

Explanatory Statement

LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL 2025

SERIAL NO. 20 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR LOCAL GOVERNMENT

GENERAL OUTLINE

This Bill proposes to amend the *Local Government Act 2019* (the Act) and make consequential amendments to the *Local Government (General) Regulations 2021* (the Regulations).

The purpose of this Bill is to remove several deficiencies identified in the Act, as a part of a staged approach. This Bill addresses the first tranche of the proposed amendments which modernises and amends the terminology used to bring the Act up to date with modern practices in the local government sector, and removes references to outdated practices ensuring efficiency for the local government sector.

The proposed amendments are grouped as follows:

1. Prospective councils;
2. Elections and casual vacancies;
3. Notification requirements; and
4. Miscellaneous changes.

NOTES ON CLAUSES

Part 1. Preliminary matters

Clause 1. Short Title.

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Local Government Legislation Amendment Bill 2025*.

Clause 2. Commencement.

This clause sets out how the amendment Act will be commenced. The Act will commence on the day the Administrator's assent to this Act is declared in the Northern Territory Government Gazette. In this case, this will be done by notice given by the Administrator in the Northern Territory Government Gazette. If for any reason a provision of the Act does not commence before 18 March 2027, it commences on that day.

Clause 3. Act amended

This is a formal clause which indicates that the Act is being amended by this Bill.

Part 1.3. Interpretation

Clause 4. Section 7 amended (Definitions)

The clause amends section 7, which contains definitions for terms used within the Act. The clause removes reference to 'public notice' to avoid unnecessary confusion. Presently, the term is defined as meaning a 'notice published in accordance with section 11'; however, the Act makes references

to 'public notices' throughout, which creates confusion as to what a public notice is. The amendment keeps the term 'public notice' in sections 11, 241 and 273 which are intended to operate independently.

Additionally, this clause inserts a new definition of 'prospective council' to aid in providing clarification.

Part 2.2. Constitutive Powers

Clause 5. Section 19 amended (Prospective councils)

This clause provides clarification regarding powers of prospective councils by making clear the rights, liabilities and obligations of a prospective council and when they transfer to a local government council. Presently, the Act is not clear on which council duties are required to be performed by the single appointed person constituting a prospective council and when the newly constituted local government council takes over those responsibilities. It is also noted that it would be impractical to require a single person to be required to fulfil all the obligations imposed on a council. This makes the powers explicitly clear.

Clause 6. Sections 19A,19B and 19C inserted (Protection from liability, performance of council functions before election of members of local government council and other transitional orders)

Section 19B has been inserted to make it clear that liability limitations afforded to local government councils are afforded to prospective councils when fulfilling their obligations, roles, and responsibilities. Currently, it is not clear whether the same protections are afforded to the person appointed to constitute a prospective council, which is an undesirable unintended consequence of the current version of the Act.

Sections 19A and 19B are inserted to provide clarity in situations where a local government area is divided, abolished, merged, or where borders are changed. The amendments aim to clarify who is responsible for the functions of the council during the transitional phase including the operational aspects of the council. This section is intended to be read in conjunction with existing sections 18 and 20 to address the disposition of land and assets of council, and by-laws. Further, it clarifies that when a prospective council is constituted, and before the general election for a local government area, it is not intended for there to be two body corporates for a single local government area.

The Bill provides this clarity by a new default position addressing the performance of council functions before a general election of council. It is recognised that local government councils are not a one size fits all. The Bill also establishes that the Administrator or Minister may, by *Gazette* notice, provide an order in relation to the functions of the prospective council and the existing local government council that covers the period until the day after the general election results are declared.

For example, a local government area which has been divided, may require an existing local government council to continue to provide service delivery to the area no longer within their jurisdiction for a period of time to enable the continuity of services, or to provide information and documents to a prospective council to enable the smooth transition of operational manners, employment and/or service delivery.

Additionally, the Administrator may, by *Gazette* notice, make a transitional order to assist with specific transitional matters for individual local government councils and prospective councils. The introduction of this power is to assist with ensuring the smooth transition for new councils in newly established local government areas. The Bill also grants the Minister these same powers, maintaining consistency with the constitutive powers within the Act. The amendments make it clear that a council or prospective council must comply with the transitional order, and that the Chief Executive Officers (CEO) of the council, and the person constituting the prospective council must take all reasonable steps to facilitate compliance with the transitional order. Under the existing section 317, if the transitional order is not complied with, and relates to financial responsibilities, a financial controller may be appointed to implement the financial controls and perform other related duties.

Part 3.2. Local Government Representation Committee

Clause 7. Section 28 amended (Powers of committee)

This clause replaces the word ‘determination’ with the word ‘recommendation’, which aligns with the purpose of the section which enables the Committee to serve as a mechanism for informed decision-making and guidance to the Minister and Administrator.

Part 3.3. Municipal, regional or shire plans

Clause 8. Section 35 amended (Municipal, regional or shire plans)

This clause deletes the reference to publish a notice ‘in a newspaper circulating generally in the area’ when inviting written submissions on the draft plan. This amendment will modernise the terminology within the Act to reflect the modern practices of the local government sector.

This clause also inserts the phrase ‘publication of’, to provide clarification that the 21-day timeframe for written submissions begins from the date of the publication of the notice.

Part 4.2. Subdivision 2 Casual Vacancies

Clause 92. Section 54 amended (Filling casual vacancy generally)

This clause is amended to establish certainty that the Northern Territory Electoral Commission has the authority to hold by-elections for casual vacancies in the period of time referred to in section 54(2)(a) of the Act. It also provides clarity that elected members are required to make a resolution to determine which method of filling the vacancy will be used. This keeps it in line with other similar provisions in the Act.

Several councils have experienced challenges working through an internal appointment process based on conflicts of interest, unclear procedures, and concerns about the democratic implications of not allowing the public a vote. However, other councils have found the appointment process to be effective for their communities. It is appropriate that councils are given the option to decide which approach best suits their circumstances, in line with the original intent when drafting the Act.

The Bill modifies the provision so that councils have the discretion to choose between holding a by-election or appointing a replacement member by a vote of existing members, in accordance with council policy.

Clause 10. Section 55 amended (Reinstatement if member stands as candidate)

This clause is amended to replace the word 'known' to 'declared' to provide certainty over the timing requirements. The clause allows for a person to resign from council to contest elections for the Legislative Assembly, the Commonwealth House of Representatives, or the Senate, to be reinstated if they apply to the Council Chief Executive Officer within seven days after the result of an election is declared. This terminology has created confusion as to when the timeframe begins.

Clause 11. Section 65 amended (Filling casual vacancies – principal member)

The clause is amended to provide certainty that a local government council vote is required to determine the method in which they would like to fill the vacancy of the principal member in accordance with the options in this clause.

Part 6.1. Council Meetings**Clause 12. Section 93 amended (Publication of notice)**

This clause removes references to publishing a notice on a notice board at the council's public office, noting that this is an outdated method that few people use to obtain information about council meetings. It is noted that the requirement for publishing notices on a notice board at the council's office does not preclude councils from continuing to do so if that is a method which works for their constituents. It does however, bring the provision in line with modern practices and provides greater flexibility for local government councils to do what is best for them.

Part 6.2. Meetings of audit committees, council committees and local authorities**Clause 13. Section 97 amended (Convening of meetings)**

This clause omits the outdated references to posting a notice meeting on a notice board at the council's office as a pre-requisite requirement.

Part 6.3. Provisions of general application to meetings of audit committees, councils, council committees and local authorities**Clause 14. Section 100 amended (Postponement of meeting)**

This clause omits the outdated references to posting a notice for a postponement of a meeting on a notice board at the council's office.

Additionally, it inserts the requirement in the corresponding regulation to publish the postponement on the council's website to modernise the provision.

Part 6.4. Meeting of electors**Clause 15. Section 103 amended (Calling meeting of electors)**

This clause removes the outdated references to requiring a council to post the notice calling for a meeting or electors on display at the council's public office and in a newspaper. It keeps the reference to publishing the notice on the council's website.

Part 8.2. By-elections**Clause 16. Section 136 amended (By-elections)**

This clause is amended to provide clarity and consistency in accordance with amended clause 54.

Part 8.7. Division 2 Miscellaneous matters**Clause 17. Section 164 amended (Offences relating to campaign material)**

This provision has been amended to be consistent with the amendments to the notification requirements referred throughout this Bill, namely the removal of the requirement to advertise by newspaper.

Part 9.1. Council's CEO**Clause 18. Section 169 amended (Vacancy)**

To align better with local government sector feedback, this clause has been amended to extend the time required to advertise a vacancy in the office of the CEO from six weeks to eight weeks. Additionally, this provision has been amended to insert that the CEO of the Agency further may extend the period for a specified time in exceptional circumstances. These amendments are to recognise the preparatory work required ahead of advertising a vacancy in the office of the CEO, while also encouraging councils to prioritise filling the vacancy.

Part 10.5. Annual budgets**Clause 19. Section 203 amended (Adoption of budget or amended budget)**

This clause removes the requirement for the council to notify by circulation within a newspaper that copies of the budget or amended budget are available from council's office or can be downloaded from council's website.

Part 11.5. Division 1 General and special rates**Clause 20. Section 237 amended (General rates)**

This clause provides clarification that councils are required to pass a resolution in order to declare general rates on allotments throughout the area. Presently, there has been confusion on whether the rates *and* the budget are required to be passed by resolution, or only the budget which contains the rates. This amendment removes the ambiguity by making it clear that councils are required to first pass a resolution on the general rates, and then to pass a further resolution on the proposed budget (which will contain the agreed rates). This ensures that councils are not becoming aware of the proposed rates for the first time when looking at a proposed budget, which has often caused compliance issues regarding publishing annual budgets.

Clause 21. Section 238 amended (Special rates)

This clause removes the requirement for the council to call for submissions on proposed special rates within a newspaper.

Part 11.5. Division 2 Charges**Clause 22. Section 239 amended (Imposition of charges)**

This clause provides clarification that provides consistency that councils are required to pass a resolution before declaring rates or charges. In this provision, the amendment makes it clear that councils are required to pass a resolution before declaring a charge on the land in which it carries out work, or provides services, for the benefit of the land or occupiers.

Part 11.6. General and particular notice**Clause 23. Section 241 amended (Public notice)**

This provision has been amended to be consistent with the amendments to the notification requirements referred throughout this Bill, namely the removal of the requirement to advertise by newspaper.

Part 11.9. Division 5 Sale of land**Clause 24. Section 260 amended (Sale of land)**

This provision inserts a requirement that the public auction is required to be advertised on the council's website for at least 21 days before the auction. This provides the practical updates required to this provision, while also ensuring that the information is available for a similar length of time to the older provision.

Part 13.7. By-laws**Clause 25. Section 278 amended (Making by-laws)**

This provision has been amended to be consistent with the amendments to the notification requirements referred throughout this Bill, namely the removal of the requirement to advertise by newspaper. This clause also makes it clear that councils are now required to publish a document explaining the general nature and effect of the by-law on their website instead of in a newspaper.

Part 14.1. Annual reports**Clause 26. Section 290 amended (Annual reports)**

This provision has been amended to be consistent with the amendments to the notification requirements referred throughout this Bill, namely the removal of the requirement to advertise by newspaper. This clause is also amended to require that councils are required to make copies of the report available to be obtained from the council's public office, in addition to publishing the report on the council's website and providing a copy to the Agency.

Part 15.2. Compliance review**Clause 27. Section 300 amended (Agency must report on results of compliance review)**

It has been noted that there has been unintended ambiguity with the present provision when it comes to the Agency providing compliance reports to councils, especially where there may be adverse findings against the CEO of the council. The present provision requires the report to be provided to the CEO, who then has the obligation to provide the report to the council as soon as practicable.

The amendment in this clause provides certainty that the council and the CEO will receive the compliance report by requiring the Agency to provide it to both the CEO and the principal member of the council.

The amendments also make similar changes in reference to local government subsidiaries, ensuring that all members receive the report resulting from a compliance review.

Part 17.3. Official management

Clause 28. Section 318 amended (Official management of councils)

Presently the Act is silent on whether elected members who are suspended when a council goes into official management retain their entitlements. This clause removes the ambiguity by stating that elected members who have been suspended from office are not entitled to any remuneration, allowances, expenses or other benefits during their period of suspension. This conforms to practice standards across the sector.

Clause 29. Chapter 21, Part 3 inserted (Transitional matters for *Local Government Legislation Amendment Act 2025*)

This clause inserts the transitional matters regarding the Bill.

The transitional amendments make it clear that the amendments relating to prospective councils and elected members who are suspended are not intended to be retrospective in nature.

Clause 30. Act further amended

This clause provides for a Schedule which has effect.

The Schedule makes several amendments to section 30 to increase the efficiency of the Local Government Representation Committee review process. This clause increases efficiency for the Committee to perform reviews for councils that have a general election outside the usual electoral cycle. It does this by referring to a period for all reviews that is no later than 10 months after the election day for a periodic general election rather than a general election that may otherwise be held.

In line with the rest of similar amendments, these amendments also replaces the word 'determination' with the word 'recommendation', which aligns with the purpose of the section which enables the Committee to serve as a mechanism for informed decision-making and guidance to the Minister and Administrator.

The Schedule also removes the requirement for the Minister to notify the making of a recommendation by Gazette notice. This takes away an unnecessary step as the Committee is required to publish its final report with its recommendation on its website.

The Schedule amends sections 31 and 32 by replacing the word 'determination' with the word 'recommendation', which aligned with the purpose of the section which enables the Representative Committee to serve as a mechanism for informed decision making and guidance to the Minister and Administrator.

The Schedule amends section 201 to correct a typographical error with the numbering of the clause.

Clause 31. Regulations amended

This Division amends the Regulations.

Clause 32. Regulation 35 amended (Public quotations)

This clause makes the corresponding changes for councils to not be required to publish requests for public quotations in the newspaper, while retaining the requirement to publish the request on the council's website. This aligns the Act to contemporary practices.

Clause 33. Regulation 36 amended (Tenders by council or local government subsidiary)

This clause makes the corresponding changes for councils to not be required to publish requests for public tenders in the newspaper, while retaining the requirement to publish the request on the council's website. This aligns the Act to contemporary practices.

Clause 34. Regulation 102 amended (Timeframes for requirements for meetings)

This clause makes the corresponding changes required under clause 15 for section 93 of the Act.

Clause 35. Regulation 103 amended (Notice requirements for meeting of council committee or local authority)

This clause makes the corresponding changes required under clause 16 for section 97 of the Act.

Clause 36. Regulation 105 amended (Notice of postponement of meeting)

This clause makes the corresponding changes required under clause 17 for section 100 of the Act.

Clause 370. Regulation 109 amended (Requirements for appointment to office of CEO)

This clause makes the corresponding changes for councils to not be required to publish a vacancy to the office of the CEO in a newspaper, bringing the section in line with modern practices of recruitment.

Clause 38. Regulation 110 amended (Vacancy in the office of CEO)

This clause makes the corresponding changes required under clause 21 for section 169 of the Act.

Part 3**Clause 39. Act repealed**

This clause repeals the Act on the day after the Bill commences.