

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

Local Government Bill 2019

The Local Government Bill 2019 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The Local Government Bill 2019 is the Bill for the *Local Government Act 2019*. The *Local Government Act 2019* repeals and replaces the *Local Government Act 2008*.

The *Local Government Act 2019* provides for the following:

- (a) the establishment of a democratic and effective system of local government that recognises the diversity of communities in the Northern Territory;
- (b) the conferral of wide powers on councils to act for the advancement, and in the best interests, of their local communities;
- (c) the enabling of councils to play a broad role in promoting the social, economic, environmental, and cultural well-being of their local communities;
- (d) the imposition of high standards of ethical conduct on council members;
- (e) the requirement on councils of high standards of governance, service delivery, asset management and financial accountability; and
- (f) the requirement on councils to promote and assist constructive participation by their local communities in achieving effective local government for their areas.

Human rights implications

The seven international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) are the:

1. International Convention on the Elimination of all Forms of Racial Discrimination;
2. International Covenant on Economic, Social and Cultural Rights;
3. International Covenant on Civil and Political Rights;
4. Convention on the Elimination of All Forms of Discrimination Against Women;
5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
6. Convention on the Rights of the Child; and
7. Convention on the Rights of Persons with Disabilities.

The compatibility of the Bill with each of these seven international human rights instruments is provided for under the headings below.

1. International Convention on the Elimination of all Forms of Racial Discrimination

No clauses in the Bill have been identified that are incompatible or otherwise pose any unnecessary limitations on the realisation of the International Convention on the Elimination of all Forms of Racial Discrimination. The topics below highlight particular clauses relevant to the human rights or freedoms expressed in the Convention.

A. Rights and interests of Aboriginal traditional owners

Clause 5 highlights the rights and interests of Aboriginal traditional owners, with reference to the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* and the *Native Title Act 1993 (Cth)*. This clause states that the delivery of local government services must be in harmony with those Acts. The emphasis on the rights of Aboriginal traditional owners as a separate clause in the Bill clarifies the relationship between local government and Aboriginal land rights. This could be viewed as a measure to ensure there is adequate recognition and protection of Aboriginal land rights in the sphere of local government (Article 2(2)).

B. No unlawful discrimination on the ground of race

Clause 172(f)(i) states that, in relation to policies on human resource management, there must be no unlawful discrimination on the ground of race. In particular, this reflects Article 2(1)(e) which states that State Parties are to ‘encourage, where appropriate [...] means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.’

C. Rates exemptions in relation to Land Trusts and Aboriginal community living area associations

Clause 222(1) sets out a list of land that is exempt from rates. Paragraph (l) exempts ‘land owned by a Land Trust or an Aboriginal community living area association’. ‘Land Trust’ means an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (clause 7). However, land owned by a Land Trust or an Aboriginal community living area association that is subject to a lease or a licence conferring a right of occupancy or land used for a commercial purpose is rateable. Clause 223(2) to (4) further clarifies the operation of these exemptions for Land Trusts and Aboriginal community living area associations. Additionally, rates do not become a charge over land within an Aboriginal community living area (clause 255(2)(b)).

Special measures are encouraged to ensure the adequate development and protection of certain racial groups or individuals belonging to those groups for the purpose of guaranteeing the full and equal enjoyment of human rights and fundamental freedoms (Article 2(2)). Special measures are justifiable in order to secure adequate advancement of certain racial groups or individuals requiring protection, provided that such special measures do not lead to the maintenance of separate rights for different racial groups after the objectives for which they were established have been achieved (Article 1(4)). In the circumstances, the maintenance of this exemption – which was present in the previous *Local Government Act 2008* – is a special measure that aligns with this rationale.

D. Rate concession to encourage cultural activities

Clause 250(1)(d) enables a council the ability to grant a rate concession if satisfied that the concession would encourage cultural activities. This reflects the realisation of Article 5(e)(vi), which is the right to equal participation in cultural activities. State Parties have an obligation to guarantee ‘the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law’ (Article 5).

E. Respect for cultural diversity (code of conduct)

Rule 5.1 in Schedule 1 (Code of conduct) states that ‘a member must respect cultural diversity and must not therefore discriminate against others, or the opinions of others, on the ground of their cultural background.’ Rule 5.2 states that ‘a member must act with respect for cultural beliefs and practices in relation to other members, council staff, electors and members of the public.’ These code of conduct rules for council members promote the elimination of barriers between races and discourages racial division (Article 2(1)(e)).

2. International Covenant on Economic, Social and Cultural Rights

No clauses in the Bill have been identified that are incompatible or otherwise pose any unnecessary limitations on the realisation of the International Covenant on Economic, Social and Cultural Rights. The topics below highlight particular clauses relevant to the human rights or freedoms expressed in the Covenant.

A. Professional development of council members

Clause 45(1)-(2) allows the Chief Executive Officer of the Agency administering the Act to approve training courses for council members in relation to the responsibilities of being a council member under the Act. A council member must complete a training course within 12 months of being elected (clause 45(3)-(4)).

This clause indirectly reflects that State Parties are to take steps ‘to achieve the full realization [of the right to work, including] technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development’ (Article 6(2)). Approved training courses – as a minimum standard – will encourage ongoing professional development for council members. This new requirement is anticipated to have positive implications for council members, such as supporting their role as elected representatives of their local community and broadening the skills and capacity of councils as a whole.

B. Equal remuneration for council members

Clause 106(1) states that a council member is entitled to be paid allowances, the maximum amount of which is determined by the independent Remuneration Tribunal. The categories of allowances are ‘ordinary allowance’, ‘extra meeting allowance’ and ‘professional development allowance’. Clause 106(3) states that a council is required to publish the amounts of the allowances payable on the council’s website (for public transparency).

In practice, council members may decide to allocate less than the maximum allowance for justifiable reasons, such as budgetary constraints affecting a council. However, if a council wishes to set less than the maximum amount for the allowance determined by the Remuneration Tribunal, it must do so by council resolution. This means that any dissenting opinions of council members can be voiced. From a policy perspective, it is recognised that

council members contribute significantly and that allowances support the realisation of each council member's right to a decent living for themselves and their families (Article 7(a)(ii)).

C. Principles of human resource management

Clause 172 states that policies on human resource management are to give effect to the following: the merit principle for appointment or promotion; reasonable access to training, development and promotion; fair treatment and protection from arbitrary decisions; suitable processes for dealing with employment-related grievances; safe and healthy working conditions; and no unlawful discrimination or other form of unreasonable or otherwise unjustifiable discrimination. This reflects Article 7, in particular, Article 7(a) (fair remuneration), 7(b) (safe and healthy working conditions) and 7(c) (equal opportunity for promotion).

D. Exemption from rates for relevant health facilities

Clause 222(1)(e)-(f) provides that a hospital, medical clinic or health centre conducted by the Northern Territory is exempt from rates. Additionally, land used for a non-commercial purpose by a public benevolent institution or public charity that is registered with the Australian Charities and Not-for-profits Commission is exempt from rates (clause 222(1)(g)). This is intended to capture Aboriginal Community Controlled Health Services.

Exemption from rates for relevant hospital, medical clinics and health centres supports the realisation of Article 12(1), which recognises 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' Such economic exemptions are important to allow the greatest possible realisation of health and well-being for local communities by removing the imposition of rates.

E. Exemption from rates for relevant educational facilities

Clause 222(1)(h) provides that kindergartens, Government schools, non-Government schools, tertiary educational institutions, and any early childhood service owned or operated by the Northern Territory or a non-Government school are exempt from rates. This supports the realisation of the right of everyone to education, particularly in allowing for viable and accessible educational opportunities for everyone, at all levels (Article 13).

F. Exemption from rates for public libraries and public museums

Clause 222(1)(j) provides that a public library or public museum is exempt from rates. This supports the realisation of the right to take part in cultural life (Article 15(1)(a)).

G. Right to take part in cultural life generally

Clauses 6(c), clause 250(1)(d), and Rules 5.1 and 5.2 in Schedule 1 are all, in general terms, supportive of the realisation of the right to take part in cultural life (Article 15(1)(a)).

3. International Covenant on Civil and Political Rights

No clauses in the Bill have been identified that are incompatible or otherwise pose any unnecessary limitations on the realisation of the International Covenant on Civil and Political Rights. The topics below highlight particular clauses relevant to the human rights or freedoms expressed in the Covenant.

A. Ensuring electoral representation if councils merged or divided

Clause 17 allows the Administrator (or the Minister), in circumstances where two or more local government areas are being merged into a single local government area, to make a declaration that all the council members of a particular ward continue to hold office after the merge. This also applies where a local government area is being divided into two or more local government areas. However, this power can only be exercised if there is no substantial change affecting the electoral representation of a ward (clause 17(2)).

If there is a substantial change, a general election or by-election would take place (clause 134(1)(b) and (3)). This ensures there is no interference with electoral representation and that every citizen has the right and the opportunity ‘to take part in the conduct of public affairs, directly or through freely chosen representatives’ (Article 25(a)).

B. No internal review of NTCAT decision in relation to disputed election results

Clause 145(5) clarifies that section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* (NTCAT Act) does not apply to a decision of the Northern Territory Civil and Administrative Tribunal (NTCAT) in relation to an application disputing the result of an election or poll (clause 143(1)).

Such an application must be filed with NTCAT with 21 days after the conclusion of the relevant election and this timeframe cannot be extended (clause 143(4)-(5)). NTCAT has the following powers in relation to such an application: declare the election void and order another election; declare a person who should have been declared elected to have been duly elected as a council member; declare a respondent to the application not to have been duly elected as a council member; order that the votes for an ineligible candidate be distributed to the candidate next in order of the voter’s preferences on the ballot paper (clause 145(1)).

This particular topic intersects with Articles 2 and 25(b). In particular, Article 25(b) states that every citizen shall have the right and opportunity ‘to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.’ Article 2(3)(b) emphasises that State Parties are to ‘develop the possibilities of judicial remedy’ in relation to violations of civil and political rights under the Covenant. For example, a person may wish to seek an internal review of the NTCAT decision due to an injustice relevant to Article 25(b).

The disapplication of an internal review of an original decision by NTCAT is justifiable in the circumstances to ensure there is certainty in relation to disputed election results and that the declaration of the elected members of a council is not delayed through an automatically available internal review process. Finalising election results in a timely manner is important to confirm council members and to allow council decisions to be made. It is noted that the disapplication of section 140 of the NTCAT Act does not limit the right of appeal to the Supreme Court of the Northern Territory on a question of law (NTCAT Act, section 141(1)).

C. Exercise of powers to enter land or premises

Clause 188(1) allows an authorised person (a person appointed by a council under clause 183(1) – other than a member of that council) to enter land or premises for an authorised purpose and to remain on the land or premises for as long as may be necessary for that purpose. It may be raised that this poses potential issues, as ‘no one shall be subjected to arbitrary or unlawful interference with [their] privacy, family or home

(Article 17(1)). However, this is justifiable as the Bill establishes clear and appropriate standards for the exercise of this power.

This power may only be exercised with the ‘necessary authority’, which either is the consent of the occupier, a warrant issued by a justice of the peace, or the authorisation of the Chief Executive Officer of the Agency in an emergency (clause 188(2)). The exercise of this power in accordance with these provisions would not be considered unlawful interference, and therefore there is no incompatible with the human rights or freedoms contained in the International Covenant on Civil and Political Rights.

D. Exemption from rates for a religious body

Clause 222(1)(d) provides that land belonging to the following is exempt from rates: a religious body that consists of a place of worship; a place of residence of a minister of religion associated with a place of worship; a place of residence for the official head in the Northern Territory of a religious body; and an institution for religious teaching or training. In general terms, this supports the realisation of the ‘freedom, either individually or in community with others and in public or private, to manifest [their] religion or belief in worship, observance, practice and teaching’ (Article 18(1)).

4. Convention on the Elimination of All Forms of Discrimination Against Women

No clauses in the Bill have been identified that are incompatible or otherwise pose any unnecessary limitations on the realisation of the Convention on the Elimination of All Forms of Discrimination Against Women. The topics below highlight particular clauses relevant to the human rights or freedoms expressed in the Convention.

A. No unlawful discrimination on the grounds of sex, marital status or pregnancy

Clause 172(f)(i) states that, in relation to policies on human resource management, there must be no unlawful discrimination on the grounds of sex, marital status or pregnancy. This reflects Article 11, which relates to eliminating discrimination against women in the field of employment.

B. Gender-neutral language for council by-laws

Clause 276(2)(c) states that a principle of council by-laws is that they are to be expressed in gender-neutral language. Discontinuing the use of gendered language in legislation enshrines Article 2(d), which states that public authorities and institutions are to refrain from engaging in any practice of discrimination against women.

5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

No clauses in the Bill have been identified that are incompatible or otherwise pose any unnecessary limitations on the realisation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6. Convention on the Rights of the Child

No clauses in the Bill have been identified that are incompatible or otherwise pose any unnecessary limitations on the realisation of the Convention on the Rights of the Child. The topics outlined below highlight particular clauses relevant to the human rights or freedoms expressed in the Convention.

A. Promoting social, economic, environmental and cultural well-being

Clause 6(c) (Overview) provides that the Act is to enable councils ‘to play a broad role in promoting the social, economic, environmental, and cultural well-being of their local communities.’ This is further reflected in clauses 21 (Principal role of council), 22 (Functions of council) and 24 (Objectives of council). Promoting the realisation of social, economic, environmental and cultural well-being has positive implications for the well-being of children. In particular, it may further the realisation of Articles 27(1), 27(3) and 31.

B. No unlawful discrimination on the ground of age

Clause 172(f)(i) states that, in relation to policies on human resource management, there must be no unlawful discrimination on the ground of age.

7. Convention on the Rights of Persons with Disabilities

No clauses in the Bill have been identified that are incompatible or otherwise pose any unnecessary limitations on the realisation of the Convention on the Rights of Persons with Disabilities. The topics below highlight particular clauses relevant to the human rights or freedoms expressed in the Convention.

A. Accessibility for members to attend meetings

Clause 95(3) provides that a council member who is not physically present at a meeting of a council can be taken to be present if the member’s attendance at the meeting is by means of an audio or audiovisual conferencing system. This also applies to members of an audit committee, council committee or local authority (clause 98(3)). Clause 95(3)(c) requires the council member to have ‘the same or substantially the same opportunity to participate in debate, and to register an opinion, on questions arising for decision as if the member were physically present at the meeting.’

Such attendance is to be authorised in accordance with a council resolution that establishes a policy for attendance through audio or audiovisual conferencing. Importantly, clauses 95(3) and 98(3) highlight the potential for councils to facilitate greater access for members with disabilities to attend and participate in meetings.

Article 4(1)(g) outlines a general obligation for State Parties to ‘promote the availability and use of new technologies, including information and communication technologies.’ Under Article 9(1), State Parties are to take appropriate measures to ensure access for persons with disabilities. Additionally, Article 21(b) states that State Parties are to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion by accepting and facilitating alternative forms of communication and all other accessible means, modes and formats of communication of their choice in official interactions.

B. Inability to complete campaign donation return

Clause 148(1) requires all candidates for local government elections to provide a campaign donation return to the Electoral Commission for the relevant disclosure period.

It is noted that some candidates may experience practical difficulties in complying with all the requirements for the contents of their return (clause 151(1)). Relevantly, clause 152 provides that if a candidate cannot complete a return, the candidate may instead prepare the return to the extent possible and provide other details around the particulars that the candidate is not able to obtain. This provides a general protection to all candidates acting in good faith, but in particular, it captures the intention of Article 29(a), which relates to ‘protecting the right of persons with disabilities [...] to stand for elections, to effectively hold office and perform all public functions at all levels of government.’

C. No unlawful discrimination on the ground of physical or intellectual impairment

Clause 172(f)(i) states that, in relation to policies on human resource management, there must be no unlawful discrimination on the grounds of physical or intellectual impairment. This is consistent with Article 5(2).

Conclusion

It is noted that the offence provisions of the Bill have been drafted in consultation with the Department of the Attorney-General and Justice to be compatible with human rights. The Bill also contains provisions relating to self-incrimination (clause 304), inspectors (Part 15.1) and the powers of an inspector (Part 15.4). As these particular provisions intersect directly with important human rights considerations, the clauses have been drafted to contain standard wording that is used across other Northern Territory legislation.

In conclusion, the Bill is compatible with human rights and freedoms, as on the balance, it promotes the realisation of the applicable human rights and freedoms. It does not unnecessarily interfere with any human rights or freedoms under any of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).