



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legal and Constitutional Affairs Committee

**Report of Ministerial
Correspondence on Subordinate
Legislation and Publications**

August 2023 – May 2024

May 2024

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Chair's Preface

As rules, regulations and by-laws affect people in their day to day lives, it is important that the Assembly maintains a sufficient level of scrutiny of subordinate legislation to ensure that they keep within the purpose of the laws under which they are made and do not unduly affect people's rights. As part of that scrutiny, the Committee obtains advice from its independent legal counsel, Professor Ned Aughterson, and writes to responsible Ministers regarding any questions or concerns the Committee has with a regulation. Ministers reply with clarification about the intended operation of the regulations or undertakings to correct any errors. This report places those letters on the public record and allows interested persons to see those clarifications or undertakings.

During the reporting period, the Committee considered 16 pieces of subordinate legislation. As detailed in this report, the Committee's legal counsel identified concerns regarding six of these. The Committee is also responsible for monitoring compliance with statutory reporting requirements. For example, all Northern Territory government departments and a range of other organisations are required to provide annual reports on their activities to the Speaker or relevant Minister for tabling in the Assembly. It is pleasing to note that during the current reporting period all agencies, independent officers, statutory authorities and government owned corporations met their relevant reporting obligations within the required timeframe.

I thank my fellow Committee members for their bipartisan approach in seeking to ensure a high standard of rules, regulations and by-laws in the Northern Territory. On behalf of the Committee, I would also like to thank Ministers for their responses to the Committee's queries. The Committee also acknowledges the significant contribution made by Professor Aughterson, and thanks him for his diligence in advising the Committee.



Hon Dheran Young MLA
Chair

Committee Members

	Hon Dheran Young MLA: Member for Daly	
	Party	Territory Labor
	Parliamentary Position	Speaker
	Committee Membership	
Standing	Legal and Constitutional Affairs (Chair) House (Deputy Chair) Standing Orders	
	Ms Marie-Clare Boothby MLA: Member for Brennan	
	Party	Country Liberals
	Committee Membership	
	Standing	Legal and Constitutional Affairs Standing Committee on the ICAC
	Mr Manuel Brown MLA: Member for Arafura	
	Party	Territory Labor
	Parliamentary Position	Government Whip
	Committee Membership	
Standing	House Legal and Constitutional Affairs (Deputy Chair)	
	Mr Steve Edgington MLA: Member for Barkly	
	Party	Country Liberals
	Committee Membership	
	Standing	Legal and Constitutional Affairs
	Ms Lauren Moss MLA: Member for Casuarina	
	Party	Territory Labor
	Committee Membership	
	Standing	Legal and Constitutional Affairs
<p>On 24 November 2023 Member for Johnston, Hon Joel Bowden MLA and Member for Fannie Bay, Hon Brent Potter MLA, were discharged from the Committee and Member for Arnhem, Hon Selena Uibo MLA, and Member for Arafura, Mr Manuel Brown MLA were appointed to the Committee. On 31 January 2024 Member for Arnhem, Hon Selena Uibo MLA, was discharged from the Committee and Member for Casuarina, Ms Lauren Moss MLA was appointed to the Committee.</p>		

Committee Secretariat

Committee Secretary: Julia Knight

Administration / Research Officer Caelan Ikin
(July – August 2023 and May – June 2024)

Amy Alexander
(October 2023 – March 2024)

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Terms of Reference

Standing Order 178

Legal and Constitutional Affairs Committee

- (1) A Legal and Constitutional Affairs Committee will be appointed at the commencement of each Assembly to inquire into and report on such constitutional and legal matters as may be referred to it by:
 - (a) the Attorney-General, or
 - (b) a resolution of the Assembly.
- (2) The Committee will consist of 5 members.

Sessional Order 10

Subordinate Legislation and Publications Committee Duties Assigned to Legal and Constitutional Affairs Committee

The Assembly suspends the requirement to appoint a separate Subordinate Legislation and Publications Committee as required under Standing Order 176 and assigns all of the duties under that Standing Order to be undertaken by the Legal and Constitutional Affairs Committee as established under Standing Order 178.

Standing Order 176

Subordinate Legislation and Publications Committee

- (1) A Subordinate Legislation and Publications Committee must be appointed at the commencement of each Assembly to examine and report upon all instruments of a legislative or administrative character and other papers which are required by statute to be laid upon the Table.
- (2) The Committee must consist of five Members.
- (3) The Committee will, with respect to any instrument of a legislative or administrative character which the Legislative Assembly may disallow or disapprove, consider:
 - (a) whether the instrument is in accordance with the general objects of the law pursuant to which it is made,
 - (b) whether the instrument trespasses unduly on personal rights or liberties,
 - (c) whether the instrument unduly makes rights and liberties of citizens dependent upon administrative and not upon judicial decisions,
 - (d) whether the instrument contains matter which in the opinion of the Committee should properly be dealt with in an Act,
 - (e) whether the instrument appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made,
 - (f) whether there appears to have been unjustifiable delay in the publication or laying of the instrument before the Assembly, and
 - (g) whether for any special reason the form or purport of the instrument calls for elucidation.

- (4) The Committee, if it is of the opinion that an instrument should be disallowed or disapproved:
 - (a) will report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly, and
 - (b) if the Assembly is not meeting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.
- (5) The Committee, if it is of the opinion that any matter relating to any paper which is laid upon the Table of the Assembly should be brought to the notice of the Assembly, may report that opinion and matter to the Assembly.
- (6) The Committee will inquire into and report, from time to time, on the printing, publication and distribution of publications or such matters as are referred to it by the Speaker or the Assembly.
- (7) For the purposes of this Standing Order, 'instrument of a legislative or administrative character' has the same meaning as that defined in the *Interpretation Act*.

Adopted 21 October 2020

1 Introduction

- 1.1 Pursuant to Sessional Order 10, the Legal and Constitutional Affairs Committee has been given the duties of the Subordinate Legislation and Publications Committee to examine and report on all instruments of a legislative or administrative character that the Assembly may disallow or disapprove and advise the Assembly whether the instrument has sufficient regard to the rights and liberties of individuals and the institution of Parliament.
- 1.2 Committees to examine subordinate legislation against such terms are common in Westminster style Parliaments. This scrutiny assists the Parliament to ensure other bodies use their delegated power to make laws according to certain principles. Those principles are detailed in Standing Order 176(3) of the Committee's Terms of Reference.
- 1.3 Subordinate legislation is any regulation, rule or by-law made under an Act.¹ Subordinate legislation takes effect from the time it is notified in the *Northern Territory Government Gazette*, or from the time specified in the legislation.² Where any Act confers the power to make or amend statutory rules, regulations and by-laws subject to disallowance under section 63 of the *Interpretation Act 1978*, there is a statutory requirement for all such instruments to be presented to the Assembly within six sitting days of its notification in the *Gazette*.³
- 1.4 However, as provided for in section 63C(1) of the *Interpretation Act*, a failure to table subordinate legislation in the Assembly does not affect the validity of the subordinate legislation, but may be the subject of a referral by the Assembly to the committee responsible for the examination of instruments of a legislative character or another committee of the Assembly.
- 1.5 The Committee obtains independent legal advice on whether an instrument raises any issues. It will then refer issues raised to the relevant Minister for response. If issues arise warranting the Assembly's immediate attention, the Committee reports that subordinate legislation to the Assembly. It also provides periodic reports such as this to the Assembly of its correspondence with Ministers to account to the Assembly for the work it has done and place on the public record the issues noted and the explanations given.
- 1.6 In addition to its scrutiny of subordinate legislation, the Committee is responsible for monitoring compliance with the statutory reporting requirements of Government entities. For example, under section 28 of the *Public Sector Employment and Management Act 1993* and section 12 of the *Financial Management Act 1995*, all Northern Territory government departments are required to present annual reports and audited financial statements to the appropriate Minister for tabling in the Assembly.

¹ *Interpretation Act 1978* (NT), ss 17, 63 & 63A

² *Interpretation Act 1978* (NT), s 63(B)

³ *Interpretation Act 1978* (NT), ss 63(b) & 63A (2)(b)

- 1.7 Independent Officers, such as the Auditor-General, Ombudsman and Independent Commissioner Against Corruption; statutory authorities; government owned corporations; and a number of other regulatory bodies are also required to submit annual reports, audited financial statements, and inquiry reports to the Speaker or relevant Minister for tabling pursuant to their respective enabling legislation. It is pleasing to note that in the current reporting period the vast majority of agencies, independent officer, statutory authorities, and government owned corporations met their relevant reporting obligations within the required timeframe.

2 Disallowance of Subordinate Legislation

- 2.1 Pursuant to section 63C(3) of the *Interpretation Act 1978*, the Assembly may disallow subordinate legislation by motion; notice of which must be given within 12 sitting days of the tabling of the subordinate legislation. Where subordinate legislation has not been tabled in accordance with section 63(b) or 63A(2)(b), notice of disallowance must be given within 12 sitting days after the last sitting day the subordinate legislation was required to be tabled. This disallowance power enables the Assembly to supervise how other bodies such as the Administrator uses the Assembly's law-making power that has been delegated to them.
- 2.2 As indicated previously, if the Committee identifies issues of concern, it will first seek to resolve the matter with the responsible Minister. However, if the Committee cannot otherwise resolve the matter and is of the opinion that subordinate legislation, or a provision of subordinate legislation, ought to be disallowed, Standing Order 176(4) stipulates that the Committee:
- (a) will report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly and
 - (b) if the Assembly is not meeting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.
- 2.3 Following consideration of the Committee's report, the Assembly may pass a resolution disallowing subordinate legislation which has the effect of repealing the legislation. In the case of subordinate legislation amending or repealing other legislation, the disallowance restores the other legislation from the date of the disallowance.
- 2.4 Where the Assembly passes a resolution of disallowance, section 64 of the Act places restrictions on the making of subordinate legislation that is the same in substance or has the same effect as the disallowed legislation within six months of the disallowance, unless the Assembly rescinds its resolution. Subordinate legislation made in contravention of this provision is of no effect.

Protective Disallowance Notices

- 2.5 Given the Committee's role in relation to subordinate legislation, it is vital that it concludes its consideration of an instrument before the end of the disallowance period to meet the requirements of the Committee's terms of reference, and to enable the Assembly to give effect to any recommendations to disallow the instrument.
- 2.6 If it appears the 12 sitting day disallowance period for an instrument will expire before the Committee can resolve any concerns, it may ask the Chair to give the Assembly a notice of motion to disallow the regulation in order to extend the disallowance period. The effect of this is to extend the disallowance period until the notice of motion is finally dealt with.

3 Ministerial Correspondence on Subordinate Legislation

Katherine Town Council Amendment By-Laws 2023 (No. 7 of 2022)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.101

Hon Chanston Paech MLA
Minister for Local Government
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Katherine Town Council Amendment By-Laws 2023 (No. 7 of 2023)

The Legal and Constitutional Affairs Committee is considering the Katherine Town Council Amendment By-Laws 2023 (No. 7 of 2023) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the by-laws from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the by-laws before the end of their disallowance period, the Committee requests this advice by 16 August 2023.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brent'.

Mr Brent Potter MLA
Chair

25 July 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Katherine Town Council Amendment By-Laws 2023 (No. 7 of 2023)

By-law 5:¹ the Council may determine charges etc for a number of listed services, including at 5(2)(h) allowing the use of real or personal property 'of or under its care'. I am not sure of the meaning of 'of ... its care'. Should it refer to the use of real or personal property 'under its care or control'?

By-law 20:² provides that a person who contravenes or fails to comply with a provision of the by-laws for which a penalty is not otherwise provided commits an offence. Is that intended to extend, for example, to by-law 6, so that the CEO commits an offence if registers are not kept in accordance with the by-laws, or the Council commits an offence where it fails to publish in accordance with by-law 5(3)? See also by-laws 28(3), 29B(2), 31(2), 45(1) etc. Such provisions impose positive obligations on the Council or officers of the Council to take specified steps, breaches of which seem to give rise to an offence (Mindful that under the *Interpretation Act*, 'person' includes a body politic and a body corporate).

By-law 46D:³ creates an offence if the 'owner' of a dog fails to comply with a condition of registration. The term 'owner' is defined broadly at by-law 37C to include the person for the time being in control or possession of the dog; the given example is a person walking a dog or looking after a dog for a friend who is on holidays. That person may not be aware of the conditions of registration. Yet the offence is one of strict liability and, unlike other of the by-laws (see, for example, s 46C), there is no defence of reasonable excuse.

There is a question of whether there should be different classes of 'owner'. If the definition of 'owner' in s 37C is taken at face value, it would mean, for example, that a person who is merely walking the dog, and has no other association with the animal, has an obligation under s 46E to notify the council if they change their address. Again, that is an offence of strict liability with no defence of reasonable excuse.

By-law 54:⁴ by-laws 51 to 53 provide that an 'owner' commits an offence where, respectively, a dog 'menaces', 'attacks', or 'seriously attacks' a person or another animal. By-law 54 establishes a defence to prosecution, but only in respect of by-laws 51 and 52; that is, not in relation to a 'serious dog attack'. By-law 53 is an offence of strict liability and there is no defence of reasonable excuse.

In relation to by-laws 51 and 52, the defence includes where 'another person had, without the defendant's permission, caused the dog to menace or attack ...' It is not clear why that defence does not apply in relation to by-law 53. For example, the registered owner might be on holidays and may have left clear instructions to the carer that the dog is not to be removed from the premises and also put in place a number of safeguards. Even then, there would be no defence on the part of the registered owner.

By-laws 65-66, 71C:⁵ The by-laws deal with animals other than dogs. Also, by-law 40 deals with obligations on the 'owner' in relation to the removal of dead or diseased animals. In relation to pounding, by-law 65(3) refers to the pounding of an animal other than a dog, while by-law 66(3) creates an offence where the 'owner' of the animal fails to collect the animal from the pound. Also, by-law 68(1) provides that an impounded animal other than a dog may be released only to the 'owner' or their agent. The potential

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

² Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

³ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)

⁴ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)

⁵ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

difficulty is that, unlike by-law 37C, which defines who is the 'owner' of a dog, there is no definition of the term 'owner' in relation to any other animal.

By-law 71C gives rise to the same issue. It provides that the 'owner' of an animal must ensure that it is not a nuisance to people or other animals.

By-law 71C:⁶ in relation to this by-law, an animal is a 'nuisance' if it:

- (a) is injurious or dangerous to the health of the community or another person; or
- (b) behaves repeatedly in a manner contrary to the general interest of the community or specific interests of another person;

This by-law is likely to be contentious. For example, in relation to (a), above, if a neighbour has a minor allergy that is affected by the presence of the animal, would that be sufficient to create a nuisance? Mindful that an owner commits an offence of strict liability in those circumstances: see by-law 71C(8) and (9).

In relation to (b), above, again this is contentious. There is a vast range of potential 'specific interests'. For example, would it constitute a nuisance if a neighbour has a specific interest in meditation and that is disturbed by the clucking of a chicken or the meowing of a cat? Again, this is an offence of strict liability. The by-law will operate unevenly. A person could be convicted of an offence simply because of the specific interests of a person who happens to be their neighbour, even, it seems, where the person is unaware of their neighbour's interests. In other words, liability does not rest only on knowable community standards.

Even under the civil law relating to nuisance in the context of residential tenancies, what constitutes nuisance is measured at common law by an objective standard; the standards of 'reasonable people' and by the nature of the neighbourhood: see, for example, *Chief Executive Officer (Housing) v Steiner* [2008] NTMC 9, [73]. See also *Housing v Maurisa Luanna Henwood* [2004] NTMC 72, [133].

⁶ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)



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Mr Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee

Via email: LA.Committees@nt.gov.au

Dear Mr Potter

Brent,

Thank you for your letter of 25 July 2023, seeking responses to comments on the *Katherine Town Council Amendment By-laws 2023* received from the Legal and Constitutional Affairs Committee's independent legal counsel, Professor Aughterson.

I have considered the points made by Professor Aughterson and believe that overall, the By-laws are of a good standard. However, the Department of the Chief Minister and Cabinet has noted all the points for consideration when the By-laws are next reviewed.

In the meantime, it is important that the By-laws are applied consistently. The Department of the Chief Minister and Cabinet will liaise with Katherine Town Council in relation to the administration of the particular By-laws identified by Professor Aughterson, with a view to encouraging and supporting consistent and appropriate application of the By-laws.

Thank you for bringing these matters to my attention.

Yours sincerely


CHANSEY PAECH

11 AUG 2023

Crown Lands Amendment Regulations 2023 (No. 10 of 2023)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.102

Hon Eva Lawler MLA
Minister for Infrastructure, Planning and Logistics
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Crown Lands Amendment Regulations 2023 (No. 10 of 2023)

The Legal and Constitutional Affairs Committee is considering the Crown Lands Amendment Regulations 2023 (No. 10 of 2023) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 16 August 2023.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brent'.

Mr Brent Potter MLA
Chair

25 July 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Crown Lands Amendment Regulations 2023 (No. 10 of 2023)

Schedule 1, clause 12(3)(b):¹ clause 12 provides that a licensee indemnifies the Territory for any specified harm or damage to land, water etc. However, 12(3)(b) provides that the indemnity does not apply to the extent that a grossly negligent or wilful act or omission of the 'owner' has contributed to the harm or damage. The term 'owner' is not defined in the Act or Regulations and there is a question of who is the 'owner' in the context of Crown lands.

By way of comparison, it is noted that in clause 13, which releases the Territory from specified claims by the licensee, clause 13(2) provides that the release does not apply to a grossly negligent or wilful act or omission of the 'Territory' that contributed to the death, injury, loss or damage.

Schedule 2, clause 4:² Clause 4(2) provides that the licensee must not remove any 'trees' from the land without written approval. The term 'tree' is not defined in the Act or Regulations. It is noted that s 102(a) of the *Crown Lands Act* makes reference to a 'tree or sapling', while s 79(9)(g) refers to 'trees and other vegetation'. Is it intended that clause 4(2) forbids the removal of trees only and not saplings and other vegetation?

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

² Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)



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Mr Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee
GPO Box 3721
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Via email: LA.Committees@nt.gov.au


Dear Mr Potter

I refer to your letter dated 25 July 2023, seeking clarification on the intent of two matters within the *Crown Lands Amendment Regulations 2020* (No. 10 of 2023) (the Regulations).

In relation to your enquiries I confirm the following:

- Schedule 1, clause 12(3)(b) – the reference to ‘owner’ in this clause refers to the Territory. A licence under the *Crown Lands Act 1992*, and the Regulations, can only be granted over Crown land as defined by that Act, and all such Crown land is owned by the Northern Territory of Australia; and
- Schedule 2, clause 4 – it is the intent that this clause extends to “trees and other vegetation”.

I thank you for bringing these matters to my attention. I have requested that the Department of Infrastructure, Planning and Logistics undertake actions to amend the Regulations to replace the word ‘owner’ with ‘Territory’ in Schedule 1, clause 12(3)(b) and to replace the word “trees” with “trees and other vegetation” in Schedule 2, clause 4.

While these changes will provide clarity to the Regulations, they are substantially inconsequential and therefore, it is requested that the Legal and Constitutional Affairs Committee support the Regulations as written in the interim, in order to allow for the ongoing administration of licences over Crown land to provide economic and social benefits to Territorians.

Yours sincerely



EVA LAWLER

16 AUG 2023



Education and Care Services National Further Amendment Regulations 2023



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.110

Hon Eva Lawler MLA
Minister for Education
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Education and Care Services National Further Amendment Regulations 2023

The Legal and Constitutional Affairs Committee is considering the Education and Care Services National Further Amendment Regulations 2023 in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 15 November 2023.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brent Potter', written over a large, light-colored scribble.

Mr Brent Potter MLA
Chair
17 October 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Education and Care Services National Further Amendment Regulations 2023

Reg 62:¹ It is noted that the present regulation amends only the penalty applicable for breach of reg 166. That regulation is headed 'Children not to be alone with visitors' and provides for a prohibition in that regard. Reg 165 requires a record to be kept of 'all visitors to a family day care residence or approved family day care venue while children are being educated and cared for at the residence or venue as part of that service'. However there is no definition in either the National Law Act or Regulations of the term 'visitor'. Does it include a parent or family member or person responsible for dropping off or collecting a child and, if so, should the prohibition extend to them? While the terms 'parent' and 'family member' are defined in the Act, it does not necessarily follow that they are excluded from the term 'visitor' when visiting the venue.

It is noted that reg 5 of the Regulations, though relating to a quite separate issue, seems to suggest that a parent might be a 'visitor'. That regulation deals with 'Services that are not education and care services' and at reg 5(2)(e) includes:

- (e) a service providing education and care to a child on an ad hoc basis at premises where the parent of, or other person responsible for, the child is—
 - (i) a guest, visitor or patron; and
 - (ii) readily available at all times that the child is being educated and cared for;

Examples—

- 1 A service that provides education and care to a child at a conference attended by the parent.
- 2 A service that provides education and care to a child at a sports and leisure centre or shopping centre where the parent is a patron.



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Hon Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee
Via email: LA.Committees@nt.gov.au

Dear  Brent Potter

Thank you for the committee's consideration of the Education and Care Services National Further Amendment Regulations 2023.

The *Education and Care Services National Law Act 2010* (national law) and the Education and Care Services National Regulations (national regulations) provide the legal platform for the National Quality Framework (NQF). The NQF aims to drive continuous quality improvement in early childhood education and care services across Australia and provides a unified national approach to regulating and assessing the quality of early childhood education and care.

Victoria is the host jurisdiction for the national law, which is adopted through the Northern Territory's (NT) *Education and Care Services (National Uniform Legislation) Act 2011*.

The national regulations are made by education ministers and published on the New South Wales legislation website.

There are currently 97 approved providers in the NT operating a combined total of 228 education and care services regulated under the NQF. These services include: 94 long day care, 75 preschools, 4 family day care schemes, 54 outside school hours care and 1 three-year-old kindergarten service. The NT's services represent approximately 1% of the total number of services regulated under the NQF across Australia.

The 2019 NQF review (the review) was commissioned by the (former) Education Council in December 2018. This was the second national review of this regulatory framework. The review aimed to ensure the NQF remains current, fit for purpose, implemented through best practice regulation and continues to meet its objectives.

The Education and Care Services National Further Amendment Regulations 2023 (the further amendment regulations) gave effect to most of the remaining recommendations arising from the review. The NT Department of Education worked with all states and territories, the Australian Government and the Australian Children's Education and Care

Quality Authority in the drafting of the further amendment regulations. In accordance with the protocol on Drafting National Uniform Legislation, the Australasian Parliamentary Counsel's Committee has been consulted, and settled the further amendment regulations.

The review recommendations included an increase to all penalty amounts across the national regulations in recognition that they had not been increased since the inception of the NQF in 2012.

Professor Aughterson's advice to the committee relates to regulation 62 of the further amendment regulations which gives effect to an increase in the penalty amount that is applicable to the approved provider for breach of an existing regulatory requirement, regulation 166 Children not to be alone with visitors. The penalty has increased from \$2,000 to \$2,200.

Regulation 166 of the national regulations relates to regulation 165 Record of Visitors, which requires the approved provider of a family day care service to ensure a record is kept of all visitors to a family day care residence or venue while children are being educated and cared for. The record must include the signature of the visitor and the time of the visitor's arrival and departure.

The Department of Education provides the following advice in relation to the observation that there is no definition in the national law or national regulations for the term 'visitor' and query as to whether a parent or family member or person responsible for dropping off or collecting a child from a family day care residence or venue excluded from the term 'visitor' in relation to regulation 166.

Regulations 158 and 159 require the approved provider to keep attendance records at the service / family day care educators residence or venue that records:

- the full name of each child
- date and time each child arrives and departs
- is signed by one of the following persons at the time the child arrives and departs:
 - the person who delivers or collects the child
 - if a signature cannot reasonable be obtained, the nominated supervisor or an educator.

In relation to the committee's query, this record keeping requirement already captures the same detail that regulation 165 requires in relation to a visitor, about a parent or family member or person responsible for dropping off or collecting a child from a family day care residence or venue.

Therefore, it is reasonable to determine that the term 'visitor' in regard to regulations 165 and 166 does not include a parent or family member or person responsible for dropping off or collecting a child from a family day care residence or venue.

The committee's query has also noted the term 'visitor' in relation to regulation 5 of the national regulations. This regulation is specifically about when is a children's service not within scope of the national law and national regulations. The term 'visitor' referred in regulation 5(2)(e) is describing when the parent, or other person responsible for the child, is a visitor, guest or patron of the service that also provides a children's service. For example, the 'kids corner' at a gym.

As part of its review of this matter, the NT Department of Education has liaised with its counterparts in Victoria, as the host jurisdiction for the national law and national regulations who agree with the above assessment. However, should any further queries arise in relation to the definition of a 'visitor', this can be raised as part of a future national regulations review by all states and territories.

Should you wish to discuss this matter further, please contact Ms Agnes McGrath, Senior Director Early Years and Primary: agnes.mcgrath@education.nt.gov.au or (08) 8999 5708.

Thank you for your consideration of the further amendment regulations.

Yours sincerely



EVA LAWLER

8 NOV 2023

City of Darwin By-Laws 2023 (No. 17 of 2023)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.109

Hon Chanston Paech MLA
Minister for Local Government
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: City of Darwin By-Laws 2023 (No. 17 of 2023)

The Legal and Constitutional Affairs Committee is considering the City of Darwin By-Laws 2023 (No. 17 of 2023) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the by-laws from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the by-laws before the end of their disallowance period, the Committee requests this advice by 15 November 2023.

Thank you for your assistance

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brent Potter', written over a horizontal line.

Mr Brent Potter MLA
Chair

17 October 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

City of Darwin By-Laws 2023 (No. 17 of 2023)

By-law 3 definition of 'owner':¹ In relation to an animal, an 'owner' means any of: the registered owner of a dog or cat; the person for the time being in control or possession of the animal; or 'the occupier of the premises,² or a part of the premises, where the animal is kept'. The definition is wide enough to catch, for example, a guest who is occupying a part of the premises (whether for a fee or otherwise), which may have a separate access and where the occupier has no association with any animal on the premises. The potential liability of such an occupier needs to be seen in the context of the responsibilities and liabilities of the 'owner' under the by-laws, which include:

- By-law 45 creates an offence if the owner of a registered cat fails to comply with any of the conditions on the animal's registration. It is an offence of strict liability.
- By-law 46 creates an offence if the owner of a registered dog or cat fails to notify the Council of a change of their address or of the transfer of the animal to a new owner. It is an offence of strict liability.
- By-law 47 creates an offence if the owner or a dog or cat fails to properly contain the animal. It is an offence of strict liability. In addition, by-law 47(4)(b) provides that the ability of the owner to properly contain the animal is not relevant to the commission of the offence.
- By-law 48 creates an offence where a dog or cat is not under effective control when outside the premises where it is kept. Given that it is an offence of strict liability, it will be of no consequence that the occupier of the residence had no association with the animal.
- The technical reach of the by-laws is exemplified by by-law 48(3)(d). By-law 48(2)(a) provides that a dog or cat is taken to be under effective control if it is restrained by a specified leash. When a dog is in a dog exercise area it is taken to be under effective control if the owner is carrying a leash (noting that under 24(2)(a) of the *Interpretation Act*, words in the singular include the plural). How far should this be taken? If there are three owners present do they all need to carry a leash? Taking it to extreme lengths, does it extend to the 'owner' who is not present? Again, it is an offence of strict liability.
- By-laws 50-54 provide for dog exercise areas, dog and cat restricted areas and cat control areas. The owner of the animal commits an offence if they do not comply with the specified conditions or restrictions (while by-law 54 refers to the person who 'owns' the animal rather than to the 'owner', the meaning is the same – see s 23 of the *Interpretation Act*). They are offences of strict liability.
- By-laws 55-57 create offences if the owner of a dog fails to ensure that the dog is not a menace to or does not attack a person or other animal. It is an offence of strict liability.
- By-law 69 requires the owner of a cat or dog to provide a report to the Council in relation to a diseased or potentially diseased cat or dog.
- By-law 78 creates an offence if an owner of an animal does not take specified steps in relation to the animal or allows an animal to do specified things.

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)

² By-law 3 defines 'premises' to include a building or other structure, a part of a building or other structure, or land where a building or other structure is situated.

It is no answer to say that the responsible officer would use their discretion in bringing an action. It remains that all 'owners' are potentially liable for any breach. That gives rise to the question of whether the definition of 'owner' is too broad, particularly given offences of strict liability, or whether there should be separate classes of 'owner' relevant to the separate obligations imposed on them.

Also, the wide definition of 'owner' impacts the obligations of the Council:

- By-law 60 requires an authorised person to give certain notices to the owner of a dangerous dog. The notice 'must' identify the dog and the owner of the dog. In accordance with the definition of 'owner' in by-law 4, presumably notice would need to be given to all occupiers of the premises or part of the premises in question. The notice requirement is not to the registered owner. In any event it is appropriate to give notice to all of those persons, given their obligations under by-laws 61-62 and the penalty provision under by-law 63. See also by-law 64.
- By-law 61 sets out the steps the owner must take 'within 14 days after the day the declaration takes effect'. The penalty provision for non-compliance is set out at by-law 63. There is a separate question of whether a defendant 'owner' would be liable where they are not one of the 'owners' given notice by the Council in relation to the dangerous dog.
- By-law 69 requires the CEO to give the owner notice of the isolation of a diseased cat or dog that has been impounded. Again, presumably the notice needs to be given to all 'owners'. The notice requires the owner to prepare a report on the animal and any other animal on the premises (see also separate comment on this by-law below).

On the other hand, there are other by-laws dealing with animal management where reference is made to an identity other than that of 'owner':

- By-law 42 provides that a 'person' commits an offence if the person keeps an unregistered dog or cat in Darwin for 3 months or longer. There may be a question of who in a particular household 'keeps' the dog or cat.
- By-law 49(3) creates an offence where without authorisation 'an occupier of premises' keeps cats or dogs on premises beyond the number allowed by the Council. Presumably the individual animals might or might not be registered. How is the term 'occupier' to be interpreted, given that there is a distinction made in by-law 4 between registered owners, those in control and possession of the animal and the occupier of the premises or a part of the premises? Also because by-law 49(4) refers simply to the 'occupier of premises', presumably it does not extend to the occupier of part of the premises, which distinction is made in by-law 4.
- By-law 58: as noted above, by-laws 55-57 deal with the responsibility of an owner of a dog where it menaces or attacks a person or another animal. In relation to those by-laws, by-law 58 provides a defence in the following terms:

It is a defence to a prosecution for an offence against by-law 55 or 56 if:

- (a) another person had, without the defendant's permission, caused the dog to menace or attack the person or another animal; or
- (b) in the case of another animal being menaced or attacked – the other animal was on premises owned or occupied by the defendant without consent; or
- (c) in the case of a person being menaced or attacked – the person was on premises owned or occupied by the defendant without consent.

Two observations are made in relation to this by-law.

- First, by-law 55 deals with dog menaces, by-law 56 deals with dog attacks, and by-law 57 deals with serious dog attacks. However, the defence applies only to by-laws

55 and 56. Given the much higher penalty, it is not clear why the defence does not apply to serious dog attacks where the attack was provoked by someone else and the owner has taken all reasonable steps to ensure that no attack occurs.

- Second, it is not clear what is meant by 'consent' and, in particular, whether there might be implied consent. For example, the other animal might have been on the premises because it had previously been allowed there. In relation to the person being attacked, is there a defence where, unknown to the owner, the person is delivering a parcel or other item to the residence?

Compare, for example, the provision relating to consent at s 248 of the Criminal Code.

By-law 25(3):³ By-law 22 allows the CEO to issue 'authorisations' (defined in by-law 3). By-law 25 allows for revoking, suspending or varying the authorisation for cause. Before making a decision as to revocation etc., by-law 25(2) requires the CEO to give written notice to the holder of the authorisation, inviting the holder to show cause why it should not be revoked etc. By-law 25(3) allows the holder of the authorisation to make written representations within 7 days of 'receiving the notice'. By-law 25(4) then provides that after considering any representations made, the CEO may take no further action or revoke, suspend or vary the authorisation. It is evident that the CEO is bound to consider any such representation.

The difficulty is that as the by-law is framed, the CEO may not know when the show cause notice was received by the holder of the authorisation and hence when the 7 days has expired so that action may be taken to revoke or otherwise deal with the authorisation.⁴ Compare by-law 64, which deals with the requirement of the CEO to give notice to the owner where it is proposed to take specified action in relation to a dangerous dog. By-law 64(3) provides that the CEO must make a decision as to what action is to be taken, after considering any response received 'within 14 days after the day of the notice'. In other words, the CEO has a clear timeline after which action may be taken. See also by-law 143(3), which is to the same effect.

By-law 29:⁵ The by-laws in this Part deal with waste and recycling. It allows for the provision of approved bins to residents. By-law 29(2) creates an offence where a person removes anything from an approved bin provided by the Council. It makes no exception in relation to a person to whom the bin has been issued, so that an offence arises if a person retrieves something from their allocated bin that had mistakenly been discarded. It is noted that, as with offences generally under the by-laws, it is an offence of strict liability.

By-law 69:⁶ this by-law deals with diseased dogs and cats. 69(1) and (2) deals with impounded dogs and cats and requires isolation of the animal in the pound and the giving of notice of its isolation to the owner. By-law 69(3) then provides:

The CEO may, in the notice given under clause (2), require the owner of the dog or cat to have a report prepared and given to the CEO on the condition of the dog or cat and any other animals kept at the same premises.

It is not apparent what is meant by 'kept at the same premises'. As by-law 69 deals with impounded animals, the 'same premises' would suggest the pound. Should the reference be to the owner's premises?

³ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b)

⁴ Section 25 of the *Interpretation Act* applies to the service of documents and might be made to apply. The term 'give' is used in by-law 25, which is not defined.

⁵ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)

⁶ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b)

By-law 78:⁷ is headed animal causing nuisance and breach of the by-law gives rise to an offence of strict liability. By-law 78(2) provides that an animal is taken to be a nuisance if, among other things, it:

- (b) behaves repeatedly in a manner contrary to the general interest of the community or specific interests of another person;

On that basis, liability for an offence is not based on objective community standards, but on the particular interests of a neighbour. Also, importantly, the person might not know of the specific interests of that other person. Whether, for example, a person is entitled to keep chickens may depend on whether the neighbour practices meditation, which might be disturbed by clucking chickens or the meowing of a cat. The right to keep an animal might change when a new neighbour takes up residence. The by-law is not even qualified by the 'reasonable' specific interests of the other person (it is noted that by-law 78(2)(c) refers to creating a noise etc. that disturbs the 'reasonable' mental, physical or social well-being of a person). The question is one of whether a person's rights should depend on the interests of their neighbour, especially given that the defendant might not know of the neighbour's interests and, further, both those interests and the neighbour might change from time to time. In other words, liability does not rest on knowable community standards.

Even under the civil law relating to nuisance in the context of residential tenancies, what constitutes nuisance is measured at common law by an objective standard; the standards of 'reasonable people' and by the nature of the neighbourhood: see, for example, *Chief Executive Officer (Housing) v Steiner* [2008] NTMC 9, [73]. See also *Housing v Maurisa Luanna Henwood* [2004] NTMC 72, [133].

Also compare by-law 34, which creates an offence where a person 'intentionally burns or heats any substance or thing' and the conduct results in an odour that 'is offensive to another person on adjacent land or public land'. In that by-law it must be shown that the person 'is reckless in relation to that result'; that is, the person is aware of a substantial risk that the result will happen and, having regard to the circumstances known to the person, it is unjustifiable to take the risk: see Criminal Code s 43AK.

By-law 85: is there a reason as to why provision is made for fees for on-street parking, but not for off-street parking areas?: see by-law 84.

By-law 86(2): is it intended to extend the prohibition on parking a vehicle in a manner that blocks a driveway to circumstances where the driveway provides access to the residence of the owner of the vehicle?

By-law 89(1): requires an authorisation where a person excavates land adjoining public land. An offence of strict liability arises where this provision is breached. Almost invariably, a residence will adjoin a road or other public land (by-law 3 provides that 'public land' 'means a road, a reserve or land within Darwin that is owned, controlled or maintained by the City'. It is evident that it also extends to a footpath: see by-law 90(1)(a)). Accordingly, it seems that this provision means that a person needs to obtain authorisation before doing any digging or other excavation work on their residential property.

By-law 97:⁸ allows for the seizing of goods abandoned on public land, but provides: 'The goods of people experiencing homelessness or people sleeping rough must be respected as not abandoned, but may be considered abandoned if left unattended for more than 24 hours'. It is not clear how that consideration sits with by-law 100(3), which provides that a person commits an offence if they camp or set up camp on public land without authorisation or consent.

⁷ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)

⁸ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b)

By-law 98:⁹ among other things, this by-law creates an offence where a person affixes a 'handbill' (defined in by-law 3) on 'a structure on land adjoining public land' without authorisation. Given that a residential building will almost invariably adjoin public land, an offence will arise if, without authorisation, a political poster is displayed at a residence or even if a letterbox carries a sign asking that there be no junk mail. In relation to political posters, there is also a question of whether this offends the implied freedom of political communication that is inherent in the system of representative and responsible government: see, for example, *McCloy v New South Wales* [2015] HCA 34.

It is noted that by-law 133, which deals with 'outdoor advertising', creates an exception to the regulation of outdoor advertising where it 'is election signage placed on private property ... in accordance with conditions determined by the City'. That exception does not extend to by-law 98. In any event, there is a question of whether by-law 133 also offends the implied freedom. The exception does not extend to posters that convey political messages but which are not related to any election. Further, there is a question of whether because of the power of the City to impose conditions any implied freedom could be rendered ineffective.

By-law 99: as with by-law 78, liability for an offence under this by-law rests on the disposition of an individual. It forbids, without authorisation, discharge of a substance into the air over public land that 'may cause harm or annoyance to another person'. The given examples include 'moisture from an air conditioner, kitchen fumes, smoke, vapour, dust or other waste products'. That would include cooking aromas and dust from a lawn mower. On that basis, a person passing by on the foot path may be 'annoyed' by cooking aromas foreign to them and make complaint to the Council. The observations made in relation to by-law 78 are equally applicable here.

By-law 100: creates an offence where a person camps on public land without authorisation or consent. As with by-law 58, noted above, there is a question as to the nature of the consent required.

By-law 102: creates an offence where, without authorisation, a person plants vegetation on City property or public land. On that basis, it would seem that a person commits an offence if, without authorisation, they plant lawn on the verge or footpath adjoining their residence.

By-law 104: there is no individual offence provision in relation to this by-law. It provides that an authorised person may require a person to leave a public swimming facility and that when required to do so the person must leave the facility immediately. It is not apparent that the general offence provisions under by-laws 139 and 140 apply. By-law 139 creates an offence where a person who engages in conduct that requires authorisation does not have that authorisation, while by-law 140 creates an offence where a person holds an authorisation subject to a condition and fails to comply with the condition. The difficulty is that by-law 104 makes no reference to requiring authorisation to attend a public swimming facility. By-law 3 provides that '*authorisation* means a form of written or electronic authority issued by the CEO ...'.

By-law 108: deals with market licences. By-law 108(2) provides that a person must not establish or manage a market in Darwin without a licence. By-law 108(3) provides that a market must be operated only during the days and times determined by the City, while 108(6) creates an offence if there is failure to comply with the determined days and times. However, presumably a licence is issued in relation to operation in a given locality and nothing is said about non-compliance in that regard. Though it is noted that there is reference at by-law 109 to the location of stalls within a market.

By-law 111(1)(e)(ii): at a market, a stallholder must not use or keep in the site 'any single

⁹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)

use plastic bags, straws, utensils or containers'. In the absence of a definition of 'single use' there may be some contention as to whether, for example, a plastic container commonly used at markets is a 'single use' product.

By-law 111(2)(e): provides that a stallholder at a market must not do specified things including acting 'in a manner offensive to a person in the vicinity of the stall'. The observations made in relation to by-laws 78 and 99 are applicable here. Perhaps the word 'reasonable' could be placed before the word 'person'? It is noted that by-law 111(2)(b) precludes the making of a noise that 'is likely' to be a nuisance or annoy persons in the vicinity of the stall.

By-law 118: this by-law provides:

- (1) A registered borrower is liable for any loss of, or damage to, library materials borrowed with the borrower's library identification.
- (2) If library identification is lost, the registered borrower remains liable under clause (1) until a library officer is notified of the loss of the identification.

Read on its face, it seems that once the library is notified of any loss of the library identification, the liability of the borrower is at an end even where the material has not been recovered. Given that specific provision, it is not clear whether the general provision at by-law 122 applies. That allows a library officer to require a borrower to pay the cost of replacing lost material while on loan to the borrower. It might be that by-law 118 is intended to apply only where the library identification has been lost and the library material was borrowed by the person who found the identification and not by the registered borrower. If that is so, after to words 'if identification is lost,' the words 'and the library material was not borrowed by the registered borrower' might be added.

By-law 125: deals with prohibited conduct and includes prohibiting 'disturbing, interrupting or annoying another person in a public library'. The observations made in relation to by-laws 78, 99 and 111(2)(e) are also applicable here. It would seem that any interruption, even asking a question as to whether the person intends to borrow a book that they are looking at, would give rise to an offence. The by-law might alternatively refer to 'behaving in an unreasonable manner so as to disturb'.



MINISTER FOR LOCAL GOVERNMENT

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The Hon Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee

Via email: LA.Committees@nt.gov.au

Dear Mr Potter

Thank you for your letter of 17 October 2023 regarding the City of Darwin By-laws 2023 (No. 17 of 2023) (the By-laws).

I have considered the points made and believe that overall, the By-laws are of a good standard. However, the Department of the Chief Minister and Cabinet (the Department) has noted the Committee's points for consideration when the By-laws are next reviewed.

In the meantime, it is important that the By-laws are applied consistently, and the Department will continue to provide support to the Council should it seek any guidance on the administration of the By-laws.

Thank you for bringing these matters to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CP' followed by a flourish.

CHANSEY PAECH

Kenbi Land Trust Regulations 2023 (No. 22 of 2023)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.120

Hon Chanston Paech
Minister for Aboriginal Affairs and Treaty
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Kenbi Land Trust Regulations 2023 (No. 22 of 2023)

The Legal and Constitutional Affairs Committee is considering the Kenbi Land Trust Regulations 2023 (No. 22 of 2023) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 19 April 2024.

Thank you for your assistance.

Yours sincerely



Hon Dheran Young MLA
Chair

12 March 2024

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Kenbi Land Trust Regulations 2023 (No 22 of 2023)

Reg 3(2):¹ This regulation provides:

The prescribed land does not include any public road within the boundaries of the land described in subregulation (1)(a), (b), or (c) that, immediately before the commencement, is vested in the Territory, a service authority or a local government council.

Is it intended that public roads that are subsequently constructed (or perhaps widened or deviated) are not to be excluded from the prescribed land? There is a question of how any such new construction is impacted where there is a grant of title under the Act.

Also, are there no other public infrastructures or utilities that need to be exempted from the prescribed land?

¹ Legal and Constitutional Affairs Committee Terms of Reference, Standing Order 176(3)(g)



DEPUTY CHIEF MINISTER
MINISTER FOR ABORIGINAL AFFAIRS AND TREATY

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Mr Dheran Young MLA
Chair
Legal and Constitutional Affairs Committee
Legislative Assembly of the Northern Territory

Via email: LA.Committee@nt.gov.au

Dear Chair *Dheran*

Thank you for your letter of 12 March 2024, requesting advice on issues raised in relation to the *Kenbi Land Trust Regulations 2023* (No.22 of 2023).

In response to the comments raised by your legal counsel, I advise the following:

- It is not intended at this point in time that new public roads, or modifications to existing public roads, will be constructed on the prescribed land.

As the grant of prescribed land is one of ordinary Territory freehold title, land for further public roads or widened road corridors needs to be secured through Northern Territory legislation, such as the *Control of Roads Act 1953* or the *Lands Acquisition Act 1978*, in the same way as any other private freehold land could be acquired for that purpose.

- No, there are no other public infrastructures or utilities that need to be exempted from the prescribed land.

Thank you for the opportunity to address these comments in order for the Committee to complete its consideration of the regulations.

Yours sincerely

Chansey Paech
CHANSEY PAECH

- 8 APR 2024



Liquor Amendment (Alice Springs) Regulations 2024 (No. 1 of 2024)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.121

Hon Brent Potter MLA
Minister for Alcohol Policy
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Liquor Amendment (Alice Springs) Regulations 2024 (No. 1 of 2024)

The Legal and Constitutional Affairs Committee is considering the Liquor Amendment (Alice Springs) Regulations 2024 (No.1 of 2024) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 7 June 2024.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dheran Young'.

Hon Dheran Young MLA
Chair

15 May 2024

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Liquor Amendment (Alice Springs) Regulations 2024 (No. 1 of 2024)

Reg 56A and 98B:¹ The issue here is one of consistency of language. There is a question of why different language is used as between reg. 56A and reg. 98B. The former relates to a 'grocery store authority', while the latter relates to a 'takeaway authority'. Reg. 56A provides that 'liquor must not be sold or supplied to a customer who has already been sold or supplied liquor on that day', while reg. 98B provides that 'liquor must not be sold or supplied for consumption off the licensed premises to a customer who has already been sold or supplied liquor on that day'. It is not clear why the additional words 'for consumption off the licensed premises' appears in reg. 98B, but not in reg. 56A, given that both licences deal with the sale of products for consumption away from the licensed premises: see s 47(1)(e) and (q) of the *Liquor Act*. The use of different wording might give rise to some confusion.

Also, while on the question of wording, it is noted that reg. 98B refers to consumption 'off' the licensed premises, whereas the *Liquor Act* at s 47(1)(e) and (q), in referring to takeaway authorities and grocery store authorities, refer to 'away from' the licensed premises: see also ss 88 and 250. It is noted that the term 'off' the premises is used at s 47(1)(f) in relation to a 'lodging authority' and at s 47(1)(j) in relation to a 'producers' authority'. But in both of those cases consumption can be 'on or off' the premises.

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

Appendix A: List of Ministerial Correspondence on Subordinate Legislation

No.	Title of Regulation/By-law	Minister	Letter to Minister	Minister's Response
7 of 2023	Katherine Town Council Amendment By-Laws	Hon Chanston Paech	25/07/23	11/08/23
10 of 2023	Crown lands Amendment Regulations	Hon Eva Lawler	25/07/23	16/08/23
N/A	Education and Care Services National Further Amendment Regulations 2023	Hon Eva Lawler	17/10/23	08/11/23
17 of 2023	City of Darwin By-Laws	Hon Chanston Paech	17/10/23	16/11/23
22 of 2023	Kenbi Land Trust Regulations	Hon Chanston Paech	12/03/24	08/04/24
1 of 2024	Liquor Amendment (Alice Springs) Regulations	Hon Brent Potter	15/05/24	

Appendix B: Subordinate Legislation commented on in 14th Assembly

Report	No.	Title of Regulation/By-Law	Minister	Date
Current	1 of 2024	Liquor Amendment (Alice Springs) Regulations	Hon Brent Potter	15/05/24
	22 of 2023	Kenbi Land Trust Regulations	Hon Chanston Paech	12/03/24
	17 of 2023	City of Darwin By-Laws	Hon Chanston Paech	17/10/23
	N/A	Education and Care Services Further Amendment Regulations 2023	Hon Eva Lawler	17/10/23
	10 of 2023	Crown lands Amendment Regulations	Hon Eva Lawler	25/07/23
	7 of 2023	Katherine Town Council Amendment By-Laws	Hon Chanston Paech	25/07/23
August 2022 – July 2023	3 of 2023	Territory Parks and Wildlife Conservation Amendment By-Laws	Hon Nicole Manison	16/05/23
	27 of 2022	Nhulunbuy (Animal Control) Amendment By-Laws	Hon Chanston Paech	21/03/23
	24 of 2022	Motor Vehicles Legislation Amendment Regulations	Hon Eva Lawler	21/03/23
	22 of 2022	Supreme Court Amendment (Appeals) Rules	Hon Chanston Paech	21/03/23
	14 of 2022	Animal Protection Regulations	Hon Paul Kirby	30/08/23
	5 of 2022	Greyhound Racing Amendment Rules	Hon Chanston Paech	30/08/22
August 2021 – July 2022	23 of 2021	Residential Tenancies Amendment Regulations	Hon Selena Uibo	22/03/22
	11 of 2021	Local Government (Electoral) Regulations	Hon Chanston Paech	21/09/21 04/11/21
	9 of 2021	Local Government (General) Regulations	Hon Chanston Paech	21/09/21 04/11/21
October 2020 – July 2021	3 of 2021	Building Amendment Regulations	Hon Eva Lawler	11/05/21
	2 of 2021	Liquor Amendment Regulations	Hon Natasha Fyles	11/05/21
	31 of 2020	Petroleum Regulations	Hon Nicole Manison	23/03/21
	N/A	Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020	Hon Lauren Moss	17/02/21 23/03/21
	18 of 2020	Plant Health Amendment Regulations	Hon Nicole Manison	17/02/21
	6 of 2020	Environment Protection Regulations	Hon Eva Lawler	11/11/20