



REF: CC-RES-ADVICE

**Constitutional Commission Conclusions and Recommendations:  
Advisory District Councils**

**15 October 2021**

In its Post-Election Update, the Constitutional Commission drew attention to the absence of Advisory District Councils with the following remarks:

*[T]he Constitutional Commission has previously highlighted the absence of legislation in force to provide for Advisory District Councils, as obliged by section 119. In its Press Release entitled Constitutional Commission Recognises International Day of Democracy on 15 September 2017, the Constitutional Commission explained that: “while such a law was enacted in 2011, this legislation was never brought into force and may now benefit from fresh review and evaluation in light of subsequent constitutional developments, including the establishment of single-member constituencies”.*

*However, it is already apparent that there is an obvious deficit in respect of the supplementary legislation mandated in section 119 of the Constitution for Advisory District Councils. We write therefore to advise that the Constitutional Commission is presently considering the content of such legislation and to request that if any new efforts are to be made on the implementation of such legislation that the Constitutional Commission be duly consulted.*

Having now reviewed the Advisory District Councils Act, 2011 (“the 2011 Act”) in full, the Constitutional Commission further notes the following:

1. The Constitutional Commission would not recommend bringing the 2011 Act into force, as drafted, at this time;
2. Legislation establishing Advisory District Councils is still required and given the express mandate in the Constitution regarding Advisory District Councils and the already lengthy delay to date in bringing the legislative basis for these Councils into force, this is a matter that should be addressed on an urgent basis;
3. In bringing such legislation into force the Constitutional Commission recommends that further consideration ought to be given to:
  - a. The Primacy of the Advisory Function

- i. Section 119 of the Constitution provides that: “Subject to this Constitution, a law enacted by the Legislature shall provide for the establishment, functions and jurisdiction of Councils for each electoral district to operate as advisory bodies to the elected members of the Legislative Assembly”;
  - ii. While reflected in their name, it should nevertheless be emphasised that these Councils are intended to be “advisory” as opposed to administrative, which means that Advisory District Councils should be empowered to make recommendations but not to take actions enforcing such recommendations;
  - iii. The Constitutional Commission believes that this advisory function is appropriate in that it is intended to feed advice into and inform the elected Members of Parliament, rather than establishing a separate level of local government in the Cayman Islands;
- b. The Impact of the Introduction of Single Member Constituencies
  - i. As a result of the implementation of single member constituencies subsequent to the enactment of the 2011 Act, the old electoral districts of West Bay, George Town, Bodden Town, North Side, East End and Cayman Brac and Little Cayman (“the Old Electoral Districts”), which are referenced in Schedule 1 of the 2011 Act, have been replaced by 18 single member electoral districts;
  - ii. As a consequence of the new electoral system, the new single member constituencies would all be considered to be districts for the purposes of Advisory District Councils;
  - iii. The Constitutional Commission considers that there is merit in reconsidering whether Advisory District Councils should now be established for each single member constituency and each individual Member of Parliament; or whether it would be preferable to establish Advisory District Councils on the basis of the Old Electoral Districts, whereby an Advisory District Council would service all of the elected single member constituency Members of Parliament covered by an Old Electoral District;
  - iv. Potential advantages of organising Advisory District Councils around the Old Electoral Districts and the communities that these traditionally reflected and indeed still do reflect, which the Constitutional Commission has noted, are:
    - (i) an opportunity to focus the work of Advisory District Councils on community issues and to engender a greater sense of community;
    - (ii)

avoiding unnecessary politicisation of Advisory District Councils; and (iii) avoiding potential duplication of resources and conflicts;

- v. The Constitutional Commission acknowledges that North Side and East End, which were effectively single member constituencies even before the new electoral system, may require special consideration; and without intending to be prescriptive, it may be that an Advisory District Council serving the Eastern Districts of North Side and East End, with sub-committees for each individual constituency, could facilitate sufficient input from the discrete communities as well as appropriate consideration of their common needs;
  - vi. While one Advisory District Council could serve Cayman Brac and Little Cayman, a similar sub-committee structure could also ensure that the needs of each of the Sister Islands, and Little Cayman in particular, are met;
- c. Advisory District Councils in the Absence of the Legislative Underpinning
- i. The Constitutional Commission also acknowledges that in the absence of legislation to introduce Advisory District Councils, some Members of Parliament have proactively established their own advisory bodies to fill the void;
  - ii. While these advisory bodies have been a positive step in that they will have provided constituents with a voice and a vehicle for feeding ideas and information to their Member of Parliament; if such bodies are simply appointed by a particular Member of Parliament, there is an inherent danger that their membership could be restricted to political supporters and that the utility of the body could then be compromised;
- d. Composition
- i. The Constitutional Commission is also troubled by the way in which it was proposed that Advisory District Councils would be composed under the 2011 Act; and thus recommends consideration of alternatives to the process by which appointments are made by the Governor in Cabinet, which would be controlled on the government of the day, notwithstanding that two members of each Advisory District Council were to be recommended for appointment by the Leader of the Opposition;
  - ii. The Constitutional Commission would prefer to see Advisory District Councils detached from national politics, as defined and dictated by the periodic results of General Elections, so that such Councils could provide independent advice to Members of Parliament;

iii. While the Constitutional Commission is aware that in the constitutional talks that resulted in the 2009 Constitution and the introduction of Advisory District Councils there was a resistance to electing Advisory District Councils, the Constitutional Commission notes that elections or indeed any other methods of composition (such as a random sample of constituents drafted by lot, which has proved effective in the Citizen's Assemblies in Ireland) are not precluded by the Constitution;

e. Maximising Engagement

i. If Advisory District Councils can be re-imagined with a more community orientated focus and detached from national politics, the Constitutional Commission also notes that this could provide an opportunity to look at engaging elements of our communities who are not able to vote or stand in Parliamentary elections in the important community-based activities of Advisory District Councils.

f. Conclusions

In summary, the Constitutional Commission's conclusions as regards Advisory District Councils are:

- i. There has been a significant failure to implement the legislation necessary to bring Advisory District Councils into being;
- ii. Notwithstanding that the 2011 Act is already on the statute book, this should be revisited;
- iii. Given what is already a long-standing delay in realising the constitutional instruction to establish Advisory District Councils, this matter should be considered urgent and the Constitutional Commission strongly recommends that the necessary steps will now be taken accordingly.

The Constitutional Commission trusts that the recommendations contained in the enclosed are instructive as to how this matter could be advanced; and, to these ends, the Constitutional Commission is available to develop these recommendations and, as always, to further assist generally as may be required.