

SOCIAL POLICY SCRUTINY COMMITTEE
Written Questions for the Department of Local Government, Housing and Community Development

Department of Local Government, Housing and Community Development

Local Government Bill 2019

DEFINITIONS

Question 1

The Central Land Council (CLC) advised the Committee that the definition of 'Aboriginal community living area association' fails to acknowledge that there are Aboriginal corporations, incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), which own Aboriginal community living areas?

- a. *Can you explain why the Bill does not acknowledge that there are Aboriginal corporations, incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), which own Aboriginal community living areas?*
- b. *How would it impact on the operation of the proposed legislation if the definition of 'Aboriginal community living area association' was amended to provide that an 'Aboriginal community living area entity' means an incorporated association or an Aboriginal corporation in which an Aboriginal community living area is vested as suggested by the CLC?*

1. The *Pastoral Land Act 1992* provides for Aboriginal community living areas. Under that Act, the land of an Aboriginal community living area can only be vested in an association that is incorporated under the *Associations Act 2003* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).¹
2. The definition of 'Aboriginal community living area association' at clause 7 of the Local Government Bill 2019 refers to "an incorporated association in which an Aboriginal community living area is vested". This definition captures associations incorporated under the *Associations Act 2003* and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). The definition captures both types of body corporate capable of holding an Aboriginal community living area.

¹ *Pastoral Land Act 1992* s 111.

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LOCAL GOVERNMENT REPRESENTATION COMMITTEE

Question 2

Clause 27 provides that the membership of the Local Government Representation Committee is to consist of the Electoral Commissioner, the Surveyor-General and the CEO of the prescribed corporation. According to the Department's 'Summary of Information Sheet', it is understood that the latter refers to the CEO of the Local Government Association of the Northern Territory (LGANT).

- a. *Noting that this information sheet relates to the consultation draft rather than the Bill as introduced, can you clarify whether 'prescribed corporation' does, in fact, refer to LGANT?*

3. The prescribed corporation does refer to the Local Government Association of the Northern Territory (LGANT). The Regulations to be made under the Local Government Bill 2019 will name LGANT as the prescribed corporation.
4. After commencement of the legislation, LGANT intends to become incorporated under the *Corporations Act 2001* (Cth), rather than being a corporation created by legislation. As the future name of LGANT, when freshly incorporated, is not yet known, the legislation allows for a prescribed corporation. When LGANT is incorporated as intended, the regulations will be amended to name that corporation as the prescribed corporation.

Question 3

City of Palmerston suggested that clause 27(2)(c) be amended to a 'nominated representative of the prescribed corporation', thereby allowing the corporation to nominate someone it considers most appropriate such as a member of their Executive Committee or a representative from a Council including an elected member. Litchfield Council also suggested that the Committee should include an elected member to ensure that local interests of residents are represented.

- a. *What was the rationale for including the CEO of LGANT as a member of the committee?*
- b. *Was any consideration given to providing that the prescribed corporation may nominate a representative that it considers most appropriate as suggested by City of Palmerston?*
- c. *Was any consideration given to providing that the Committee also include an elected member? If not, why not?*

5. The Local Government Representation Committee will include the Electoral Commissioner and the Surveyor-General, both very senior public servants with suitable knowledge and expertise. The Chief Executive Officer (CEO) of LGANT is the appropriate equivalent person from LGANT.

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6. Consideration was given to allowing the prescribed corporation to nominate a representative for the Committee. Consideration was also given to the Minister nominating a fourth person to be on the Committee. The latter option of a fourth Committee member nominated by the Minister was proposed in the consultation draft version of the Bill. Feedback received was that an appointment by the Minister could be seen as political and potentially result in the independence of the Committee being questioned. For that reason, it was decided that the Committee should be comprised only of senior public servants and their counterpart at LGANT.
7. Consideration was given to having an elected member of a council on the Committee. However, there will be one Committee that reviews the constitutional arrangements of all 17 local government councils. It would not be appropriate for a council member to be on the Committee, as the member would have a conflict of interest when the Committee reviewed the member's council. In addition, it is important that the Committee be, and be perceived as, independent.

Question 4

Noting that Councils currently conduct and fund their own representation reviews, the Northern Territory Electoral Commission (NTEC) suggested that they may object to funding an independent process that determines their electoral boundaries.

- a. *Can you clarify for the Committee who will be responsible for funding the independent panel to conduct these reviews?*

8. The Northern Territory Electoral Commission has indicated that the estimated cost of performing the reviews for 17 councils will amount to \$0.2 million. This cost would occur every four years, once per council term.
9. The Northern Territory Government will be responsible for ensuring that the independent panel is funded.

MUNICIPAL, REGIONAL OR SHIRE PLANS

Question 5

Litchfield Council objected to the change of date from 31 July to 30 June by which councils must adopt their municipal, regional or shire plan and provide a copy to the Agency, noting that it will increase administrative pressure on councils and is out of step with equivalent provisions in other jurisdictions. Similar concern was raised regarding the timeframes in clauses 200, 237 and 238.

- a. *What was the rationale for changing the date from 31 July to 30 June?*
- b. *What other jurisdictions require municipal, regional or shire plans to be adopted by 30 June?*

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10. Under the *Local Government Act 2008*, councils are required to adopt their municipal, regional or shire plan by 31 July. This plan includes a council's budget for the financial year. A council's rates declaration is also required to be published by the same date.
11. It is not considered appropriate for a council to enter the beginning of a financial year without having a budget in place, as council expenditure is required to be in accordance with a budget adopted by council resolution. Many councils adopt their plan and budget before 30 June for this reason. Starting a financial year without a budget in place is not permissible for other spheres of government.
12. The practical effect of bringing forward the cut-off date by one month for adopting a municipal, regional or shire plan will be nil for councils that adopt their plan by 30 June already. In 2019, the 2019-20 plan and budget were adopted before 30 June by the Alice Springs Town Council, Coomalie Community Government Council, City of Darwin, East Arnhem Regional Council, MacDonnell Regional Council, City of Palmerston and Victoria Daly Regional Council.
13. For councils that do not always adopt their plan before 30 June, they will have to begin the planning and consultation process up to one month earlier. In 2019, the Litchfield Council adopted its 2019-20 plan and budget on 10 July.
14. In Queensland, South Australia, Tasmania and Western Australia, a council is not required to adopt an annual plan and budget before the beginning of a financial year.² In New South Wales, a council must adopt its 'operational plan', which is the equivalent to a municipal, regional or shire plan and includes the council's revenue policy (equivalent to a budget), by 30 June.³ In Victoria, a council must adopt its council plan and budget by 30 June.⁴

DELEGATION

Question 6

Litchfield Council objected to the restriction against delegating powers and functions under the proposed *Burial and Cremations Act 2019* to a council committee.

- a. *While noting that councils may form a committee to assist and advise on the management of a public cemetery, can you clarify why the Bill prohibits councils from delegating powers and functions under the proposed Burial and Cremations Act 2019 to such a committee?*

² *Local Government Act 2009* (Qld) s 107A(3); *Local Government Act 1999* (SA) s 123(8); *Local Government Act 1993* (Tas) ss 71, 82(3); *Local Government Act 1995* (WA) ss 5.56, 6.2(1).

³ *Local Government Act 1993* (NSW) s 405(1).

⁴ *Local Government Act 1989* (Vic) ss 125(1), 130(3).

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15. Where a council is the responsible entity under the *Burial and Cremation Act 2019* for a public cemetery, community cemetery or facility, it has various functions for which it is legally accountable. While tasks can be delegated to staff, for example maintaining records of burials and exhumations, ultimately the council is the legally responsible corporate entity.
16. A council committee is not a legally responsible corporate entity. It is not a corporate body. A council committee does not have legal personality, does not employ staff, cannot be prosecuted for an offence and is not capable of being a responsible entity.
17. If a council, as the responsible entity, is contravening the *Burial and Cremation Act 2019*, the responsible Minister may issue an enforcement order, requiring the council to take specified action. Contravention of an enforcement order is an offence. The *Burial and Cremation Act 2019* also contains other offences that can potentially be committed by a responsible entity.
18. A council can delegate its functions or powers as a responsible entity to a local government subsidiary, as a local government subsidiary is a body corporate. In addition, a council may form a committee to advise the council in relation to a cemetery or facility. However, the council, as the responsible entity, will still be ultimately responsible for the management and control of the cemetery.

DISQUALIFICATION

Question 7

Clause 47 sets out the conditions under which a person is disqualified from office as a member of a council. NTEC raised concerns as to how it is expected to administer and check the banned status of a candidate if included as an eligibility criteria for nomination given the number of candidates that local government elections attract and the short time frame between the close and declaration of nominations.

- a. *Noting that NTEC currently accepts a nomination form if the candidate has signed the declaration stating that they meet all eligibility criteria, can you clarify what obligation NTEC will have under the proposed legislation to check the banned status of a candidate?*

19. A person is eligible to be a council member if they are not disqualified. There are a number of matters that, under the current *Local Government Act 2008*, disqualify a person from being a council member such as being bankrupt, being a judicial officer, being certified mentally unfit to carry out the functions of a council member or having an undischarged debt to the council for rates or a surcharge that has been due and payable for over six months.⁵

⁵ *Local Government Act 2008* s 37(1).

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20. When a person nominates to be a candidate in a council elections, the person must complete a declaration stating that none of the disqualifying matters apply to them. Making a false or misleading declaration on such a form is a criminal offence.⁶
21. The closing time for nominations is generally the day before nominations are declared, meaning that it is not practical for all possible disqualifying factors to be investigated by the Northern Territory Electoral Commission (NTEC). Reliance is placed on a candidate's declaration and the fact that if the person is elected and later found to be ineligible for office, the person will be disqualified from remaining in office. The NTEC only checks that a person nominating to be a candidate is enrolled as an elector for the area.
22. Under the Bill, a person will also be disqualified from being a council member if the person is disqualified from being an officer of an incorporated association under the *Associations Act 2003* or managing a corporation under the *Corporations Act 2001* (Cth) or *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).
23. As with the matters that currently disqualify a person from being a council member, it will not always be possible to determine if a person is disqualified under any of the new matters in the brief period after a nomination form is submitted and before nominations are declared. The current approach, of relying on a candidate's declaration and the fact that if the person is elected and later found to be ineligible for office, the person will then be disqualified from remaining in office, will be continued. The NTEC will not have any additional obligation under the Bill to check the eligibility status of a candidate.
24. This is more than just an 'honour system'. If a person makes a false declaration, they risk facing prosecution for committing an offence of making a misleading statement to an authorised officer in connection with an election, for which the maximum penalty is 50 penalty units (currently \$7850).⁷

ALLOWANCES AND EXPENSES

Question 8

While supporting the determination of maximum allowances for members of a council by the Remuneration Tribunal established under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*, City of Palmerston expressed the view that allowances should be reviewed at least once each term of Council, and that allowances must, as a minimum, include an annual increment increase.

- a. *Noting that clause 108 provides that allowances are to be fixed for each financial year as part of the council's budget, how often is it anticipated that determinations will be made in relation to maximum allowances for council members?*

⁶ *Local Government (Electoral) Regulations 2008* reg 59(2).

⁷ *Local Government (Electoral) Regulations 2008* reg 59(2).

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b. *If determinations are not made annually, will they provide for annual increment increases in allowances for members of council?*

25. It is intended that the Remuneration Tribunal will be asked to review council member allowances soon after commencement of the Local Government Bill 2019. Beyond the initial review, reviews will occur as required. If there is no significant reason to have the Remuneration Tribunal conduct a review, public money should not be spent simply to 'tick a box'. If the Local Government Association of the Northern Territory or a council believes there is a good reason to review allowances, a request can be made to the Minister.

26. The allowances will be adjusted annually in line with the Consumer Price Index⁸.

Question 9

Clause 109(2) provides that, in addition to travel and accommodation expenses, councils may adopt a policy regarding entitlement to payment or reimbursement, or non-monetary benefits for other reasonable expenses that may be incurred or required as a result of undertaking official duties. City of Palmerston questioned whether this could include indirect costs such as a member requiring to pay for childcare and suggested that it would be beneficial if guidelines were developed to provide further clarity on the implementation of this provision.

a. *What, if any, guidance will be provided to councils in relation to the matters that may be included in policies regarding entitlements to payment or reimbursement or non-monetary benefits for other reasonable expenses incurred or required as a result of undertaking official duties?*

27. Local government councils form an independent sphere of Government. There are 17 vastly different councils within the Northern Territory. These councils have different needs and different budget capacities.

28. On 11 June 2019, the City of Darwin voted against a motion that "a report be prepared, outlining options to provide occasional childcare for both elected members and staff during council meetings and workshops".⁹

29. However, there may be other councils that would support the provision of childcare services to members. The Local Government Bill 2019 enables an individual council to determine what is reasonable and appropriate for that council.

⁸ Local Government Bill 2019 cl 369.

⁹ City of Darwin, Minutes, Ordinary Council Meeting, Tuesday, 11 June 2019, Notice of motion 12.1 – Occasional childcare for council meetings and workshops, page 8
https://www.darwin.nt.gov.au/sites/default/files/agendas/minutes/signed_council_minutes_-_open_-_11_june.pdf.

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30. The Department of Local Government, Housing and Community Development will provide guidance materials to councils on all the new requirements under the Bill and will have a hotline for council members or staff to call with any questions. The Department will also provide assistance to councils as they develop policies to comply with the new Act. Councils will need policies which are suited to their circumstances and resources. Such decisions will be made by the council and be public and transparent.

CONFLICT OF INTEREST

Question 10

City of Palmerston suggested that the definition of conflict of interest as provided for in clause 114 should be broadened to better reflect and align with sections 8-16 of the *Independent Commissioner Against Corruption Act 2017*.

- a. *In developing the Bill what, if any, consideration was given to the provisions of the Independent Commissioner Against Corruption Act 2017?*
- b. *How would it impact on the operation of the proposed legislation if the definition of conflict of interest was more closely aligned with sections 8-16 of the Independent Commissioner Against Corruption Act 2017?*

31. The conflict of interest requirements in the code of conduct at Schedule 1 of the Local Government Bill 2019, which will apply to all council members, have been carefully designed, in consultation with the Department of the Attorney-General and Justice, to align with the *Independent Commissioner Against Corruption Act 2017*. The requirements are very broad and expressly include perceived conflicts of interest. In addition, they apply any time a member is undertaking official functions or responsibilities.
32. The offence at clause 115 of the Bill for not declaring a conflict of interest at a meeting is more narrowly focussed, with the interests relevant to the offence defined at clause 114. These conflicts of interest are more narrowly focussed because they amount to an offence. A wide definition would not be practical for the purpose of prosecution. A widely defined offence for not declaring any kind of perceived conflict of interest could lead to a culture of over-declaration for fear of committing an offence and result in council meetings regularly having difficulty in making quorum.
33. The *Independent Commissioner Against Corruption Act 2017*, applies to council members and staff and does not contain an offence for failure to declare a conflict of interest. Rather, it allows certain types of conduct to be investigated by the Independent Commissioner Against Corruption, including “failure to manage adequately an actual or perceived conflict of interest”.¹⁰

¹⁰ *Independent Commissioner Against Corruption Act 2017* s 10(2)(c)(ii).

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34. The Independent Commissioner Against Corruption's investigative powers are not changed by the Local Government Bill 2019.

Question 11

Noting that a conflict of interest need only be declared in a matter that has arisen or is about to arise before an audit committee, a council, a council committee or a local authority, City of Palmerston further suggested that 'a conflict of interest should also be declared if any actions or activities where a conflict exists may result in a financial or non-financial impact to the council.'

- a. *Was any consideration given to extending the definition of conflict of interest to encompass any actions or activities where a conflict exists that may result in a financial or non-financial impact to the council? If not, why not?*

35. Extensive consideration was given to the situations in which a member ought to declare a conflict of interest. Members of councils, audit committees, council committees and local authorities can be approached by members of the public who wish to discuss matters related to the council.

36. It is when a matter arises before a council, audit committee, council committee or local authority that may require a resolution to make a decision or note information that it is important that a member declares a conflict, leaves the meeting while the matter is considered and does not try and influence the other members.

37. The conflict of interest requirements in the code of conduct at Schedule 1 of the Local Government Bill 2019, which will apply to all council members, apply any time a member is undertaking official functions or responsibilities.

38. In addition, the *Independent Commissioner Against Corruption Act 2017*, which applies to council members and staff, allows the failure to manage adequately an actual or perceived conflict of interest to be investigated by the Independent Commissioner Against Corruption.

39. It should be noted that the new legislation provides for a register of council members' interests to be kept by each council and for this register to be published on the council's website.¹¹

¹¹ Local Government Bill 2019 cls 110-111, 117.

CODE OF CONDUCT

Question 12

Schedule 1 sets out the code of conduct governing the conduct of members of an audit committee, a council, a council committee and a local authority. While noting that the schedule in the Bill as introduced now specifically prohibits bullying, City of Palmerston raised concerns that it fails to adequately address matters relating to anti-discrimination.

- a. *While clause 5 of schedule 1 provides that members must respect cultural diversity and must not discriminate against others, or the opinions of others, on the ground of their cultural background, can you explain why the code of conduct does not prohibit discrimination on other grounds such as those provided for pursuant to section 3(b) of the Anti-Discrimination Act 1992 (NT)?*
- b. *How would it impact on the operation of the proposed legislation if the code of conduct were amended to ensure that it aligns with the objects of the Anti-Discrimination Act 1992 (NT)?*

40. The *Anti-Discrimination Act 1992* will continue to apply to councils to the full extent it does now. The code of conduct in Schedule 1 of the Local Government Bill 2019, which applies to members of councils, audit committees, council committees and local authorities, does not replace the effect of the *Anti-Discrimination Act 1992*. For that reason, it is not necessary that the code of conduct prohibit the types of discrimination that are already prohibited by the *Anti-Discrimination Act 1992*.
41. If a person believes that they have been discriminated against by a member, in a way that is prohibited by the *Anti-Discrimination Act 1992*, the person can seek information about their rights from the Anti-Discrimination Commission. The Commission can help a person understand: the person's rights; what potential remedies exist; and the process for making a formal complaint regarding any alleged discrimination.
42. A person can also lodge a code of conduct complaint against a member if they believe that the member has breached item 5 of the code of conduct by discriminating against a person on the basis of the person's cultural background.
43. The code of conduct is aligned with the objects of the *Anti-Discrimination Act 1992* in the sense that nothing in the code is inconsistent with those objects.

Question 13

Litchfield Council raised concerns that the process for complaints and contraventions of the code of conduct as proposed in the Bill will place an administrative burden on council in relation to the establishment of policies and procedures and the significant training required of Councillors in handling complaints.

- a. *What, if any, guidance or training will be provided to councils in relation to the development and implementation of appropriate policies and procedures for the handling of complaints?*

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44. The Department will provide guidance materials and training in relation to the handling of code of conduct complaints. The guidance materials will include processes, procedures and approved forms. Councils will be given information and assistance in developing their policies in relation to a contravention of the code of conduct.¹²
45. Department staff will be available to answer any questions, discuss any concerns and give feedback. In addition, the Department will establish a hotline that council members or staff can ring with any questions about the new local government legislation.

Question 14

While acknowledging that councils may refer complaints to a third party for advice, Litchfield Council noted that since council still needs to decide on the complaint this has the “potential to exasperate strained relationships that may exist between Councillors as independence of decision making may be questioned.”

- a. *Was any consideration given to the inclusion of a provision whereby councils may elect to refer complaints to an independent party for assessment and determination as suggested by Litchfield Council? If not, why not?*

46. A council may refer a complaint to a third party such as a mediator or someone experienced in local government issues. The third party may be able to help the parties resolve the matter. The third party will report back to council and may make a recommendation to council about a decision or way forward.
47. A council can resolve to take no action (without deciding whether there was a contravention) or decide whether there was a contravention. The council as a corporate body must take responsibility for its members and its corporate personality. While councils should be able to seek assistance, they may not obfuscate their corporate responsibility by totally passing off the matter to a third party.
48. A council decision can be appealed to the prescribed corporation by either of the parties. It would not be appropriate if the third party, who might be a mediator, had to issue a decision notice that could then be appealed. A mediator does not decide a matter and does not make appealable decisions.
49. It should be noted that the respondent to a complaint and, if the complainant is a member of the council, the complainant, have the right to refer a complaint directly to the prescribed corporation.

¹² Local Government Bill 2019 cl 121 requires such a policy.

CAMPAIGN DONATION RETURN

Question 15

Clause 148 introduces political disclosure requirements for all council candidates to submit a campaign donation return. NTEC raised concerns regarding the practical implications of administering this provision for regional councils given the number of remote candidates for local government elections.

- a. In developing the Bill was NTEC consulted? If not, why not?*
- b. What consideration, if any, was given to the potential impact on NTEC of administering this provision?*
- c. What consideration, if any, was given to the potential cost to councils of compliance reviews undertaken by NTEC to verify accuracy and completeness of campaign donation returns?*
- d. How would it impact on the operation of the proposed legislation if the requirement for campaign donation returns was limited to principal members or members elected to council as suggested by NTEC?*

50. The NTEC has been extensively consulted, at every step since 2015, in the development of electoral related matters in the Local Government Bill 2019. The NTEC's concerns with the practicalities of the campaign donation disclosure requirements have been understood and different options that could mitigate the practical challenges have been carefully considered.

51. In the consultation draft version of the Bill, it was proposed that only principal member (Mayor or President) candidates would have to submit returns. In the formal submissions received from the Alice Springs Town Council, the Barkly Regional Council, the City of Darwin, the City of Palmerston, the Coomalie Community Government Council, the Local Government Association of the Northern Territory and the Top End Regional Organisation of Councils, it was indicated that this was considered inappropriate and that all candidates should have to submit returns.

52. It was identified that a campaign donation return form would have to be developed and that people nominating as candidates would need to be given warning of the requirement to submit a return. It is anticipated that the key way that this message will be communicated is through information and written materials provided to candidates before, and at the time of, nomination. Development of appropriate forms and/or guidance materials for candidates is not anticipated to have significant impact on the NTEC. In addition, the Department will assist the NTEC with these tasks. Department staff have assisted the NTEC previously in updating forms required for elections.

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53. The NTEC has advised, and the Department accepts, that the more challenging aspect of administering the campaign donation requirements will be ensuring that all candidates in remote areas submit returns. The Department is well positioned to assist the NTEC in this regard, as it has staff throughout the Territory who visit all communities. Department staff will be able to follow up with candidates regarding submission of their returns.

54. There were a total of 293 candidates in the 2017/2018 local government periodic general elections. The periodic general elections were in 2017 except for the City of Palmerston where the election took place in 2018, because it was under official management at the time of the 2017 elections. Of the 293 candidates, 100 nominated to be municipal council members, 25 to be shire council members and 168 to be regional council members. The breakdown of candidates for regional councils in the 2017 elections is set out in the below table:

Council	Number of candidates
Barkly Regional Council	22
Central Desert Regional Council	21
East Arnhem regional Council	24
MacDonnell Regional Council	17
Roper Gulf Regional Council	23
Tiwi Islands Regional Council	23
Victoria Daly Regional Council	10
West Arnhem Regional Council	18
West Daly Regional Council	10

55. When a candidate submits a campaign donation return, the NTEC will publish the return on its website, so the return can easily be viewed by any member of the public. The NTEC will have the power to investigate the accuracy of a return and this could happen if somebody came forward with information about a campaign donation that was not reported, or not accurately reported.

56. The Local Government Bill 2019 does not require returns to be verified for accuracy, nor does it provide for a compliance scheme. However, making a false return will be a criminal offence.

57. One of the policy considerations in relation to donation disclosures was that if only principal member candidates had to submit returns, it would be possible for somebody to contribute to the campaigns of a number of ordinary member candidates and 'stack' a council without any declaring any donations.

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58. Consideration was also given to only requiring successful candidates to submit returns. However, it is considered that such an approach would undermine the transparency sought by these provisions, being that the public can see who has been contributing to all election campaigns.

SHARED SERVICES POLICY

Question 16

Clause 216 provides that councils must adopt a policy for shared services. While supportive of this new provision, Litchfield Council sought clarification as to the intended operation of this clause given the provisions of the associated regulations.

- a. *Can you explain how clause 216 relates to the provisions set out in Part 13, Division 2 'Collective Procurement' of the Local Government (Accounting) Regulations 2008?*

59. Shared services and procurement are different concepts. Accordingly, clause 216 of the Local Government Bill 2019 addresses different matters from the collective procurement regulations in Part 13, Division 2 of the *Local Government (Accounting) Regulations 2008*. Procurement is the process of acquiring goods or services from an external source. Councils are able to collectively procure goods or services under the current Regulations and it is intended that similar Regulations for collective procurement will be made under the Bill.
60. A shared service can be where a service is jointly provided by more than one council. For example, some councils have jointly set up a program to collect and recycle abandoned vehicles over multiple council areas. In such a scenario, it is possible for councils to undertake collective procurement, but collective procurement is not, of itself, a shared service.
61. Another type of shared service is where a council provides a service not only to its own council area but to another council's area on behalf of that council. For example, a council might have authorised officers that round up and impound stray dogs in its own council area and also provide the same services in another council area on behalf of that other council.

RATES AND CHARGES

Question 17

Clause 223 provides for some special cases in relation to rates. The CLC raised concerns that, as drafted, this clause does not address situations where an Aboriginal corporation owns land in a remote community that does not fall within the definition of an 'Aboriginal community living area'. For example, Aputula community where the Aputula Aboriginal Corporation and the Aputula Housing Aboriginal Corporation own land which is not Aboriginal land or an Aboriginal community living area.

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- a. *Given that the CLC is of the view that these organisations are essentially land holding corporations similar to an Aboriginal community living area association, can you explain why this is not recognised in the Bill?*
- b. *How would it impact on the operation of the proposed legislation if clause 223 was amended, as suggested by the CLC, to also provide that while an Aboriginal corporation which owns land in a remote community is not liable to rates, an occupier of land owned by the corporation (other than itself) is liable to rates; and if land owned by the Aboriginal corporation is held under a lease from the Aboriginal corporation, the leasehold estate constitutes the rateable land for the purposes of this Act?*

62. It is not intended that corporations incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) be generally exempt from paying rates.
63. A corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) can purchase commercial property and operate commercial businesses.
64. However, some corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) are registered as charities or public benevolent institutions. Under clause 222(1)(g) of the Local Government Bill 2019, land used for a non-commercial purpose by a public benevolent institution or charity that is registered with the Australian Charities and Not-for-profits Commission is exempt from rates.
65. It should be noted that councils are able to grant a rate concession under clause 250 of the Bill if satisfied that the concession would promote a purpose that provides a public benefit.
66. The suggested amendment is not appropriate as an Aboriginal Corporation which holds land should pay rates unless it meets one of the exemption categories or is granted a concession. If an Aboriginal corporation leases land, it could recoup the cost of rates through the lease agreement.
67. It should also be noted that under the 'Intergovernmental Agreement on Competition and Productivity – Enhancing Reforms' (December 2016), the Northern Territory is obliged to apply competitive principles to ensure that regulatory frameworks and government policies binding the public or private sectors do not unnecessarily restrict competition.¹³ There is no intention that the Local Government Bill 2019 apply any additional competitive principles to Aboriginal corporations operating in the Northern Territory. However, exempting Aboriginal corporations from paying any rates, even if the relevant land is being used commercially, would be anti-competitive.

¹³ Council of Australian Governments (COAG), Intergovernmental Agreement on Competition and Productivity – Enhancing Reforms, <https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-competition-and-productivity-enhancing-reforms>.

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Question 18

Consequential to the above, and taking into consideration the CLC's comments regarding the definition of an Aboriginal community living area association, it was further suggested that clause 223(4) be amended to provide that 'Land owned by a Land Trust or an Aboriginal community living area entity or land in a remote community owned by and Aboriginal corporation:

- a. *How would it impact on the operation of the proposed legislation if clause 223(4) were amended as proposed by the CLC?*

68. Unlike 'normal' freehold land, clause 223(4) of the Bill provides that rates cannot become a charge on the land in relation to land owned by Land Trusts and Aboriginal community living area associations. This recognises and preserves the status of that land as being different from usual freehold land.

69. A corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) can operate as a commercial business and buy and sell freehold land. Such corporations are not automatically exempt from rates. If rates are owed by a corporation, over land which is not owned by a Land Trust or Aboriginal community living area association, the rates can become a charge on the land.

70. It would be inappropriate to amend the legislation in the way proposed because the clause in question is to protect Land Trusts and Aboriginal community living area associations, not to exempt Aboriginal corporations generally.

Question 19

Similar to the note for clause 229(2), the CLC suggested that a note be included for clause 228(1) to clarify that where an allotment is owned by a Land Trust or an Aboriginal community living area entity it is not liable to rates but the occupier is liable for rates payable in respect of an allotment. In addition, where an allotment in a remote community is owned by an Aboriginal corporation, the corporation is not liable to rates but the occupier is liable for rates payable in respect of an allotment.

- a. *How would it impact on the operation of the proposed legislation if a note were included for clause 228(1) as proposed by the CLC?*

71. The note proposed, to the extent that it applies to land owned by a Land Trust or an Aboriginal community living area association, is not necessary, as these matters are covered by clauses 223(2)-(3) of the Bill.

72. It is not intended that land owned by a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) be exempted from rates. Such a corporation can purchase commercial property and operate commercial businesses.

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73. Some corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) are registered as charities or public benevolent institutions. Under clause 222(1)(g) of the Local Government Bill 2019, land used for a non-commercial purpose by a public benevolent institution or charity that is registered with the Australian Charity and Not-for-profits Commission is exempt from rates. If a corporation has a commercial profit-making purpose, it should not be automatically exempted from paying rates.

Question 20

The CLC suggested that the note for clause 229(2) does not address situations where an allotment is owned by an Aboriginal community living area entity, or in the case of an allotment in a remote community where it is owned by an Aboriginal corporation.

- a. *Can you explain why this is the case?*
- b. *How would it impact on the operation of the proposed legislation if the note for clause 229(2) was extended to include allotments owned by Aboriginal community living area entities or, in the case of remote communities, allotments owned by Aboriginal corporations as suggested by the CLC?*

74. The note for clause 229(2) is explanatory in nature to assist interpretation about who the principal ratepayer is. It applies similarly where an allotment is owned by an Aboriginal community living area entity, because of the definition of 'owner' at clause 7 of the Bill. If the land is within an Aboriginal community living area and is held under lease – the lessee is treated as the owner.

75. There is no need to amend the Bill as it already provides that Aboriginal community living area associations are not liable to pay rates at clause 223(3).

76. It is not intended that land owned by any corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) be exempted from rates. Any corporation can buy and sell property and operate commercial businesses. Such corporations are entitled to the same exemptions and concessions as any other corporation.

77. It is the nature of the status of the land it holds, not the corporate nature of the land owner, which makes a Land Trust or Aboriginal community living area association exempt from rates.

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Question 21

Clause 230 'Assessment record' provides at sub clause (4) that a person with 'sufficient interest' in the assessment record may inspect or copy the assessment record. Sub clause (5) then provides that a council may adopt a policy to provide for what constitutes a sufficient interest in the assessment record. However, to ensure consistency across Councils in the application of clause 230(4), Litchfield Council suggested that it would be beneficial if the Bill included a definition of 'sufficient interest' instead of leaving the definition up to Council policy.

- a. *Was any consideration given to the inclusion of a definition of 'sufficient interest' in the Bill? If not, why not?*
- b. *What, if any, guidance will be provided to councils as to what might constitute a sufficient interest in the assessment record?*

78. Consideration was given to defining 'sufficient interest' but any definition was likely to result in some unintended consequences or exclusions. The Department also sought advice from the Information Commissioner when the drafting instructions for this clause were being developed. It is preferable that these matters be dealt with by a policy because this will allow council officers some flexibility to make a sensible judgement in relation to actual situations, rather than having to apply a clause in the Bill, irrespective of any unforeseen circumstances.

79. Before the Local Government Bill 2019 commences, councils will be given training as well as guidance materials regarding the new requirements under the Bill. Department staff will be available to answer any questions, discuss any concerns and give feedback on draft policies. In addition, the Department will have a hotline that council staff can ring with any questions about the new local government legislation.

Question 22

Clause 255(2)(b) provides that rates do not become a charge over land within an Aboriginal community living area. CLC suggested that, for completeness, this section should also refer to Aboriginal land and freehold land in a remote community owned by an Aboriginal corporation.

- a. *Can you comment on CLC's suggestion that clause 225(2)(b) be amended to include land held by a Land Trust or land in a remote community owned by an Aboriginal corporation?*

80. Clause 255(2)(a) provides that rates do not become a charge over land unless the owner of the land is a ratepayer who is liable for the rates that are in arrears. Because clause 223(2) provides that a Land Trust is not liable to rates, rates cannot become a charge on land owned by a Land Trust.

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81. It is not intended that land owned by a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) be exempted from rates. Such a corporation can purchase commercial property and operate commercial businesses. Such a corporation would be eligible for the usual exemptions and concessions available to all corporations generally.

Question 23

Consistent with its functions under section 23(1)(e)(b) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), the CLC expressed the view that clause 256 should be amended to extend the requirement for Land Council's approval of the sale of a leasehold estate granted by an Aboriginal community living area entity, as well as approval by the relevant Aboriginal corporation of the sale of a leasehold granted by it in a remote community.

- a. *Can you explain why the Bill does not require Land Council approval of the sale of a leasehold granted by an Aboriginal community living area entity or approval by the relevant Aboriginal corporation of the sale of a leasehold granted by it in a remote community?*
- b. *How would it impact on the proposed operation of the legislation if the Bill was amended as proposed by the CLC?*

82. Section 23(1)(eb) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) provides that a function of a Land Council is "for land that is a community living area and in the area of the Land Council -- to assist the owner of the land, if requested to do so, in relation to any dealings in the land (including assistance in negotiating leases of, or other grants of interests in, the land)".

83. Automatically requiring Land Council approval of the sale of a leasehold estate granted by an Aboriginal community living association in these circumstances is a step further than the current law, where the association may request the assistance but does not have to. Expanding a legislated function of Land Councils would almost certainly require amendment of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and consultation with the Australian Government.

84. However, if an Aboriginal community living area association was to lease its community living area, it can include terms within the lease that, for example, the leasehold estate may not be sold or assigned to any person not approved by the association. In the event that an Aboriginal community living area association wishes to lease its community living area, it is through the lease agreement that the association can further protect its interests.

85. Other than for Land Trusts and community living area associations, where freehold land is owned by a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), the usual law in relation to rates and freehold land applies.

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ROADS

Question 24

Litchfield Council noted that clause 273 'Establishment of new road' and clause 274 'Substantial temporary road closure' are copied directly from sections 18 and 20 of the Local Government (Administration) Regulations 2008 and suggested that they are best left in the regulations and not included in the Act given their procedural nature.

- a. *Can you explain why it was determined that sections 18 and 20 of the Local Government (Administration) Regulations 2008 should now be included in the primary legislation?*

86. Clause 273, which sets out how a new road is established, is an important matter affecting land and it is appropriate that it is included in the primary legislation. The clause enables land to be re-purposed as a road and requires consultation with the public.

87. Similarly, clause 274, which sets out the requirements for closing a road for a substantial period of time, is important and it is appropriate that it is included in the primary legislation. The clause is at a high level and requires consultation with the Minister and the Member of the Legislative Assembly in whose electoral division the road is located.

Question 25

Clause 274(1) provides that if a council proposes to close a road temporarily but for a substantial period, the council must consult with the Minister and the MLA for the electoral division in which the road is situated. However, City of Palmerston advised that they disagreed with the requirement to consult local members on specific council controlled and managed issues and suggested that it may lead to perceived political involvement.

- a. *Can you clarify for the Committee why councils are required to consult MLA's for the electoral division in which the road is situated in addition to the Minister prior to proceeding with a substantial temporary road closure?*

88. This is a continuation, without any change, of the existing requirements in the *Local Government (Administration) Regulations 2008*.¹⁴ In the Northern Territory, with its small population, constituents have abundant access to their local Members of the Legislative Assembly.

89. When a road is to be closed, constituents often contact their local member. Local members have local knowledge of the views of their constituents and the area. A local member may have relevant information to contribute to the consultation process.

¹⁴ *Local Government (Administration) Regulations 2008* reg 20.

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90. A council is not bound by the views of a local member, it must simply consider any written submissions the member makes.

ANNUAL REPORTS

Question 26

The CLC raised concern that the requirement for annual reports to include ‘an itemisation of the salary, allowances or any other payments made to, or fringe benefits received by or on behalf of the CEO’ as provided for in clause 286(e) of the exposure draft has been removed from the Bill as introduced.

- a. *Noting that all Commonwealth funded agencies will be required to report on CEO’s salaries’ in their annual reports from this financial year, can you explain why this sub clause has been removed from the Bill as introduced?*
- b. *To ensure accountability and transparency, how would it impact on the operation of the proposed legislation if this sub clause were reinstated in the Bill?*

91. The policy intention has not changed and CEO salaries will be reported.

92. During consultation on the draft Bill, some stakeholders indicated that the Australian Accounting Standard AASB 124 already requires the remuneration of key management personnel to be included in a council’s annual financial statement. It is considered preferable that details of a CEO’s remuneration be included in a council’s annual financial statement, rather than elsewhere in the annual report, because the financial statement has to be audited.

93. It is intended to use the power at clause 207(2)(b) of the Bill to prescribe, in the Regulations, requirements for council annual financial statements. It is intended that a Regulation will be made that requires the CEO’s remuneration to be reported separately from the figures for all other key management personnel in the annual financial statement. This will achieve the intended accountability and transparency and will be subject to the annual audit of financial statements.

DEFAULTING COUNCILS

Question 27

City of Palmerston raised concern that the Bill only provides the Minister with the power to intervene in a council’s affairs when there is serious financial irregularity. However, the Committee notes that clause 316 provides that the Minister may require a council to take specified remedial action if satisfied that deficiencies have been identified in the conduct of a council affairs and that action must be taken to address them.

- a. *Apart from serious financial irregularities, can you clarify for the Committee what other types of deficiencies the Minister may consider require remedial action?*

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94. The Minister's power to issue remedial orders could be considered, for example, where a council: failed to appoint a new CEO after a CEO resigned; or had formed a corporation without the Minister's approval.¹⁵ There are many possible situations where the Minister's power to make such an order could be useful.

Question 28

In relation to clause 317, Litchfield Council raised concern that, as drafted, it would appear that the CEO of the Agency has the right to appoint a financial controller without any prior notice to the Council or local government subsidiary regarding any financial concerns the Department might have. It was also suggested that the phrase 'performing its financial responsibilities appropriately' requires further clarification.

- a. *Can you explain the process the Department will undertake prior to the appointment of a financial controller?*
- b. *In the absence of any reference to the Regulations, can you clarify why the process for determining whether or not to appoint a financial controller is not set out in the Bill?*
- c. *Why does the Bill not include any requirement for the Department to notify the Council or the local government subsidiary of its intention to appoint a financial controller prior to doing so?*
- d. *Was any consideration given to the inclusion of a mechanism whereby the CEO of the Agency must first warn a council or local government subsidiary of the intention to appoint a financial controller and provide a council or local government subsidiary an opportunity to rectify the matter before a financial controller is appointed? If not, why not?*
- e. *How would it impact on the operation of the proposed legislation if the Bill was amended to provide that the CEO of the Agency must notify a council or a local government subsidiary of their intention to appoint a financial controller prior to doing so and provide a council or local government subsidiary an opportunity to rectify the matter before a financial controller is appointed?*
- f. *Given that the term 'financially unsound' is defined at clause 317(6), can you explain what the phrase 'performing its financial responsibilities appropriately' encompasses?*
- g. *Was any consideration given to defining this phrase? If not, why not?*

¹⁵ Local Government Bill 2019 cl 39 prohibits a council from forming a corporation without the approval of the Minister in consultation with the Treasurer.

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95. The Agency would be in contact with a council or local government subsidiary about any concerns regarding financial management. Possible solutions would be explored with the council or subsidiary. If the options were not taken up or if the Department's advice was ignored, a council or subsidiary may be warned that if it does not take certain steps (or refrain from taking certain steps) in a specified timeframe, a financial controller may be appointed.
96. However, there are not set rules of process that would be practical and appropriate in all situations. An emergency could arise. If the Agency becomes aware of a need to quickly appoint a financial controller to prevent a council from losing a significant amount of public monies, for example in an unlawful transaction, it may be necessary to act quickly and with little or no warning. This would be a highly unusual circumstance.
97. Aside from the requirement that the appointment be by notice in the *Gazette*, having a detailed process of appointing a financial controller in the Bill could lead to a situation where the requirements hold up the appointment of a financial controller in a situation where time is of the essence, resulting in the loss of significant public monies. One process will not suit every situation.
98. Consideration was given to a council or subsidiary having to be warned in writing that if it does not take certain steps (or refrain from taking certain steps) in a specified timeframe, a financial controller will be appointed. Such a requirement is likely to be problematic if the Agency becomes aware of a need to quickly appoint a financial controller to prevent a council from losing a significant amount of public monies in an unlawful transaction. For example, a council could be poised to enter a contract that would require it to spend a substantial amount of money that would put its budgetary position into significant deficit. It might be important that the Agency act quickly to prevent such a contract being entered into.
99. Providing a warning that a financial controller will be appointed if a council does not rectify certain matters in a specified timeframe is generally best practice but is not suitable as a mandatory requirement. Otherwise the utility of the power to appoint a financial controller would be undermined. The Agency does not want to appoint a financial controller if it can be avoided, nor does it want to surprise a council or subsidiary by appointing a financial controller with little warning. Nevertheless, it is more important that public money is protected than councils or subsidiaries always receive warning of such an appointment.
100. It is important to note that when a financial controller is appointed, no council members or staff are suspended from duty, nor can they be dismissed by the Minister, the Agency or the financial controller. It is a far lesser step than placing a council under official management, where the council members are suspended and an official manager is appointed to run the council. The clause has been included in the Bill precisely because of the lesser impact that appointment of a financial controller has compared to official management.

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101. The phrase 'performing its financial responsibilities appropriately' could include, but is not limited to: spending money from a reserve where the money has been reserved for another purpose; entering into a loan agreement without proper authorisation; or spending money in a way that will result in a council or subsidiary becoming insolvent.

102. It was a deliberate choice not to define the phrase 'performing its financial responsibilities appropriately'. By leaving the concept at a high level, it can be applicable across a range of scenarios. If it was defined too precisely, there could be unforeseen circumstances where a financial controller cannot be appointed and the Minister must instead consider placing a council under official management, with the council members being suspended.

LEGAL PROCEEDINGS

Question 29

Clause 329(3) provides that legal proceedings may be commenced in the absence of a resolution of the council for the prosecution or an offence against a by-law; debt recovery; or any other legal proceeding prescribed by regulation. However, Litchfield Council raised concerns regarding the extent to which a CEO may be able to initiate Fair Work proceedings or legal proceedings regarding procurement contract breaches for example in the absence of a resolution of the council.

- a. *Can you clarify for the Committee the types of legal proceedings that are likely to be prescribed by regulation?*
- b. *What consultation will be undertaken with councils regarding the development of regulations in this regard?*

103. The consultation draft version of the Bill did not contain any exceptions to the requirement that legal proceedings not be commenced without a council resolution. Through consultation, the exceptions now in clause 329(3) were suggested. The ability to prescribe further exceptions is considered important, so that if some unforeseen types of proceedings that are operational in nature are identified, exceptions can be added in the Regulations.

104. The ability to initiate Fair Work proceedings or legal proceedings regarding procurement contract breaches are not matters that have previously been raised with the Agency. These suggestions will be discussed with councils and carefully considered, as will any other suggestions, when consultation is undertaken in relation to the Regulations to be made under the Bill.

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Contracts

Question 30

The CLC raised concern that clause 212 of the exposure draft has been removed from the Bill. This clause provided that in entering into a contract, a council must have regard to the following principles: support for local business and industry; ethical behaviour and fair dealing; value for money; environmental protection and open and effective competition.

- a. *Can you explain why this clause was removed from the Bill as introduced?*
- b. *How would it impact on the operation of the proposed legislation if this clause was reinstated?*

105. It is now intended that the sound contracting principles will be included in the procurement requirements in the Regulations to be made under the Bill.

106. After feedback during consultation from the Department of Trade, Business and Innovation, it is planned that the principle of 'support for local business and industry' will be replaced with a similar principle better aligned with the Northern Territory Government's principles – 'enhancing the capabilities of Territory enterprises and industries'.

107. The principles of 'ethical behaviour and fair dealing', 'value for money', 'environmental protection' and 'open and effective competition' will remain. An additional principle of 'employment of Aboriginal people' will be added.