

Submission to Legislative Scrutiny Committee on Local Government Legislation Amendment Bill 2025 (Serial 20)

The Local Government Association of the Northern Territory (LGANT) welcomes the opportunity to provide a submission to the Legislative Scrutiny Committee (the Committee) on the Local Government Legislation Amendment Bill 2025 (the Bill).

We would like to highlight that there has been minimal consultation with the local government sector about the particular amendments outlined in the Bill, coupled with the one-week turnaround from the day that the amendments were tabled to the day that a submission is to be made to this Committee.

LGANT, as a membership-based organisation, is the voice of local government in the NT representing 16 of the 17 councils across the NT. This membership consists of four municipal, three shire, and nine regional councils, and two associate members (including the prospective Groote Archipelago Regional Council).

LGANT provides leadership, support, representation, and advocacy on behalf of our member councils for the benefit of their communities. In performing these functions, we will continue to work towards a relationship of equal partnership with the Territory Government, and one that sees positive change that is influenced by the needs and aspirations of the local government sector.

With respect to the Committee's functions to inquire and report on this Bill to the Legislative Assembly of the Northern Territory, we recommend a finding that the Assembly should amend the Bill.

We have provided direct responses and the recommendations of LGANT for the consideration of the Committee.

Clause 6 - Sections 19A, 19B and (inserted) – Prospective Council

- i. While the Explanatory Statement goes to some length to outline the rationale behind sections 19A and 19B, it is scant on detail with respect to 19C.
- ii. On its face, section 19C provides the source of power for the Minister to merge or divide existing local government areas, and the power to abolish a local government area. This can be done without the requirement for consultation as a precondition of the exercise of the power.
- iii. Further, section 19C mandates an obligation on the CEO and/or the person constituting the prospective council to do all things necessary to deliver the will of the Minister in their power as outlined above.
- iv. All things 'reasonably necessary' must be done to establish the operations of the council (or the desired outcome). 'reasonable' is a subjective test. While it is plainly understood that an outright refusal to assist would be a failure to take reasonable steps, resourcing constraints that might affect the timeliness of those steps may not be considered reasonable.
- v. Section 19C(3) sets out that a CEO must comply with an order made with respect to transitional matters – the Bill lacks any detail around non-compliance by the CEO with the order but the explanatory statement refers to the use of section 317 (financial controller). This is not referenced in the amendments. This silence seems to ominously suggest that the Minister may step in to see that the order is complied with, side-stepping the CEO, or that non-compliance may be seen as grounds for a council to be placed under official management.
- vi. The Bill needs to be clear about the ramifications of non-compliance.

- vii. Section 19B sets in law the requirement that the existing council continue to perform its functions in relation to the prospective council where the current Act does not make mention of this. This places a substantial burden on local government councils who are already resource constrained.
- viii. The requirements of the existing council are set out by way of an order – once again, not through consultation with the existing council, and without applying the test of what is ‘reasonable’.
- ix. The drafting of these amendments does not appear to be logical/in the sequence of events. i.e. facilitating the events that establish a prospective council (section 19C) comes after the making of an order for an existing council to perform functions for a prospective council (section 19B).

Recommendations:

- Inclusion of the requirement for open and transparent stakeholder consultation as a precondition of the exercise of the Minister’s power.
- Inclusion of the requirement for the Minister to provide something akin to an explanatory statement to support their decision (sections 19C(1)(a)-(d)) as to the reasonings and the financial sustainability of the proposal, giving the existing council and other stakeholders the right of reply before a decision is formalised.
- Inclusion of the requirement for consultation with the existing council regarding the functions it is being asked to perform for the prospective council; apply the test of what is ‘reasonable’, i.e. ‘functions reasonably able to be performed by the existing council’ with consideration of the financial sustainability of the council, in particular.
- Outline the consequences of non-compliance with these sections of the Act.
- Consider the sequencing of Sections 19B and 19C.

Clause 7 – Section 28 (amended) and Schedule – Act further amended – Powers of Local Government Representation Committee

- x. The Bill significantly alters the functions of the Local Government Representation Committee who currently determine if a local government area is divided into wards.
- xi. The Local Government Representation Committee is comprised of members who are independent of the government and/or who hold apolitical roles (including LGANT as the prescribed corporate entity) and the considerations and the criteria for the determinations are clearly laid out in the Act.
- xii. These amendments now have the Minister or the Administrator making the determination on the recommendation of the Local Government Representation Committee which disempowers the Local Government Representation Committee, concentrating authority and further embedding a model of centralised government control.
- xiii. Noting the Schedule, Act further amended, section 30(4) – (5) are wholly omitted – which considered on its own causes there to be a dead-end once a determination has been made by the Committee. There is no next step in the process to give effect to the determination once made. Considered with clause 7, it has the effect of the Committee’s recommendation being made to the council and Minister in a final report.

Recommendation:

- That this amendment, and the omission of section 30(4) – (5) not be supported by the Committee.

- That, prior to making any decision that would significantly disempower the Local Government Representation Committee, consider and test the importance of their decision-making capacity with local government councils through the consultation process being afforded to the second tranche of legislative amendments.

Clause 9 – Section 54 (amended) – Filling of casual vacancy

- xiv. Section 54(2)(b), as it reads in Clause 9, if the council did neither vote for an appointment nor hold a by-election, the position would be vacant. That is not a desirable outcome for the duration of six to 18 months. The use of the word ‘may’ implies that inaction is on the table as an option.
- xv. The timeframes associated with appointments are such that a minimum of six months is impractical and we recommend amendments to the provision to the effect that if a vacancy occurs for more than 12 months, the requirements to fill the vacancy are activated.
- xvi. Consideration will then need to be given to any additional consequential amendments that are required to give effect to this change.

Recommendation:

- That the wording in section 54(2)(b) and (c) be amended to insert that the council ‘must, by vote of existing members...’; and at section 54(2)(b)(ii) and (c) omit ‘may’.
- That section 54(2)(b) be tidied up to read: (b) less than 18 months, but more than 12 months, before the next general election – the council must, by vote of existing members decide:
 - (i) to appoint a person to fill the vacancy until the next general election; or
 - (ii) hold a by-election; or

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

- xvii. The inserted 318(2)(ab) implies a breach or deficiency on the part of the suspended member prior to an investigator’s report being handed down. This does not afford natural justice or procedural fairness to that suspended member.
- xviii. Under Fair Work principles, employees are typically paid during a suspension while an investigation is ongoing.
- xix. Given the suspension is a temporary measure, it implies that an investigation may return an outcome that is in the members’ favour.
- xx. If the amendment were to proceed (which is not supported by LGANT), an innocent party would have been stripped of their remuneration without cause which could in turn be a risk to the Department.

Recommendation:

- That section 318 be considered as part of the planned amendments to Part 7.4 Code of Conduct (in second tranche), at which time proper consideration can be given to the requirements of procedural fairness.

General statements

- LGANT generally supports the modernisation of the notification requirements throughout the Bill, however we suggest that councils be supported in considering ways to reach to remote households and communities who regularly face poor mobile and internet coverage. Wholly

online public notices may lead to a lack of engagement by constituents affected by telecommunications issues.

- Further clarification is required to understand the intent behind the role of the CEO in inserted section 19C. This section places all responsibility (and potential consequence) on the CEO, while the actions of the CEO in any local government council is directed by elected members. The relationship between elected members and CEO needs to be thoroughly considered in the finalisation of section 19C.
- The omission of 'may, by vote of existing members' in section 65(2)(b)(i) and the word 'may in section 65(2)(b)(ii) neglects to give the council any duty with respect to the vacancy. We consider that this may be a drafting error but recommend that the obligation of council in this situation be made clear. Referring to section 65(2)(a) which is not amended, the word 'must' is used.
- The introduction of the requirement for a resolution to be made as part of sections 237 and 239 is supported.
- The requirement of an explanatory statement as part section 278 is an additional requirement placed on local government councils and, while it is supported, consideration needs to be given to what support will be provided to councils to deliver on this time-bound requirement, particularly where there are resource constraints across the sector.
- The requirement to make copies of the annual report available at a council's public office (section 290) are supported but suggest that a practical timeframe be included, for e.g. for four weeks (otherwise a council may be non-compliant with this requirement if copies aren't available year-round).
- The intent of the amendments to section 300 is supported but recommend they be further amended to ensure that the reports are tabled by the CEO to council.

We refer this Committee to the Principles (section 4) of the *Local Government Act 2019*, that first and foremost local government is a distinct and essential sphere of government. LGANT is generally not supportive of any amendments to the Act that would dilute a local government council's ability to be 'flexible... adaptable... and responsive to community needs'. We see the gradual ebbing away of consultation requirements as a real risk to a council's ability to carry out these important functions for their communities. Section 4(2) places a requirement on anyone exercising a power or function under the Act to uphold the principles – the general tone of the amendments to the Act make it increasingly difficult for this to occur. We hope that in finalising these amendments, and throughout future amendments to the Act, this government will pay heed to the Principles and ensure that local government councils are supported to deliver their functions in a manner consistent with the Principles.

LGANT would welcome the opportunity to make a statement before the Legislative Scrutiny Committee at a public hearing.