



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Local Government Bill 2019

10.30 am, Monday 23 September 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members: Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Mr Chansey Paech MLA, Member for Namatjira
Mrs Kate Worden MLA, Member for Sanderson

Witnesses: *Department of Local Government, Housing and Community Development*
Maree De Lacey: Executive Director, Local Government and Community
Development
Lee Williams: Senior Director, Legislation and Policy
Hugh King: Manager, Legislation and Policy

LOCAL GOVERNMENT BILL 2019

Department of Local Government, Housing and Community Development

Madam CHAIR: Good morning everyone, thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee.

On behalf of the committee I welcome everyone to this public briefing on the Local Government Bill 2019.

I acknowledge my fellow committee members in attendance today, Member for Sanderson, Kate Worden, Member for Spillett, Lia Finocchiaro and via teleconference Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee, from the Department of Local Government, Housing and Community Development: Maree De Lacey, Executive Director, Local Government and Community Development; Lee Williams, Senior Director, Legislation and Policy; and Hugh King, Manager, Legislation and Policy. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record and the capacity in which they appear. I will then invite you to make an opening statement before proceeding to the committee's questions.

Could you please each state your name and capacity in which you are appearing?

Ms DE LACEY: Maree De Lacey, Executive Director, Local Government and Community Development.

Ms WILLIAMS: Lee Williams, Senior Director, Legislation and Policy, Department of Local Government, Housing and Community Development.

Mr KING: Hugh King, Manager, Legislation and Policy, Department of Local Government, Housing and Community Development.

Madam CHAIR: Thank you. Ms De Lacey, would you like to make an opening statement?

Ms DE LACEY: Thank you, Madam Chair and members of the committee, for the opportunity to provide an opening statement and to brief the committee in relation to the Local Government Bill.

This bill is intended to replace the current *Local Government Act 2008*. The 2008 act started as part of major local government reforms, resulting in the current system of local government in the Northern Territory, in which there are municipal, regional and shire councils. This legislation is a result of a comprehensive review to make sure that we have modern legislation for the sector.

This new legislation is intended to improve governance and accountability within an appropriate framework for the sector. It also provides measures to strengthen local decision making by increasing opportunities for public participation. The bill reinforces the importance of local authorities as committees of regional councils whose role is to communicate the voices for their community back to the council and to take information about council activities back to communities.

In this opening statement, firstly I will outline the consultation history in relation to this bill and then I will provide a summary of the key matters outlined in the bill.

The bill has been developed over a number of years with an extensive consultation process. This started with the announcement in 2014 of a full review of the act. During the public consultation, submissions were received from most local government councils, the Local Government Association of the Northern Territory (LGANT) and members of the public. A committee known as the Local Government Working Party considered issues raised in the submissions and made recommendations regarding the contents of the new act. The working party had representation from LGANT and from regional and municipal councils.

For the second round of consultation, a discussion paper was publicly released in 2016. That paper included intended changes and captured the working party's recommendations. Nineteen written submissions were received which were gratefully received and analysed.

With the increasing focus on local decision making, it was clear then that the regional councils, local authorities and their contribution to local decision making should be given greater recognition in the legislation.

The final round of consultation started in March 2019. The department advised all councils of the likelihood that consultation of the draft Local Government bill was imminent. Information about the major proposed changes was provided to councils at that time, and then the draft bill was publicly released for consultation on 22 May 2019 and submissions closed on 18 July 2019.

Twenty-five written submissions were received from councils, from LGANT, from land councils and others. This bill is the result of careful consideration of all of those submissions.

The purpose of the bill is to support local government councils to provide good governance and accountability to their communities as well as to strengthen community-led decision making within the sector. The bill will repeal the *Local Government Act 2008* and amend the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

This bill strengthens and facilitates local decision making by requiring regional councils to seek advice from local authorities regarding local government services and activities in the local authorities' areas. Local authorities will be asked to advise their council regarding the council's budget, expenditure priorities, service delivery, regional plans, strategic directions, cemeteries and the funding of projects.

The bill requires councils to share information about regional council planning and activities with local communities with their local authorities and to respond to local authority's advice about community aspirations.

We know that some local authorities struggle with achieving a quorum at meetings. The bill changes the membership structure to increase local participation and to resolve some of the quorum issues. Automatic membership by certain council members has been replaced with the requirement that a council must appoint at least one council member from the relevant ward to a local authority, and this will ensure a continuing strong-link between local authorities and their council.

This bill also proposes increased transparency through reporting, training and consultation requirements. Specific examples of these new requirements that promote transparency and accountability include, that a regional council must ensure its annual report details the activities of local authorities for the relevant financial year, all councils must provide in their annual report an itemisation of shared services the council has been involved with, all councils seeking to declare special rates must ensure they undergo a public consultation process to invite written submissions, including giving the principal rate payer for each individual allotment a notice of the intention to impose special rates, and all council members must undergo training approved by the CEO of the agency within 12 months, which will outline the responsibilities of being a council member under the act.

The bill provides for improved governance by giving more guidance on conflicts of interest with more detail on what interests should be declared by members of councils, local authorities or council committees. Four categories of conflict of interest are described in the bill and this is supported by a broad requirement to avoid any conflict of interest, including actual or perceived that is part of the mandatory code of conduct for council members in schedule 1.

The bill also increases transparency through several other changes, including that councils will be required to keep a register of members' interests with annual returns of interest to be submitted by council members. This is similar to the requirements for council members in other jurisdictions and to the requirements for members of the Legislative Assembly.

All council member candidates nominating in general elections or by-elections will be required to provide a campaign donation return to the Northern Territory Electoral Commission within 40 days after the election results are declared.

This bill significantly changes and improves processes in relation to complaints about council members for breaches of code of conduct. This is not about complaints that are more appropriately referred to other bodies like ICAC or the police.

In the first instance, a complaint about a council member can be handled by the council, a panel established by the council or it may be referred to an independent person engaged by the council such as a mediator for recommendation back to the council. It is intended that council members will work together to resolve any issues within the council in the first instance.

However, parties to the complaint who are members of the council do have the option of referring the complaint directly to an external panel without it being considered by the council. This is a safeguard that was recommended to us through consultation to respond to those circumstances where a member has reason to believe that they may not have a fair hearing through the council-led process.

An external panel established by LGANT can receive these direct referrals or referrals if either party is not satisfied with the decision or recommendation made through the council process. The panel may decide whether any breach of the code of conduct is established and may issue a reprimand or recommend for the respondent, the complainant or any other person, to attend training, mediation or counselling.

If either party to the complaint is not satisfied with the decision made or the recommendation given by the external panel, there can be an appeal to the Northern Territory Civil and Administrative Tribunal. The tribunal will be able to conduct a new hearing and may make any order that it considers appropriate, such as to order a complainant or third party to attend counselling.

Also, if a member does not comply with a recommendation from the previous panel, the tribunal has the ability to deal with the failure to comply.

Each of these steps has defined time frames. Importantly, the council or LGANT panel must give a decision within 90 days of the receipt of the complaint or the referral, which is a significant improvement to the current system.

The bill provides that a person will not be able to be a council CEO while the person is disqualified from managing a corporation regulated by the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, is disqualified under the *Associations Act 2003* from being an officer of an incorporated association, or while the person is bankrupt.

Under the current act, a council reviews its constitutional arrangements, such as the 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, 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 the councils, conduct a review, consult on draft determinations and make final determinations regarding any required changes.

The bill provides improved guidance on other matters to support good financial management. For example, councils will be prohibited from forming, owning or otherwise participating in any type of corporation, partnership or other trading body unless the responsible minister, in consultation with the Treasurer, approves such formation, ownership or participation.

Under the bill, the amounts of council members allowances will be set by the independent Remuneration Tribunal established under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

A council will not be able to enter into a contractual arrangement to give a rate concession for years that do not fall wholly or partly within its term of office. For example, a council could not agree to give a rate concession for 10 years' time, tying future councils to a reduced base for rates revenue.

An important change provided for in the bill is that the agency responsible for administering the act will be able to appoint a financial controller to a council when the council is not performing its responsibilities adequately or not complying with the law.

If a financial controller is appointed a council will only be able to make payments approved by the financial controller. This might be used to assist with matters that might otherwise have led to the suspension of council members. However, the ability of the minister to place a council under official management still remains.

The implementation of the new act will support transparency, good governance, financial accountability and community-led decision making within the local government sector.

Again, I thank the committee for the opportunity to attend and provide this opening statement. We now welcome any questions in relation to the bill or the consultation process undertaken.

Madam CHAIR: Thank you very much. I will now open up to the committee for any questions.

Mrs FINOCCHIARO: I have a question about rates. Under the new legislation, councils will be required to publish in the paper and I think put on its website. Is that correct? There is no requirement to write to ratepayers to notify them of any change?

Mr KING: Not for the general rates and charges which councils all issue every year, but if a council proposes to impose special rates for either a special purpose or even just part of a council area, they will have to write to all of the affected ratepayers with a notice of intention to declare a special rate.

Mrs FINOCCHIARO: Okay. What about—perhaps it might not be a special rate but a change to how rates are calculated? I think Litchfield might be looking at this at the moment. Is that required to be done in writing or it is up to the council?

Mr KING: Only with the public notice and information on the website.

Mrs WORDEN: I have a question about the quorum changes. Could you walk through a little bit more of that in detail, if that is okay?

Mr KING: Local authorities?

Mrs WORDEN: Yes, the conditions. The quorum changes are only for local authorities, is that correct?

Mr KING: That is right.

We are not actually changing the quorum rule, which is the majority of the members. At present, any council member within the ward, where a local authority is located, and the principal member of the council are automatically members and count towards that quorum.

In some cases, all the ward members and the principle member do go to those meetings. There are cases where there might be four ward members for some of the councils further south, for example, and not all of them would normally go to every local authority meeting.

This is just giving councils a little bit more flexibility in terms of who is going to be on the local authorities so that it is easier for them to make quorum.

Mrs WORDEN: It is broadening the base of who is going to be invited to the actual meeting, is that correct?

Mr KING: It is not so much broadening it, it is quite broad who can be on a local authority at the moment, there are no real limitations. It is giving councils flexibility to either have plenty of their members and their principal member be on that local authority, or a minimum of one council member has to be on each local authority.

Mrs WORDEN: That is changing the attendance rules, not changing the actual membership?

Mr KING: That is right.

Ms AH KIT: In regards to more guidance being provided on conflicts of interest. Could you provide some more information on that please?

Mr KING: At the moment it is a very brief sentence that describes what a conflict of interest is for council members. If a council member does not declare a conflict of interest, they are committing an offence, at the moment.

We have had plenty of situations over the years where council members and administrators within councils have been unsure about whether certain situations would be a conflict of interest. Particularly in the area of perceived conflicts of interest.

The new act will still have an offence provision for not declaring a conflict of interest but it has to be one of the four specifically described categories, where there is a financial interest or a person's associate has a financial interest and a couple of other matters like that.

However, there will still be the broad requirement in the Code of Conduct, which would cover perceived conflicts of interest, but not a situation where a council member, who might be doing their best to understand whether or not they have a conflict, has difficulty in knowing whether they are going to be complying with the law.

Mrs FINOCCHIARO: I want to ask about council plans. Under the current legislation, a council does not have to lodge one of these, is that right? It is a new...

Mr KING: Councils have to prepare an annual plan every year.

Mrs FINOCCHIARO: And submit it to the department?

Mr KING: Yes.

Mrs FINOCCHIARO: Okay. Are there any specific changes around how that is going to work?

Mr KING: At present, part of the plan, is at least once in each term of council, they have a review of the council's constitutional arrangements which is ward boundaries within the council—if the council has wards, number of members per ward and that sort of thing.

Councils will still be able to participate in that, but it will actually be an independent committee that does the review, seeks feedback from the councils in two stages and make determinations. At the moment, if a council was to review its ward structure and thought they should have an extra ward or move some boundaries, they would make that recommendation to the minister and it would be the minister's decision.

Ms De LACEY: The requirement for councils to publish consultation in their annual report also covers this area as well as planning. It makes it more transparent in terms of the consultation that has been undertaken for the development of plans.

Mrs WORDEN: You talked about allowances and boundary changes being similar to the Legislative Assembly. Is there an additional cost to local government and have they been factored into as to where that money will be coming from?

Mr KING: There will not be any additional cost to local governments. However, with the Remuneration Tribunal, there will be some cost to the Northern Territory Government in terms of that. I would not be able to tell you a figure of what it would be but it will not be something that has to be done every year. The Remuneration Tribunal would make a determination for a council and then that determination would stay in place subject to increases in line with the Darwin consumer price index until the government decided to do another determination.

Mrs WORDEN: I would be interested in a bit of detail about how that is going to work because currently for any sort of changes, the process is that the Chief Minister has to ask the Administrator for the RT to do their work. I am wondering how, if you legislated for it is there an appetite for that process to be triggered in the same way?

Mr KING: No, in consultation with the Department of the Chief Minister that administers that act, the preference was that it be the minister responsible for the *Local Government Act* that would be able to ask the tribunal to make a determination.

Mrs WORDEN: So a direct request.

Mr KING: That is right.

Mrs WORDEN: I might have to keep that in mind and have a look at that a bit more closely. I am just not sure how—that is a completely new way of thinking. How is it currently determined?

Mr KING: By the minister.

Mrs WORDEN: Alright. I just cannot believe that—I wonder where that money will come from. That is a referral and there is a fee for anything that is referred their way. Thank you.

Madam CHAIR: As there are no further questions, on behalf of the committee I would like to thank you all for appearing before us and sharing information on this new bill today.