginal communities.

The breakdown of governance and services within Aboriginal communities is devastating for community members. It impacts on neighbouring towns and communities as people move to larger population centres in search of services. This has direct impact on Local Government.

Before proceeding with a service or facility, Local Government must apply three tests that are outlined in section 3.18(30) of the Local Government Act (1995)

- 1.A local government must satisfy itself that services and facilities that it provides-
- (a)integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body;
 - (b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the commonwealth, the State or any other body or person, whether public or private; and
 - (c)are managed efficiently and effectively.

Whilst the constitutional status of Local Government places constraints on Councils to determine independently their policy stances their does exist choice for scope. Councils can adopt a minimalist position and focus solely on their statutory functions or an activist position playing a catalytic role in the economic and social development of their communities, undertaking functions beyond their statutory obligations. This choice derives as much from ideological imperatives as the pragmatic considerations of Councils and their capacity to fund an expansion of services beyond a statutory role. It explains the difference in functions and activities undertaken by Councils.

Financial Constraints Facing WA Local Governments

Local Government in Western Australia is facing a number of financial constraints, identified both at the national, state and local level. These must be taken into consideration when assessing the implementation of Commonwealth policy positions by Local Government.

The House of Representatives Standing Committee on Economics, Finance and Public Administration Report, *Rates and Taxes: A Fair Share for Responsible Local Government* found that escalating costs and constrained funding along with growing community expectations and a funding gap threatens the future of an efficient and responsive local government.¹

The Association's Systemic Sustainability Study, *In Your Hands Shaping the Future of Local Government in Western Australia, Final Report, December 2006*, found a number of critical issues facing Local Government which include:

- 83 Western Australian Local Governments were assessed as financially unsustainable;
- There is a \$1.7Billion infrastructure backlog;
- There are critical labour shortages in key technical and professional areas central to the current role of Local Government; and
- Cost shifting and the growing compliance roles determined by over 400 pieces of State legislation as significant drivers of cost and sustainability challenges.

Service Delivery Impediments

A number of factors have inhibited Local Governments from servicing Aboriginal communities. These include the financial capacity of Local Government to deliver services; the nature of land tenure and consequential non-rateability of land; the private nature of Aboriginal communities; the fact that the Crown is not expressly bound by all

¹ Australia. House of Representatives Standing Committee on Economics, Finance and Public Administration, 2003, *Rates and Taxes: A Fair Share for Responsible Local Government*, Canberra, p 11.

provisions of the *Health Act* limiting the powers of Local Governments to enforce health provision in Indigenous communities which are located on Crown reserve land; and the areas in which a number of Aboriginal communities are located being exempt from statutory building controls.

The financial capacity of Local Government to provide services has inhibited service delivery. Whilst a National Principle of the Commonwealth Financial Assistance Grants recognizes the needs of Aboriginal and Torres Strait Islander peoples and the WA Local Government Grants Commission has introduced a number of disability factors to address this principle including an Aboriginal Environmental Health Allowance, population dispersion factor, Indigenous factor and Indigenous allowance, it is accepted that current finances of Local Governments is inadequate to fund service provision by Local Government to remote communities.

In addition, Western Australian Federal funding for Municipal Services (such as community power, water and sewerage services, garbage collection, internal road maintenance and dog health programs) are provided directly to Aboriginal corporations who are responsible for the management of these services

Legislative and land tenure impediments to service delivery

The legacy of the land status of Aboriginal communities being situated on Crown reserves impacts on Local Government's statutory obligations to provide services and facilities to the residents of the communities. Statutes are presumed not to bind the Crown and do not unless there is an express provision in a particular statute to the contrary.

Crown land tenure restricts Local Government's ability to apply and enforce a number of Acts. These include:

- Local Government Act: Local Laws do not apply to Aboriginal communities.
- Roads: Local Government's responsibilities of the roads going into Aboriginal communities and the roads within Aboriginal communities depends on their status as a dedicated, public thoroughfare

- Environmental Health: Expressly where specifically expressed as binding the Crown, the *Health Act 1911* is currently held not to apply to land held by the Aboriginal Lands Trust which is an agency or instrumentality of the Crown². Part VIII of the Health Act, which generally relates generally to food, binds the Crown.
- Local Government (Miscellaneous Provisions) Act 1960: Provisions do not apply to any building owner or controlled by, or under the control or management of the Crown in right of the State or a department agency or instrumentality of the Crown in the right of the State.
- Dog Act: Provisions do not apply on Crown Land
- Emergency Management: The current situation in relation to the integration of remote Indigenous communities into local emergency management policy arrangements is haphazard. There is an uncertain relationship between remote Indigenous communities and Local Government.

Amending legislation to bind the Crown is one solution. In lieu of legislative change, Local Government has worked with the State on policy initiatives to facilitate service provision to Aboriginal communities including town planning and building services. State initiatives undertaken in partnership with Local Government;

- Statement of Planning Policy and Town Planning Programme
- Environmental Health Officer Network
- Code of Practice for Infrastructure Development

Another solution put forward by Councils is normalising the communities that is changing the land status from Crown to freehold land. This process takes a number of years.

- The State Government has had a strategic focus on normalisation: providing citizenship entitlements to large, permanent communities on the basis that they should be treated equitably and comparably to mainstream towns.
- This prioritisation of communities for service provision has underpinned State and Commonwealth bi-lateral agreements and the pooling of resources to achieve efficiencies

² 1996 WASC: The Supreme Court in the case, *Atyeo v Aboriginal Lands Trust* held that a Shire Environmental Health Officer could not require the ALT to provide sanitary facilities to a house in Halls Creek because the relevant part of the Health Act was deemed not to bind the Trust which judged as an agent of the Crown.

- Discussion has occurred on a hub and spoke model of service delivery radiating from larger population centres to guide resource allocation
- State initiatives include:
 - Town Reserves Regularisation Programme
 - Remote Area Essential Services Programme
 - Aboriginal Community Strategic Investment Programme
 - Statement of Planning Policy and Town Planning Programme
 - Environmental Health Officer Network
 - Code of Practice for Infrastructure Development
 - Outstation and Homeland Policy
 - Community Management and Government Support
 - Aboriginal and Remote Community Power Supply
 - Energy and Water Efficiency Programme
 - Multipurpose Policing Facilities
 - Bi-lateral Agreements³
- State and Commonwealth Government have been pooling their resources to maximize efficiencies: however the quantum of funding is not adequate to meet current and future needs
- Whilst this new approach aims to reduce waste and duplication there is a need for new State and Commonwealth funding to address the substantial backlog in infrastructure needs on the communities.

It is acknowledged that there is inadequate funding by the State and Commonwealth to meet their responsibilities to communities including community infrastructure and community service. It is recognized that there is a significant backlog in identified and unfunded infrastructure needs on Aboriginal communities including the provision of housing, roads, and community facilities.

³ Integration of Emergency Mitigation Strategies into Remote Indigenous Communities Report of the Senior Officers Working Group to the State Mitigation Committee (2004), p 2

Capacity Building of Aboriginal Communities

Local Government identified poor community administration and governance as an issue facing the communities in relation to Local Government service delivery. They identified that the success of the services often depends on the capabilities of the community administrators. There is concern that Current MUNS funding is often used for administration purposes and this will be lost in the new landscape. There is a need to develop a framework and funding for community governance.

Bilateral Agreement on Indigenous Affairs and the Role of Local Government

The Bilateral Agreement on Indigenous Affairs was signed by the State of Western Australian and the Commonwealth of Australia in July 2006. Local Government was not a signatory. The Agreement establishes an agreed framework and priorities for intergovernmental cooperation and effort in Indigenous Affairs. The Agreement has six key outcomes areas

- Law and Order and safe places for people
- Skills, Jobs and Opportunities
- Health and Strong people
- Sustainable Environmental Health and Infrastructure
- Land Sea and Culture
- Strong Leadership and Governance

The purpose of the agreement is to improve and streamline government services to Indigenous people by having one level of government primarily responsible for delivery of a service or, where jurisdictions have overlapping responsibilities , for services to be delivered in accordance with an agreed, coherent approach. (Bilateral Agreement: 2006)

Local Government, despite ongoing requests, was not party to the Western Australian Bi-lateral negotiations. The State Department of Local Government and Regional Development represented Local Government at all discussions. The Association continues to protest at the lack of Local Government representation and consultation with Local Government.

The Bi-lateral Agreement will not impact all Local Governments in Western Australia, only those Local Governments that contain remote and town based Aboriginal communities. Due to the location of the communities the impact will be greatest on Councils in the Kimberley, Pilbara, Gascoyne, Midwest and Goldfields-Esperance region of the State.

The Bi-lateral states that Local Government should be responsible for services to Aboriginal communities that they would normally provide to comparable non-Indigenous communities. This has implications across all functional areas of Local Government.

Current Commonwealth funding for municipal services, which includes power, water and sewerage operation and maintenance, waste disposal, road and aerodrome maintenance and environmental health activities, landscaping and dog control, along with housing, infrastructure and essential services, is pooled with the State funds through the Agreement for the Provision of Housing, Infrastructure and Essential Services for Indigenous People in Western Australia. This agreement, based on agreed planning, funding arrangements and reporting, expires in June 2008. It is anticipated that new arrangements framed by the bi-lateral will replace this.

The Bi-lateral has acknowledged that the increased involvement of Local Governments will require the development of mechanisms to augment the revenue of Local Government. It articulates that the proposed transfer will involve the development and trialing of new models and approaches to service delivery. The Shire of Halls Creek has been identified as the trial site with parties commencing work on the possible transfer of municipal services funding to the Shire for the Aboriginal communities of Balgo, Ringers Soak, Billiluna and Mulan. However the trial is not expected for completion for another 18 months, which does not align with Bilateral Agreement expectations.

The Association continues to express concern at the time frame for the development and implementation of a new service delivery model/arrangement by June 2008, given the required financial modeling and the potential financial and human resource implications on Local Government.

The current approach of State and Commonwealth Government is to engage with individual Councils to progress the Bilateral Agreement. The Association believes this approach is flawed and without appropriate communication and consultation; Local Government will not be in a position to deliver on the Bilateral Agreement by June 2008.

Whilst the Association will continue to lobby the State Government for greater representation and communication with Local Government, the current process is protracted and is not meeting the needs of Local Government.

There is work being undertaken through the Sustainable Environmental Health and Infrastructure Group (SEHISOG) whose role is essentially to streamline the delivery of housing, essential and municipal services to remote communities. This will include the development of the terms of transfer, funding, timeframes and administrative arrangements. The SEHISOG has developed a Discussion Paper for Local Government and Indigenous Communities consideration.

The paper outlines the Bilateral Agreement and how it impacts on Local Government in Western Australia and discusses the various funding implications, seeking feedback on a range of issues. The feedback from the paper will inform the development of a Cabinet Submission on the State's position regarding the potential transfer of responsibility to the State for the delivery of municipal services to Indigenous communities, and the role of Local Government. This paper will be available shortly for comment.

The Association believes there is opportunity to develop a Local /State Partnership on Service delivery to Indigenous Communities under the auspices of the Local Government State Government Partnership Council.

Although not signatory to the Bilateral Agreement, the success of the policy is dependent on the effective role of Local Government. Just as the State and Commonwealth are in the process of outlining their level of responsibility for services to Indigenous communities through a bi-lateral process, there is a need for Local and State Government to engage at this strategic level.

Principles to guide Local Government's involvement may include:

- Change should support Local Government's democratic role and encourage active participation by the residents of Aboriginal communities in Local Government
- Genuine partnership and dialogue with Local Government for improved co-operation and outcomes for Aboriginal people
- Change must not result in any cost shifting from the Commonwealth or State to Local Government
- Change should develop and promote initiatives that will increase the access to sustainable Local Government services by Indigenous people
- Negotiations should assist Local Government meet service delivery obligations and strengthen the capacity of Local Government to work with Aboriginal communities
- The principle of one level of Government having primary responsibility for delivery should identify outcomes and revenue streams
- Flexibility for Local Governments to work in response to local community needs

There is an opportunity for Local Government and Aboriginal communities to work closely together to deliver positive outcomes to Aboriginal people whilst building the capacity of Aboriginal people at the local level. There is also an opportunity to look at governance and service delivery issues, avoiding duplication and building on the strength of Local Government operational structures.

Report Recommendations

The Association supports in principle the Report recommendations and offers the following comments.

In relation to Recommendation 1 under the auspices of the SEHISOG, Draft State Aboriginal Communities Policy is being developed which may address the sustainability issues surrounding small remote Aboriginal Communities.

In regards to Recommendation 2: we do not support the accountability mechanisms being attached to the Financial Assistance Grants. However we would support accountability mechanisms for the transfer of MUNS funding and specific purpose grants.

The Association makes the additional comment that there is a need for the Australian/ Western Australian Government fund an audit and gap analysis of Indigenous Communities municipal services infrastructure, equipment and practices, and where appropriate funds the upgrading and/or replacement of infrastructure and equipment.