



## LOCAL GOVERNMENT REFORM

The vision of the Anindilyakwa people is for self-determination.

Self-determination is known to provide better outcomes for First Nations peoples. It is the bedrock of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, which provides at Articles 3 and 4:

### *Article 3*

*Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

### *Article 4*

*Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*

Ultimately, the ALC sees this vision being fulfilled through a treaty, a legally binding instrument that will recognise the Anindilyakwa people as the sovereign owners of the Groote Archipelago, and provide for substantive self-governance.

In the short-medium term, the ALC sees local government reform as an important step towards treaty. This paper sets out the vision of the ALC for local government reform and a pathway to self-governance.

Part 2 provides a background to the current local government reform under the LDM Agreement, including a history of the push for a return to local government on the Groote Archipelago. Part 3 sets out a brief overview of the myriad of current governance, administrative and service providing entities on the Groote Archipelago, and the vision of the ALC to have these entities come together under a common Anindilyakwa-led leadership structure. Part 4 sets out the ALC's proposed model for implementing local government reform. Part 5 provides an overview of a possible pathway from this local government reform, to a full treaty providing self-governance on the Groote Archipelago.

## 1 Executive summary

- 1 As part of the implementation of a new, Anindilyakwa-controlled local government, the ALC would like to see a legally binding framework that provides a pathway to self-determination. Critical to that is a forum for Anindilyakwa leaders to meet and set the governance and administrative direction for the Groote Archipelago.
- 2 To achieve that, the ALC would like as part of the local government implementation a legally binding Regional Governance Agreement entered into between the ALC, the new local government council, and the Northern Territory and Australian Governments.



- 3 This agreement would be administered by a Regional Governance Committee. It is proposed the Regional Governance Committee would comprise three elected members of the new local government council, and three elected members of the ALC. The Northern Territory Government and Australian Government would participate as observers/advisers.
- 4 It is also proposed the Regional Governance Committee replace the existing Groote Eylandt Executive Steering Committee, allowing for greater Anindilyakwa input and control of key governance decisions, while maintaining the support of high-level executives in the NTG and Australian Government.
- 5 By installing a Regional Governance Committee by contract, the ALC sees this model could be introduced quickly without requiring legislative change in the short term.
- 6 Ultimately, the ALC's desire is for the Regional Governance Committee to transition into a regional authority, and over time take control of services currently administered by the NTG and Australian Governments. This could be facilitated under a treaty process, and would likely require enabling legislative reform.
- 7 The key component of this reform is to establish and empower one, united leadership on the Groote Archipelago. This proposal is not to extend the powers of the Anindilyakwa Land Council beyond its statutory remit. Its focus is to ensure that the local government reform does not leave the Groote Archipelago with two sets of leadership and no formal mechanism of partnership and unity.

## 2 Background

- 8 On 14 November 2018, the Anindilyakwa Land Council (**ALC**) signed a Local Decision Making Agreement with the Northern Territory Government (**NTG**). That agreement covers economic development, housing, health, education, local government, sustainable power and law, justice and rehabilitation. This agreement is not legally binding.
- 9 Under the LDM agreement, the NTG have agreed in principle to the Anindilyakwa people taking responsibility for local government in the Groote Archipelago by establishing an Anindilyakwa Regional Local Government Council.
- 10 The Anindilyakwa people have been calling for a return of local government for many years. Prior to the formation of the East Arnhem Regional Council in 2008, there were three local government councils on the Groote Archipelago. These councils were community hubs, with broad-ranging responsibilities, including for housing, roads, outstations, cemeteries, power and water, CDP, sport and recreation, parks and gardens, after-school care and vacation programs, aged care, the women's centre, safe house, rubbish collection, linguistics and print shop.
- 11 Since the formation of the EARC, the Groote Archipelago has lost these community hubs. Two Groote Archipelago representatives on a council servicing the needs of nine communities across the broad foot-print of East Arnhem has not met the desire for true community representation and decision making.



- 12 In 2013, the ALC was invited by the NTG to participate in consultations about options for regional governance in the Northern Territory. The consultation paper released at that time canvassed two options; a regional council or a regional authority. The regional council model was based on the existing shire council model. The regional authority model was presented as a 'stronger regional council' that would include the Australian Government, NTG and ALC as partners, and would have the potential to grow into the delivery of services currently delivered by government.<sup>1</sup>
- 13 The regional authority model has been described by the NTG as a 'long term' goal for regional governance. The ALC remains committed to that objective, and sees a regional authority model as a means of implementing a treaty on the Groote archipelago.
- 14 In the interim, however, the ALC considers a return of local government as an important step towards a regional authority, with the express objective that the framework establishing a local regional council also facilitate a transition to a regional authority model.
- 15 In 2014, the ALC commissioned strategic assessment and advice from Michael Malouf, an independent expert with extensive experience in local government (**Malouf Paper**). The Malouf Paper proceeds on the basis of NTG advice that the establishment of a regional authority would not be possible in the short term. It recommended that a 'hybrid regional council' be established. The key feature of the 'hybrid council' proposal is that while it would perform the function of existing local government councils, it has the structure of a regional authority in that it would be made up of both directly elected councillors as well as key stakeholder representatives.
- 16 The rationale behind both the regional authority and 'hybrid council' model is that it facilitates a joint leadership model between the ALC and new local government entity. For a population of 2000 people, a united leadership model through structural cooperation is critical to delivering on the vision of the Anindilyakwa people.
- 17 The *Local Government Act 2008* (NT), while recently amended to allow for a transition to a new local government, does not provide for the hybrid model the ALC proposed. The problem with the model under the LGA is that there is no mechanism for councillors to be appointed by stakeholders, only directly elected. ALC Board members will likely be conflict barred from being elected to the local government council. In effect, there is no mechanism in the legislation to allow for meaningful regional governance across the new council, the ALC and other existing stakeholders. Without some form of legally binding partnership, this model risks the introduction of duplication, divergence and inefficiency between the new local government and existing service providers and governance bodies.
- 18 The next decade is going to be a critical time for the Groote Archipelago. Under the LDM Agreement, the Anindilyakwa people will continue to take ownership of service delivery in health, education, housing and economic development. At the same time, the South 32 manganese mine is winding down to closure, and the Anindilyakwa people will transition to economic independence through the establishment of their own mining operation and aquaculture industry.

---

<sup>1</sup> Northern Territory Government, *Your Council Your Voice: Options for Regional Governance in the Northern Territory*, Consultation Paper, Regional Governance Working Group, March 2013.



- 19 The local government initiative is the centrepiece of local decision making. It is the mechanism that will tie together the commitments in the LDM Agreement for local control over housing, economic development, law and justice, education, health services, and sustainable power. Control of, and responsibility for, the delivery of local government is a catalyst for empowerment. The ALC sees local government reform as a pathway to true self-governance on the Groote Archipelago through a treaty agreement. This process has the potential to be the most significant change for the Anindilyakwa people since the Australian Government recognised their inalienable ownership of the Groote Archipelago under the *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)*.
- 20 The LDM Agreement already captures the long-term vision of the Anindilyakwa people for self-governance. Under the long-term initiatives, it provides for the transition of control from the NTG to the Anindilyakwa people key services currently delivered by the NT Government and the Australian Government. The ALC aims, through this paper and the Implementation Plan for the creation of an Anindilyakwa local government council, to set a framework that will enable and facilitate this vision.

### **3 Stakeholder overview**

- 21 An important aspect of the push for self-governance on the Groote Archipelago is to have one, Anindilyakwa controlled governance body.
- 22 Currently, while the Groote Archipelago is a small population of 2000 people, there is a myriad of disparate entities responsible for governance, administration and service delivery. A brief summary of these entities and their functions are set out below.
- 23 It is critical that a new local government entity is set up to facilitate cooperation and a unified vision between these entities. Such cooperation must be structurally sound, administratively efficient and legally binding.

#### **3.1 Anindilyakwa Land Council**

- 24 The ALC is established under the ARLA. It functions to ascertain and express the wishes and opinions of the Anindilyakwa people as to the management of the land and sea in the Groote Archipelago region, to protect interests of Traditional Owners, to assist in protection of sacred sites, to assist Anindilyakwa people in traditional land claims, to negotiate with persons desiring to obtain an estate or interest in the land, to assist Traditional Owners in carrying out commercial activity, and to supervise and provide administrative and other assistance for Land Trusts holding Indigenous land in the Groote Archipelago region.
- 25 One of the unique features of the ALC is its level of engagement in community matters, including direct responsibility for the funding, design and in some cases the delivery of a broad range of community services include aged care and disability services, sports and recreation programs, maintenance of parks and gardens, community safety programs, cultural programs, general community support services and civil infrastructure.





### 3.2 East Arnhem Regional Council

- 26 The EARC was formed in 2008 and replaced the three Groote Archipelago local government councils. It functions under the *Local Government Act 2008* (NT). Its head office is based in Nhulunbuy, and it services the three large Groote communities, along with six Yolngu communities in the East Arnhem region.
- 27 Currently on Groote, EARC provides services including road maintenance, sport and recreation programs, animal management and cemetery management.
- 28 Under the current proposal, the EARC will be replaced with an Anindilyakwa-controlled local government council based on the Groote Archipelago.

### 3.3 Northern Territory Government

- 29 The NTG delivers a broad range of services directly on the Groote Archipelago, as well as through government agencies. NTG delivered programs and services include the three government schools, health clinics, police, children & family services (including the safe house and connected beginnings program). The NTG also funds the delivery of a number of local government service areas through EARC.

### 3.4 Australian Government

- 30 The Australian Government also delivers core community services on the Groote Archipelago through partner agencies such as Centrelink, the National Disability Insurance Scheme and various local government service areas delivered through EARC. Programs funded by the Australian government include aged care services, and the Remote School Attendance Strategy.

### 3.5 Executive Director of Township Leasing

- 31 The EDTL is established under the ALRA. It holds the head-lease over Angurugu, Umbakumba and Milyakburra and is responsible for administering all land within that area in partnership with the Traditional Owners.

### 3.6 Groote Eylandt Executive Steering Committee

- 32 The Groote Eylandt Executive Steering Committee (**GEESC**) provides a forum for the ALC, NTG and Australian Government to set the high-level strategic direction for service delivery and governance across the Groote Archipelago.
- 33 GEESC was ultimately born out of the original Regional Partnership Agreement dated 20 May 2008 between the ALC, NTG and Australian Government (**RPA**). The objective of the RPA was to achieve sustainable and measurable improvements on the Groote Archipelago, and for the parties to work together to coordinate services and effectively deliver initiatives across communities in the regional in response to locally identified need.



34 GEESC has provided a highly successful governance model that sits above the LDM Agreement. It is attended by senior delegates of the partner agencies, and is a forum for big picture support to the Groote Archipelago. Initiatives championed through GEESC include the delivery of a police station in Angurugu, and an upgrade to the Telstra back-haul infrastructure providing telecommunications services to Groote Eylandt.

### 3.7 Local Decision Making Entities

35 Under the LDM Agreement, several local Aboriginal corporations and other entities have been established to take control of service delivery and economic development. These include:

- (a) Anindilyakwa Housing Aboriginal Corporation, which is responsible for the construction of housing as well as property and tenancy management
- (b) Groote Eylandt Bickerton Island Primary College Aboriginal Corporation – responsible for education, including the construction of a new boarding college on Bickerton island, community engagement with existing government schools and the design and implementation of a bi-lingual curriculum
- (c) Community Justice Group – responsible for law, justice and rehabilitation matters, including liaising between community and law enforcement agencies, local court and matters ancillary to the construction of a Cultural Rehabilitation Centre.
- (d) Anindilyakwa Advancement Aboriginal Corporation – majority shareholder in Winchelsea Mining Pty Ltd (Joint Venture)
- (e) Groote Holdings Aboriginal Corporation – designed to hold in trust major infrastructure and assets as well as to provide services for social and economic development of all Traditional Owners
- (f) A range of clan based Aboriginal Corporations to develop seafood export industry on lands and lagoons across the Groote Archipelago

36 The model under the LDM Agreement is that while the ALC facilitates the design of an Implementation Plan in each service area, service delivery is ultimately made the responsibility of an independent, Anindilyakwa-controlled organisation. The ALC supports these local champions through its Royalty Development Unit, but does not seek to control their operation. *It is beyond the remit of the ALC to directly deliver these services to community, however it is critical that this model include structured coordination both between the ALC and the LDM entities, and as between LDM entities, to ensure all parties are working together.*

## 4 Proposed model for Regional Governance Committee

37 As noted above, the ALC's original vision was for a regional authority that allowed for a joint Anindilyakwa leadership structure across the governance, administrative and service providing entities.

38 On the advice from the NTG that a regional authority was not possible, the ALC sought a 'hybrid council' model, that would allow a joint leadership structure between the new local government council and the ALC.

39 Presently, the Local Government Act does not allow for a hybrid council model.





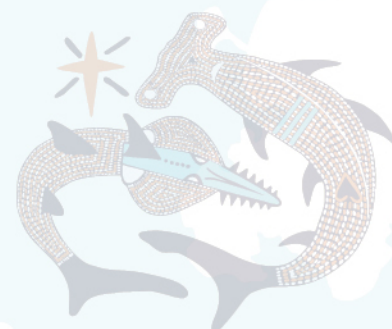
- 40 Given these two options are not on the table, the ALC proposes that a Regional Governance Agreement is entered into by the ALC, the new local government council, the NTG, the Australian Government, and – possibly – appropriate LDM Entities.
- 41 The Regional Governance Agreement would be legally binding, and be administrated by a Regional Governance Committee. This would provide for a forum whereby archipelago-wide strategic, funding and governance policy direction can be set by Traditional Owners with appropriate support from key stakeholders.
- 42 The ALC proposes the Regional Governance Committee replace the existing GEESC. The precise governance structure would be worked out in partnership with the NTG and Australian Government, however the ALC would like it to build on the success of GEESC. At a minimum, it is envisaged the Regional Governance Committee would have the following core features:

#### **4.1 Membership**

- 43 Membership would be majority Anindilyakwa controlled, comprising three nominated members of the ALC and three nominated members of the new Local Government Council.
- 44 NTG and Australian Government representatives would participate as observers and advisers. It is hoped the same level of coordinated partnership and participation of senior government delegates at GEESC would continue with the Regional Governance Committee.
- 45 There would be the possibility for membership or participation of other appropriate stakeholders, including the LDM Entities, police and South32.
- 46 It is intended that the Regional Governance Committee operate as a consensus forum, rather than a voting 'board-style' entity.
- 47 When the Regional Governance Committee develops into a regional authority, it would also include directly elected members.

#### **4.2 Functions**

- 48 The Regional Governance Committee would meet quarterly, and focus on high level governance policy. This could include:
- (a) Allocation of funding / contracts for service delivery
  - (b) Member reporting on service delivery
  - (c) Forum to enable strategic alliance and efficiency of service delivery





- 49 The Regional Governance Agreement would provide for key commitments from partners, including:
- (a) that the NTG and Australian Government will seek the endorsement of the Regional Governance Committee for all funding decisions on the Groote Archipelago;
  - (b) that the Regional Governance Committee will endorse all third-party contractors delivering services in the Community; and
  - (c) that the Regional Governance Committee will discuss and determine funding requests from stakeholder organisations, including funding sought by the new Anindilyakwa local government council from the ALC.
- 50 Over time, it is envisaged the Regional Governance Committee would grow in responsibility, and ultimately transition into a regional authority. This is explored in more details below.

## 5 Future pathway to self-governance

- 51 It is proposed the Regional Governance Committee could, over time, transition into a regional authority and progressively take control of services currently delivered by government.
- 52 The proposed regional authority would replace the Anindilyakwa local government council. Importantly, its remit would be far broader than what is provided for under the *Local Government Act*, and in time it could be vested with powers to provide true self-governance.
- 53 The Regional Governance Committee would be the appropriate body to map out the transition from a local government council to a regional authority.
- 54 The strength of this model is that it provides a clear pathway to self-governance, but offers a stable transition that sets the Anindilyakwa people up for success. While the proposed Regional Governance Committee would be convened by contract, and in the ALC's view avoid the need for legislative change in the short term, the regional authority model would be expected to require legislative reform providing for true Anindilyakwa self-governance.
- 55 In the ALC's view, this pathway aligns with both the recommendations in the Indigenous Voice Co-Design Interim Report<sup>2</sup>, and the Treaty Discussion Paper<sup>3</sup>.

### 5.1 Alignment with Indigenous Voice Co-Design Interim Report

- 56 The Indigenous Voice Co-Design Interim Report puts forward a principles-based framework for Local and Regional Indigenous Voice. The purpose of this model is “to enable Aboriginal and Torres Strait Island peoples in every community to have a greater say in public policy, programs and service delivery affecting their lives through shared decision making in partnership with governments”<sup>4</sup>. The scope of the proposed Local and Regional Voice function is to “undertake community engagement, provide advice to governments and other stakeholders, undertake and facilitate shared decision making with governments and engage with the national voice”.

<sup>2</sup> Indigenous Voice Co-Design Interim Report, October 2020

<sup>3</sup> Northern Territory Treaty Commission, Treaty Discussion Paper, 30 June 2020

<sup>4</sup> Indigenous Voice Co-Design Interim Report, p70.





- 57 The principles of the Local and Regional Voices are empowerment, inclusive participation, cultural leadership, community-led design, non-duplication and links with existing bodies, respectful long-term partnerships, transparency and accountability, capability driven and data and evidence-based decision making.
- 58 In the ALC's view, these principles would be reflected in the Regional Governance Committee model proposed in this paper and a future regional authority. Indeed, if the Groote Archipelago was nominated as a 'region' under the Indigenous Voice Co-Design stage 2 process, the regional authority could become an Anindilyakwa Local & Regional Voice Structure.
- 59 The Indigenous Voice Co-Design Interim Report recommends that administration of funds and programs are out of scope for local and regional voice functions, although the framework does allow for flexibility and tailored arrangements in each region<sup>5</sup>. In the ALC's view, this function would come over time through a treaty agreement with the Groote Archipelago.

## 5.2 Alignment with Treaty Discussion Paper

- 60 The Treaty Discussion Paper presents four possible phases towards a First Nation treaty in the Northern Territory:
- (a) Phase 1 – LDM Agreement with a minimum entry point of community led – government funded service delivery;
  - (b) Phase 2 – Local Government Body, whereby the First Nation assumes all local government responsibility in addition to all LDM agreements in place;
  - (c) Phase 3 – Regional Authority, whereby the First Nation delivers all key Northern Territory government services on its country; and
  - (d) Phase 4 – First Nations Self-Government, including law making and tax raising powers as well as service delivery arrangements.
- 61 The current local government reform on the Groote Archipelago presents an opportunity to clearly lay out a pathway through these phases to self-government.
- 62 As the Treaty Discussion Paper notes, local circumstances and aspirations of First Nations ought to determine substantive outcomes from a treaty agreement.<sup>6</sup>
- 63 On the Groote Archipelago, the LDM Agreement is delivering substantive outcomes, including in the following areas:
- (a) Education, including the implementation of an Anindilyakwa designed bi-lingual curriculum, increased training pathways for local teachers and the construction of a local residential boarding school on Bickerton Island.
  - (b) Housing, including local control over the design and construction of houses, and local responsibility for property tenancy and maintenance.
  - (c) Economic development, including the establishment of the Winchelsea Mining joint-venture, an Anindilyakwa controlled mining operation on Winchelsea Island and the development of a local aquaculture industry.
  - (d) Law, Justice and rehabilitation, including the establishment of a Community Justice Group to have a real voice in community justice matters across the archipelago.

<sup>5</sup> Indigenous Voice Co-Design Interim Report, p84.

<sup>6</sup> Treaty Discussion Paper, p44.

- (e) Health, with the commitment to introduce, by June 2021, an Aboriginal Medical Service, which are recognised across the country as a highly successful model to deliver health services in a culturally appropriate way.
- 64 What is desired, and what a treaty could provide, is bringing these initiatives together under a true self-government arrangement exercised directly by Anindilyakwa people within the Groote Archipelago.
- 65 The Regional Governance Committee proposed in this paper is a first step towards that end. Once the new Anindilyakwa Local Government Council is established, the Regional Governance Committee provides a clear pathway through phases 3 and 4 outlined above – being to a regional authority, and ultimately a First Nations Self-Government.
- 66 The ALC hopes this progression would happen in concurrently with the framework put forward in the Treaty Discussion Paper for treaty negotiation (see **Fig 1** below). Implementing that framework will require large structural change to enable negotiations to commence, both on a Territory-wide level and a local level. On the ‘government side’ of preparation for treaty negotiations in the Northern Territory, the Treaty Discussion Paper recommends the establishment of a proposed Interim Treaty Commission, a legislated Treaty Commission, a Treaty Tribunal and an Office for First Nations Treaties. This will take time.
- 67 However, the ALC does not see this as an impediment to preparedness on the part of First Nations.
- 68 Importantly, in preparation for treaty negotiations, the Treaty Discussion paper recommends First Nations create a formal governing body, ensure its land tenure is secure and there are no disputes, ensure its land borders are not disputed and settling a process for determining citizenship.<sup>7</sup> On the Groote Archipelago, land tenure, borders and citizenship process are well established and secured under the ALRA. The establishment of a regional authority as a formal governing body would ensure the Groote Archipelago is well-prepared to commence treaty negotiations.
- 69 Under this model, a regional authority on the Groote Archipelago could – in time – become a First Nation Government. The Treaty Discussion Paper canvasses international best-practice models for treaty. These include the example of the Tla’amin Nation in British Columbia, which has law-making and regulatory powers including over Tla’amin land, resources, health, education, language and culture, cultural heritage, land management and public works.<sup>8</sup> That treaty also provides for financial settlement, service delivery, taxation rights and an agreed dispute resolution mechanism. There is no reason an Anindilyakwa Regional Authority could not perform a similar function.

---

<sup>7</sup> Treaty Discussion Paper, part 6.2.1, p72.

<sup>8</sup> See Treaty Discussion Paper, part 5.2.4 BC Treaty Example: The Tla’amin Final Agreement (Treaty)



## 6 Conclusion

- 70 The ALC has produced this paper to inform the design and implementation of the LDM commitment to return local government to the Groote Archipelago.
- 71 What we hope to make clear in this paper is that while the establishment of an Anindilyakwa Local Government Council is an important development, it is part of a transition to full self-determination on the Groote Archipelago.
- 72 Instead of passively waiting for legislative reform, the ALC is determined to implement this initiative in a manner that will enable a clear and effective pathway to a regional authority, and ultimately a self-government.
- 73 It's proposed model of introducing a legally binding Regional Governance Agreement overseen by a Regional Governance Committee will provide for both greater Anindilyakwa control over service delivery in the short term, as well as a future path to treaty.





### 6.2. Proposed Northern Territory First Nations Treaty Negotiating Model

As discussed in the introduction to section 6.1, the proposed model describes a process by which treaties can be negotiated. Diagram 5 depicts the proposed negotiating model and its elements are then described in more detail.

**Diagram 5**  
NT Treaty Negotiating Model

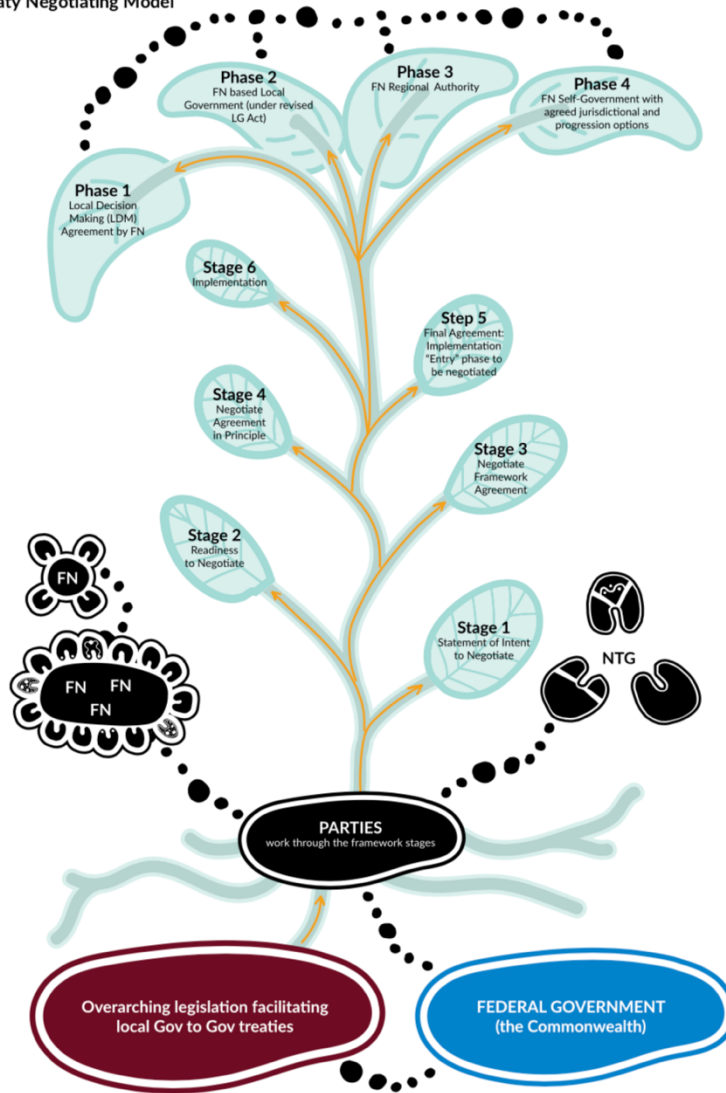


Figure 1 - Proposed Northern Territory First Nations Treaty Negotiating Model; Treaty Discussion Paper p71

