



Legislative Assembly of the Northern Territory

Legislative Scrutiny Committee

Inquiry into the Local Government Legislation Amendment Bill 2025

April 2025



Inquiry into the Local Government Legislation Amendment Bill 2025



Legislative Assembly of the Northern Territory

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Chair's Preface

This report details the Committee's findings regarding its examination of the Local Government Legislation Amendment Bill 2025. Amending the *Local Government Act 2019* and the Local Government (General) Regulations 2021, the Bill seeks to modernise and improve the efficiency, transparency and overall effectiveness of the local government sector. The proposed amendments are designed to align local government systems and processes with best practice and ensure the sector is more responsive and better suited to the needs of Northern Territory communities.

The Committee received six submissions to its inquiry. While submitters were generally supportive of the proposed amendments, clarification was sought regarding the intended operation of various provisions within the Bill. Submitters also put forward a number of suggestions as to how the Bill might be improved.

Following its examination of the Bill and consideration of the evidence received, the Committee has recommended that the Assembly pass the Bill with the proposed amendments as set out in recommendations 2 – 7. Recommendations 2 and 3 propose that the Bill be amended to clarify the ramifications for non-compliance under section 19C, and the process for notifying the making of, and giving effect to, determinations based on recommendations of the Local Government Representation Committee.

Recommendations 4 and 5 seek to ensure that the intent of the Bill in relation to the filling of casual vacancies as set out in clauses 54 and 65 is unambiguous and drafted in a sufficiently clear and precise way. Recommendations 6 and 7 propose amendments to the Explanatory Statement to clarify the policy purpose of clause 7 regarding the amendment to the powers of the Local Government Representation Committee and to address a number of typographical errors.

On behalf of the Committee I would like to thank all those that provided submissions to the Committee's inquiry. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.



Mrs Oly Carlson MLA

Chair

Committee Members

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Acknowledgments

The Committee acknowledges all those that provided written submissions to the Committee's inquiry.

Acronyms and Abbreviations

CoP	City of Palmerston
LGANT	Local Government Association of the Northern Territory
NTEC	Northern Territory Electoral Commission
RGRC	Roper Gulf Regional Council
WDRC	West Daly Regional Council

Terms of Reference

Sessional Order 14

Establishment of Legislative Scrutiny Committee

- (1) The Assembly appoints a Legislative Scrutiny Committee
- (2) The membership of the scrutiny committee will comprise three Government Members, one Opposition Member and one crossbench Member.
- (3) The functions of the scrutiny committee shall be to inquire into and report on:
 - (a) any bill referred to it by the Assembly;
 - (b) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
 - (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal and Torres Strait Islander tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.

- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether a bill:
 - (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (4) The committee will provide an annual report of its activities to the Assembly.

Adopted 15 October 2024

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Local Government Legislation Amendment Bill 2025 with the proposed amendments set out in recommendations 2-7.

Recommendation 2

The Committee recommends that the Bill be amended to clarify the ramifications for non-compliance with an order made under proposed section 19C.

Recommendation 3

The Committee recommends that proposed section 30 be amended to clarify the process for notifying the making of, and giving effect to, determinations based on recommendations of the Local Government Representation Committee.

Recommendation 4

The Committee recommends that to avoid any ambiguity, proposed section 54(2) be amended as follows:

- (b) omit the word 'may' and insert the word 'must'
- (b)(i) omit the words 'decide to'
- (b)(ii) omit the word 'may'
- (c) omit the word 'may' and insert the word 'must'

Recommendation 5

The Committee recommends that to avoid any ambiguity, proposed section 65(2)(b), (3)(b) and (c) be amended to omit the word 'may' and insert the word 'must'.

Recommendation 6

The Committee recommends that the Explanatory Statement be amended to clarify the policy intent of the clause 7 amendment to section 28.

Recommendation 7

The Committee recommends that the Explanatory Statement be amended to address the following typographical errors:

- Clause 6, paragraph 1: omit '19B' and insert '19A'
- Clause 6, paragraph 2 omit '19A and 19B' and insert '19B and 19C'
- Omit 'Clause 92' and insert 'Clause 9'
- Omit 'Clause 370' and insert 'Clause 37'

1 Introduction

Introduction of the Bill

- 1.1 The Local Government Legislation Amendment Bill 2025 (the Bill) was introduced into the Legislative Assembly by the Minister for Housing, Local Government and Community Development, the Hon Steve Edgington MLA on 19 March 2025. The Assembly subsequently referred the Bill to the Legislative Scrutiny Committee for inquiry and report by 30 April 2025.¹

Conduct of the Inquiry

- 1.2 On 20 March 2025 the Committee called for submissions by 28 March 2025. The call for submissions was advertised via the Legislative Assembly website, Facebook and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations. The Committee received six submissions to its inquiry (see Appendix 1).

Outcome of Committee's Consideration

- 1.3 Sessional Order 14 requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.4 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendments set out in Recommendations 2-7.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Local Government Legislation Amendment Bill 2025 with the proposed amendments set out in recommendations 2-7.

Report Structure

- 1.5 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.6 Chapter 3 considers the main issues raised in evidence received.

¹ Hon Steve Edgington MLA, Minister for Housing, Local Government and Community Development, Draft Daily Hansard – Day 2 – 19 March 2025, <https://hdl.handle.net/10070/990874>, p. 4

2 Overview of the Bill

Background to the Bill

2.1 In presenting the Bill, Minister Edgington noted that:

It is important to emphasise that the amendments in this Bill are the first tranche of reforms that will be implemented in stages. By tackling some of the most pressing issues first, the amendments lay the groundwork for comprehensive changes that are currently underway.

The proposed changes in this Bill are designed to modernise and improve the efficiency, transparency and overall effectiveness of the local government sector. This first phase seeks to align local government systems and processes with the best practice seen in local governments nationwide, ensuring the sector becomes more responsive and better suited to the needs of our communities. ...²

Purpose of the Bill

2.2 Amending the *Local Government Act 2019* and the Local Government (General) Regulations 2021, the purpose of the Bill as set out in the Explanatory Statement is to:

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

The proposed amendments are grouped as follows:

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

² Hon Steve Edgington MLA, Minister for Housing, Local Government and Community Development, *Draft Daily Hansard – Day 2 – 19 March 2025*, <https://hdl.handle.net/10070/990874> p. 2

³ Explanatory Statement, *Local Government Legislation Amendment Bill 2025 (Serial 20)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p. 1

3 Examination of the Bill

Introduction

- 3.1 While submitters were generally supportive of the proposed amendments to the *Local Government Act 2019* and the *Local Government (General) Regulations 2021*, clarification was sought regarding the intended operation of various provisions within the Bill. Submitters also put forward a number of suggestions as to how the Bill might be improved. The following discussion considers the main issues raised in submissions.

Publication of Notices

- 3.2 The Bill seeks to modernise local government communication practices by introducing several amendments to the publishing requirements for local government notices that aim to make local government notices more accessible to the public through digital platforms. As highlighted by the Minister, these amendments include:

- removal of the outdated requirement for councils to publish certain notices in newspapers including budget-related information. Councils will now be permitted to publish notices on their websites, improving efficiency and ensuring alignment with current communication practices.
- removal of legislative references to posting notices on notice boards at council offices, as this method has become less commonly used. While Councils may continue using this method if it suits their constituents, the change provides greater flexibility in how they communicate with the public.
- removal of the requirement to publish newspaper notifications for a council's draft plan and annual report, and instead ensure that these documents are published on a council's website and are available at council offices...
- similar updates apply to notices regarding meeting postponements and the calling of meetings of electors, with the focus shifting to publishing these notices on the council's website, rather than in newspapers or on notice boards.⁴

- 3.3 Although generally supportive of the proposed amendments, the West Daly Regional Council (WDRC) pointed out that:

While the intention is to modernise, WDRC constituents may not have easy access to electronic devices which support ease of access to information via the Website. Therefore, the reality could lead to reduced access to information in the community.⁵

- 3.4 Similarly, the Local Government Association of the Northern Territory (LGANT) noted that 'wholly online public notices may lead to a lack of engagement by

⁴ Hon Steve Edgington MLA, Minister for Housing, Local Government and Community Development, *Draft Daily Hansard – Day 2 – 19 March 2025*, <https://hdl.handle.net/10070/990874>, p. 3

⁵ West Daly Regional Council (WDRC), Submission No. 4, p. 2

constituents affected by telecommunications issues.’⁶ LGANT suggested that ‘councils be supported in considering ways to reach remote households and communities who regularly face poor mobile and internet coverage.’⁷

- 3.5 While noting that the proposed amendments to the publication of notices does not impact requirements in relation to elections as set out in section 11 of the Act, the Northern Territory Electoral Commission (NTEC) suggested that ‘consideration be given to the inclusion of public notice amendments similar to the provisions of the *Queensland Local Government Electoral Act* (Qld) 2011’.⁸
- 3.6 Pursuant to section 11 of the Act, current provisions require that the returning officer for the election must publish information about the matter in a newspaper circulating in the relevant local government area, and must direct the relevant council to make that information available on the council’s website. While acknowledging that it is both appropriate and effective to continue the publication of certain matters relating to local government elections in newspapers as part of broader communication strategy, the NTEC noted that:

provisions of the *Local Government Elections Act 2011* (Qld) allow for matters including (amongst others) notices of election, close of rolls, calling of nominations, announcement of nominations, voting places and notification of results to be ‘published on the electoral commission website; and in other ways the returning officer considers appropriate.’⁹

Committee’s Comments

- 3.7 The Committee notes that there is nothing in the proposed amendments that precludes Councils from the continued use of noticeboards and newspapers, in addition to the new requirement to publish notices on their websites, where it is considered such methods suit their constituents.
- 3.8 While acknowledging the suggestion put forward by the NTEC, the Committee notes that section 11(3) of the Act does not prevent the giving of notice in relation to an election in another way such as radio or television broadcasts.

Prospective Councils and Transitional Arrangements

- 3.9 Clause 6 inserts sections 19A (Protection from Liability), 19B (performance of council functions before election of members of local government council), and 19C (Other transitional orders).
- 3.10 As set out in the Explanatory Statement, section 19A clarifies that:

liability limitations afforded to local government councils are afforded to prospective councils when fulfilling their obligations, roles and responsibilities. Currently, it is not clear whether the same protections are

⁶ Local Government Association of the Northern Territory (LGANT, Submission No. 5, pp. 3-4

⁷ Local Government Association of the Northern Territory (LGANT, Submission No. 5, p. 3-

⁸ Northern Territory Electoral Commission (NTEC), Submission No. 6, p. 4

⁹ NTEC, Submission No. 6, p. 4

afforded to the person appointed to constitute a prospective council, which is an undesirable unintended consequence of the current version of the Act.¹⁰

- 3.11 Section 19B then clarifies that where a prospective council is established for an area of the Territory that is already part of a local government area constituted under the Act, the local government council for the existing local government area must continue to perform its functions in relation to the prospective local government area until such time as the prospective council becomes the council after the general election for the council for the local government area. However, LGANT and WDRC expressed the view that;

the requirement that the existing council continue to perform its functions in relation to the prospective council ... places a substantial burden on local government councils who are already resource constrained.¹¹

- 3.12 Finally, section 19C provides that, to ensure the smooth transition for new councils in newly established local government areas, the Administrator or Minister may, by *Gazette* notice, make a transitional order to assist with specific transitional matters for individual local government councils and prospective councils. As noted in the Explanatory Statement, this section makes it clear that:

the Chief Executive Officer (CEO) of the council, and the person constituting the prospective council must take all reasonable steps to facilitate compliance with the transitional order. Under the existing section 317, if the transitional order is not complied with, and relates to financial responsibilities, a financial controller may be appointed to implement the financial controls and perform other related duties.¹²

- 3.13 LGANT and WDRC raised concern that section 19C empowers the Minister to merge, divide or abolish existing local government areas without any 'requirement for consultation as a precondition of the exercise of the power.'¹³ However, the Committee notes that the power to establish, merge, divide or abolish local government areas is, in fact, provided for in the existing section 16(1) of the Act. Pursuant to section 16(2), while the Minister has the power to divide or merge local government areas, only the Administrator is empowered to constitute or abolish a local government area. The Committee also notes that enactment of the provisions in section 16 are not subject to any consultation requirements.
- 3.14 Given the above, the Committee notes that section 19C provides that the Administrator or Minister may make a transitional order in relation to a local government council or prospective council if considered necessary as a consequence of actions taken pursuant to section 16.
- 3.15 Concern was also raised in relation to proposed section 19C(3) and (4). Section 19C(3) provides that a local government council or prospective council must comply with transitional orders made under this section, and subsection (4)

¹⁰ Explanatory Statement, Local Government Legislation Amendment Bill 2025 (Serial 20), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p. 2

¹¹ LGANT, Submission No. 5, p. 2; see also WDRC, Submission No. 4, p. 3

¹² Explanatory Statement, Local Government Legislation Amendment Bill 2025 (Serial 20), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p. 3

¹³ LGANT, Submission No. 5, p. 1; see also WDRC, Submission No. 4, p. 3

provides that the CEO of the council and the person constituting the prospective council must take all reasonable steps to facilitate compliance with such orders.

3.16 However, as LGANT noted:

‘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. ...¹⁴

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 the CEO needs to be thoroughly considered in the finalisation of section 19C.¹⁵

3.17 As noted previously, the Explanatory Statement notes that non-compliance with an order that relates to financial responsibilities may give rise to actions under section 317 of the Act. However, as LGANT and WDRC noted, the Bill does not provide any detail around non-compliance with orders that do not relate to financial responsibilities:

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. The Bill needs to be clear about the ramifications of non-compliance.¹⁶

Committee’s Comments

3.18 In relation to proposed section 19B, the Committee does not consider that the requirement for an existing council to continue performing its functions in relation to the prospective local government area until such time as the prospective council becomes the council places an undue burden on councils.

3.19 However, with regards to proposed section 19C(4), and noting the reference in the Explanatory Statement to potential action under section 317 where non-compliance relates to financial responsibilities, the Committee agrees that the Bill ought to be amended to clarify the ramifications for non-compliance more generally.

Recommendation 2

The Committee recommends that the Bill be amended to clarify the ramifications for non-compliance with an order made under proposed section 19C.

¹⁴ LGANT, Submission No. 5, p. 1; see also WDRC, Submission No. 4, p. 3

¹⁵ LGANT, Submission No. 5, p. 4

¹⁶ LGANT, Submission No. 5, p. 1

Local Government Representation Committee

- 3.20 The Local Government Representation Committee was established under the *Local Government Act 2019*, which replaced the *Local Government Act 2008*. At the time, the Department of Local Government, Housing and Community Development noted that:

Under the current [2008] Act, a council reviews its constitutional arrangements, such as ward boundaries and number of members in wards, and makes recommendations about any desired changes. The Minister then determines if any changes are to be made.

Under the proposed legislation [Local Government Bill 2019], a process similar to the Legislative Assembly redistribution is to be used for local government. This will involve an independent local government representation committee consisting of the Northern Territory Electoral Commissioner, the Surveyor-General and the Chief Executive Officer of LGANT. The committee will consult with councils, conduct a review, consult on draft determinations and make final determinations regarding any required changes.¹⁷

- 3.21 Amending section 28 (Powers of committee) regarding the Local Government Representation Committee, the Explanatory Statement notes that clause 7 of the Bill:

replaces the word 'determination' with the word 'recommendation', which aligns with the purpose of the section which enables the Committee to serve as a mechanism for informed decision-making and guidance to the Minister and Administrator.¹⁸

Noting that councils have not been consulted on this amendment, WDRC pointed out that the Explanatory Statement fails to provide any commentary as to the purpose of this amendment, 'which would have significant impact on the council and its constituents.'¹⁹

- 3.22 The City of Palmerston (CoP) supported the proposed amendment to the powers of the Local Government Representation Committee, noting that it:

holds better regard to the institution of Parliament, with the Minister retaining the final decision on whether councils should have wards or remain undivided, based on appropriate community consultation, within the considerations specified in the Act.²⁰

- 3.23 However, LGANT, WDRC, Roper Gulf Regional Council (RGRC) and the NTEC raised concerns regarding the impact of this amendment on the independence of the process. For example, the NTEC noted that:

Independent committees tasked with looking at representative structures provides assurance that decisions about electoral boundaries or representation are impartial, free from influence and prevent manipulation in

¹⁷ Social Policy Scrutiny Committee, *Public Briefing Transcript – 23 September 2019, Department of the Legislative Assembly of the Northern Territory, Darwin, 2019*, <https://parliament.nt.gov.au/committees/previous/spsc/107-2019>, p. 4

¹⁸ Explanatory Statement, *Local Government Legislation Amendment Bill 2025 (Serial 20)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p. 3

¹⁹ WDRC, Submission No. 4, p. 3

²⁰ City of Palmerston (CoP), Submission No. 1, p. 1

favour of certain individuals or groups of people. The independence of this decision making process promotes public confidence in representative structures and, subsequently, public trust in elections.²¹

3.24 As LGANT pointed out, the proposed amendment:

significantly alters the functions of the Local Government Representation Committee who currently determine if a local government area is divided into wards.

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.

These amendments now have the Minister or the Administrator making the determination on the recommendation of the Local Government Representation Committee, concentrating authority and further embedding a model of centralised government control.²²

3.25 LGANT and WDRC considered that councils should be consulted before 'making any decision that would significantly disempower the Local Government Representation Committee.'²³ The NTEC also expressed the view that:

consideration be given to reviewing any impacts of the proposed changes on the objectives of the Representation Review Committee, conflicts and any impacts in the representation review and decision making process concerning the representation structures of councils.²⁴

3.26 LGANT further noted that clause 30 (Act further amended) removes sections 30(4) and (5) which relate to the action required of the Minister following the making of a determination by the Local Government Representation Committee. After the Committee has provided its final report to the council and the Minister, section 30(4) currently requires the Minister to notify the making of the determination by *Gazette* notice, and section 30(5) then sets out when the determination takes effect. As amended, LGANT pointed out that once the Committee has provided its final report to the council and the Minister, the Bill is silent regarding notification of the making of a determination based on the Committee's recommendation and when such takes effect.²⁵

Committee's Comments

3.27 With regards to the proposed amendment to section 28 of the Act, the Committee notes that the new provisions are not dissimilar to those of equivalent committees in other jurisdictions. For example, in Victoria, Western Australia and Tasmania electoral representation reviews are conducted by an advisory body to the Minister.²⁶ In Queensland, councils have no role in such reviews, which are

²¹ NTEC, Submission No. 6, p. 5

²² LGANT, Submission No. 5, p. 2

²³ LGANT, Submission No. 5, p.3; WDRC, Submission No. 4, p. 3

²⁴ NTEC, Submission No. 6. pp. 5-6

²⁵ LGANT, Submission No. 5, p. 2

²⁶ *Local Government Act 2020* (Vic), s. 16; *Local Government Act 1995* (WA), s 2.44; *Local Government Act 1993* (Tas), s 210

conducted by the Local Government Change Commission.²⁷ South Australia and New South Wales are the only jurisdictions where councils are empowered to make determinations following a review process and consultation with the Electoral Commissioner.²⁸

- 3.28 In relation to the proposed omission of sections 30(4) and (5), the Committee agrees that, as currently drafted, the process for notifying the making of, and giving effect to, determinations based on recommendations of the Local Government Representation Committee is unclear and recommends the Bill be amended accordingly.

Recommendation 3

The Committee recommends that proposed section 30 be amended to clarify the process for notifying the making of, and giving effect to, determinations based on recommendations of the Local Government Representation Committee.

Casual Vacancies

- 3.29 Clause 9 amends section 54(2) (Filling casual vacancy generally) to clarify that where a casual vacancy occurs 18 months or more before the next general election, the council must hold a by-election. However, where the vacancy occurs less than 18 months, but more than 6 months, before the next general election, councils have ‘the discretion to choose between holding a by-election or appointing a replacement member by a vote of existing members, in accordance with council policy.’²⁹ The amendment further provides that elected members are required to pass a resolution to determine which method of filling the vacancy will be used.

- 3.30 As highlighted in the Explanatory Statement, this amendment acknowledges that:

Several councils have experienced challenges working through an internal appointment process based on conflicts of interest, unclear procedures, and concerns about the democratic implication of not allowing the public a vote. However, other councils have found the appointment process to be effective for their communities. It is appropriate that councils are given the option to decide which approach best suits their circumstances, in line with the original intent when drafting the Act.³⁰

- 3.31 While generally supportive of the amendments to section 54, LGANT and WDRC raised concerns that use of the word ‘may’ rather than ‘must’ in proposed section 54(2)(b) and (c) ‘implies inaction is on the table as an option’.³¹ As LGANT pointed out:

²⁷ *Local Government Act 2024* (Qld), ss 17 – 23

²⁸ *Local Government Act 1999* (SA), s 12; *Local Government Act 1993* (NSW), s 210

²⁹ Explanatory Statement, *Local Government Legislation Amendment Bill 2025* (Serial 20), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p. 3

³⁰ Explanatory Statement, *Local Government Legislation Amendment Bill 2025* (Serial 20), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p. 3

³¹ LGANT, Submission No. 5, p. 3; see also WDRC, Submission No. 4, p. 3

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.³²

It was further noted that inclusion of the word 'may' in proposed section 54(2)(b)(ii) is superfluous.

3.32 CoP also noted that:

there is inconsistency in the proposed wording between clauses 54(2)(b)(i) and 54(2)(c)(i) and request that the words 'decide to' are removed from the proposed clause 54(2)(b)(i) for consistency.³³

3.33 Where a casual vacancy occurs in the office of a principal member, clause 11 amends section 65(2) and (3) to clarify that, similar to proposed section 54(2), the council is required to pass a resolution to determine the method they will use to fill the vacancy. Here again, LGANT recommended that to clarify the obligation of council, the word 'may' be replaced by the word 'must' in proposed section 65(2)(b), (3)(b) and (c).³⁴

3.34 With regards to the proposed amendment to provide that councils may choose to hold a by-election to fill casual vacancies that occur less than 18 months, but more than 6 months, before the next general election as set out in proposed section 54(2), the NTEC advised that it:

has concerns about its ability to conduct additional elections within the existing resourcing allocation during this period without compromising its ability to provide high quality electoral services.

Whilst the NTEC has not conducted by-elections within this period the NTEC has recently provided information and materials to support a number of councils to manage their processes to fill casual vacancies.

The NTEC operates with a small team (14 FTE) and is experiencing resourcing, budget and systems challenges. The fixed-term schedules for local government and the Legislative Assembly general elections means that the Legislative Assembly election is held 12 months prior to the periodic general election for local government councils.

As a result, the NTEC has concerns that the potential requirement to hold local government by-elections during this period may compromise the service delivery of fixed-term Legislative Assembly elections and preparations and planning for the delivery of local government periodic general elections.³⁵

Given the above, the NTEC recommended that 'consideration be given to identifying alternative approaches to support the filling of casual vacancies within this period ...'³⁶

3.35 Importantly, it is noted that clause 16 of the Bill amends section 136 (By-elections) to provide that, as is currently the case in respect of by-elections that must be held in relation to casual vacancies that occur 18 months or more before

³² LGANT, Submission No. 5, p. 3

³³ CoP, Submission No. 1, p. 2

³⁴ LGANT, Submission No. 5, p. 4

³⁵ NTEC, Submission No. 6, p. 6

³⁶ NTEC, Submission No. 6, p. 7

the next general election, by-elections held pursuant to proposed section 54(2)(b)(ii) will also be subject to the provisions of section 136. Under these provisions councils may appoint the CEO or another person (other than the Electoral Commissioner) to be the returning officer for a by-election. Further, the returning officer has some discretion with regards to fixing the date of the by-election, so long as it is held within 4 months of the Electoral Commissioner being notified of the vacancy.

Committee's Comments

- 3.36 With regards to the concerns raised by NTEC, the Committee notes that the options for filling casual vacancies in relation to elected members are necessarily limited. While acknowledging the potential impact proposed section 54(2)(b) may have on the NTEC's operational capacity, the Committee considers that the provisions of section 136, as amended, should enable the NTEC to fulfil its responsibilities in relation to both the delivery of general elections and by-elections as requested by councils. However, the Committee is of the view that it would be prudent to monitor the extent to which proposed section 54(2)(b) affects NTEC's operational capacity going forward.
- 3.37 Given that the Explanatory Statement at clauses 9 and 11 states that elected members are required to pass a resolution regarding the method by which a casual vacancy will be filled, and to ensure the Bill is unambiguous and drafted in a sufficiently clear and precise way, the Committee agrees with submitters that proposed sections 54(2), 65(2)(b), (3)(b) and (c) should be amended as set out in the following recommendations.

Recommendation 4

The Committee recommends that to avoid any ambiguity, proposed section 54(2) be amended as follows:

- (b) omit the word 'may' and insert the word 'must'**
- (b)(i) omit the words 'decide to'**
- (b)(ii) omit the word 'may'**
- (c) omit the word 'may' and insert the word 'must'**

Recommendation 5

The Committee recommends that to avoid any ambiguity, proposed section 65(2)(b), (3)(b) and (c) be amended to omit the word 'may' and insert the word 'must'.

Annual Reports

- 3.38 Clause 26 amends section 290 (Annual Reports) to remove the requirement to advertise publication of Annual Reports by newspapers. This clause also clarifies that in addition to publishing annual reports on their website and providing a copy

to the Agency, Councils are required to make copies of the report available from the council's public office.

- 3.39 While supporting this amendment, LGANT suggested that 'a practical timeframe be included, for e.g. four weeks (otherwise a council may be non-compliant with this requirement if copies aren't available year-round).'³⁷

Committee's Comments

- 3.40 With regards to LGANT's suggestion, the Committee notes that section 290(2) already provides that Councils must publish annual reports on their website and make them available from the council's public office. The Committee further notes that the timeframe suggested by LGANT does not cater for new residents moving into the area during the year who may wish to obtain a copy of the Council's annual report.

Compliance Reviews

- 3.41 Clause 27 amends section 300 (Agency must report on results of compliance review). As stated in the Explanatory Statement:

It has been noted that there has been unintended ambiguity with the present provision when it comes to the Agency providing compliance reports to councils, especially where there may be adverse findings against the CEO of the council. The present provision requires the report to be provided to the CEO, who then has the obligation to provide the report to the council as soon as practicable.³⁸

- 3.42 The proposed amendment provides that the Agency must now provide a copy of the compliance report to both the CEO and the principal member of the Council. The CEO and the principal member then both have an obligation to ensure that a copy of the report is provided to each other member of the council. Similar changes are made in reference to local government subsidiaries to ensure a copy of the report is provided to all members of the constituent council or councils.
- 3.43 While supporting the intent of the proposed amendments LGANT recommended that section 300 be further amended to 'ensure that the reports are tabled by the CEO to Council.'³⁹

Committee's Comments

- 3.44 Given that tabled reports are generally made public, the Committee is of the view that, depending on the nature of the report, it may not necessarily be appropriate for a compliance report to be made public.

³⁷ LGANT, Submission No. 5, p. 4

³⁸ Explanatory Statement, *Local Government Legislation Amendment Bill 2025 (Serial 20)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p. 7

³⁹ LGANT, Submission No. 5, p. 4

Official Management of Councils

3.45 As noted in the Explanatory Statement, 'the Act is silent on whether elected members who are suspended when a council goes into official management retain their entitlements.'⁴⁰ Clause 28 amends section 318 (Official management of councils) to remove the ambiguity by providing that 'a suspended member is not entitled to any remuneration, allowances, expenses or benefits during the period of suspension.'

3.46 LGANT and the RGRC expressed the view that the proposed amendment is prejudicial and inconsistent with the concept of natural justice:

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.⁴¹

in a similar situation within the realm of industrial relations, employees are generally suspended *with* salary and entitlements until allegations against them are resolved. Council is firmly committed to the *universal* application of 'Natural Justice' and considers it extremely unfair to (and potentially unlawful) for such prejudicial action to be legislated.⁴²

3.47 RGRC suggested that:

Rather than punishing individuals, who may or may not have had any involvement or say in the lead up to the events that may cause a suspension, it would be far more prudent and fair to strengthen the Code of Conduct provisions at Schedule 1 of Act, and for the Minister and the Department of Housing, Local Government and Community Development to carry out their function as a regulator in the sector, and carry out compliance and enforcement action against individual elected members who breach the Code of Conduct.⁴³

Committee's Comments

3.48 The Committee notes that the proposed amendment to section 318 is consistent with provisions in New South Wales, South Australia, Tasmania, Victoria and Western Australia.⁴⁴ In Queensland, whether or not a suspended councillor is eligible to receive any remuneration, allowances, expenses or benefits during a period of suspension is dependent upon the circumstances of the suspension.⁴⁵

Explanatory Statement

3.49 The Explanatory Statement that accompanies a Bill is designed to assist both Members of the Legislative Assembly and members of the public to gain a

⁴⁰ Explanatory Statement, *Local Government Legislation Amendment Bill 2025 (Serial 20)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p.7

⁴¹ LGANT, Submission No. 5, p.3

⁴² RGRC, Submission No. 2, p.3

⁴³ RGRC, Submission No. 2, p.3

⁴⁴ *Local Government Act 1993* (NSW) s438L(2); *Local Government Act 1999* (SA) ss68(1b), 80A(2d); 273(8A); *Local Government Act 1993* (Tas) s340A(5); *Local Government Act 2020* (Vic) s37(1)(b); *Local Government Act 1995* (WA) s29(5)

⁴⁵ *Local Government Act 2009* (Qld) ss 150AR(4), 175N(6)

thorough understanding of the legislation. As stated in the *Northern Territory Government Legislation Handbook*:

The Explanatory Statement explains the general intent of the Bill and describes the purpose of each clause of the Bill. It is to more than merely paraphrase the clauses of the Bill; it should explain the policy purpose of each clause and what the effect of the Bill would be if passed. ... The sponsoring Minister uses the Explanatory Statement as a reference document in the Consideration in Detail Stage debate on the Bill ... the courts may refer to the Explanatory Statement to help ascertain the intent of the legislation in the event of related litigation or prosecution action, so it is critical the material in the Explanatory Statement is clear and comprehensive.⁴⁶

- 3.50 As noted previously, concern was raised about the adequacy of the explanation provided for clause 7 of the Bill regarding proposed amendments to the powers of the Local Government Representation Committee which notes that:

This clause replaces the word 'determination' with the word 'recommendation', which aligns with the purpose of the section which enables the Committee to serve as a mechanism for informed decision-making and guidance to the Minister and Administrator.⁴⁷

- 3.51 While this amendment does not alter the Committee's existing function as a mechanism for informed decision-making and guidance to the Minister and Administrator, as noted in submissions it does significantly alter the power of the Committee in the exercise of its functions.⁴⁸ However, as currently drafted, the Explanatory Statement fails to explain the policy purpose of this amendment, or the effect of this amendment should the Bill be passed.
- 3.52 Similarly, although the *Legislation Handbook* also notes that the Explanatory Speech read by the Minister on presentation of the Bill 'should deal in detail with the policies and proposals in the Bill, and provide the reason for the introduction of the measures and the benefits which are expected from the new law'⁴⁹, the Committee notes that this amendment was not mentioned during the Minister's first reading speech.

Committee's Comments

- 3.53 The Committee notes that, overall, the Explanatory Statement satisfactorily explains the policy purpose of the clauses of the Bill. However, as noted above, the policy intent of the clause 7 amendment is unclear. Given the absence of any mention of the clause 7 amendment in the Minister's first reading speech, the Committee is of the view that the Explanatory Statement should be amended to clarify the policy intent of the clause.

⁴⁶ Northern Territory Government, *Northern Territory Government Legislation Handbook*, (unpublished), Northern Territory Government, Darwin, December 2024, pp. 14-15

⁴⁷ Explanatory Statement, Local Government Legislation Amendment Bill 2025 (Serial 20), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>, p.3

⁴⁸ LGANT, Submission No. 5, p.3; WDRC, Submission No. 4, p. 3

⁴⁹ Northern Territory Government, *Northern Territory Government Legislation Handbook*, (unpublished), Northern Territory Government, Darwin, December 2024, p. 14

- 3.54 In addition to the issue outlined above, the Committee has identified a number of typographical errors in the Explanatory Statement that require correction as set out in Recommendation 7 below.

Recommendation 6

The Committee recommends that the Explanatory Statement be amended to clarify the policy intent of the clause 7 amendment to section 28.

Recommendation 7

The Committee recommends that the Explanatory Statement be amended to address the following typographical errors:

- Clause 6, paragraph 1: omit '19B' and insert '19A'
- Clause 6, paragraph 2 omit '19A and 19B' and insert '19B and 19C'
- Omit 'Clause 92' and insert 'Clause 9'
- Omit 'Clause 370' and insert 'Clause 37'

Appendix 1: Submissions Received

Submissions Received

1. City of Palmerston
2. Roper Gulf Regional Council
3. Alice Springs Town Council
4. West Daly Regional Council
5. Local Government Association of the NT
6. NT Electoral Commission

Note: Copies of submissions are available at:

<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/20-2025>

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