LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

Inquiry into the Local Government Bill 2019

October 2019

Contents

Chair's Preface

This report details the Committee's findings regarding its examination of the Local Government Bill 2019. This Bill repeals and replaces the *Local Government Act 2008*. In doing so, the Bill seeks to improve governance and accountability, strengthen local decision making, reinforce the importance of local authorities, and ensure that the legislation is effective and contemporary.

The Committee received five submissions to its inquiry. Submitters were generally supportive of the proposed legislation and acknowledged the extensive work undertaken by the Department to modernise the existing legislation and strengthen the governance and accountability requirements for local government in the Northern Territory.

However, as detailed in this report, clarification was sought regarding the anticipated operation of a number of clauses. Following consideration of the subsequent advice provided by the Department of Local Government, Housing and Community Development, the Committee has recommended that the Assembly pass the Bill.

On behalf of the Committee, I would like to thank all those that made submissions to the Committee's inquiry. I would also like to thank the departmental representatives for briefing the Committee on this Bill and their subsequent advice. Finally, I thank my fellow Committee members for their bipartisan commitment to the legislative review process.

Ms Ngaree Ah Kit MLA

Chair

Committee Members

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	Standing:	Standing Orders and Members' Interests, House
	Sessional:	Social Policy Scrutiny
	Chair:	Social Policy Scrutiny
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	Committee Membership	
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	Parliamentary Position:	Deputy Leader of the Opposition, Opposition Whip
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	Standing:	Privileges
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
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	Standing:	Public Accounts, Standing Orders and Members Interest
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

(1) Standing Order 178 is suspended.

(2) The Assembly appoints the following scrutiny committees:

  (a) The Social Policy Scrutiny Committee

  (b) The Economic Policy Scrutiny Committee

(3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

(4) The functions of the scrutiny committees shall be to inquire and report on:

  (a) any matter within its subject area referred to it:

    (i) by the Assembly;

    (ii) by a Minister; or

    (iii) on its own motion.

  (b) any bill referred to it by the Assembly;

  (c) 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 powers 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 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 the 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.

(5) The Committee will elect a Government Member as Chair.

(6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Local Government Bill 2019.

1 Introduction

Introduction of the Bill

1.1 The Local Government Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Minister for Local Government, Housing and Community Development, the Hon Gerald McCarthy MLA, on 18 September 2019. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 26 November 2019.[1]

Conduct of the Inquiry

1.2 On 18 September 2019 the Committee called for submissions by 8 October 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix 2, the Committee received five submissions to its inquiry. The Committee held a public briefing with the Department of Local Government, Housing and Community Development on 23 September 2019.

Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) 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.

1.5 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.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Local Government Bill 2019.

Report Structure

1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.7 Chapter 3 considers the main issues raised in evidence received.

[1] Daily Hansard, *Wednesday 18 September 2019,* https://www.territorystories.nt.gov.au/jspui/handle/10070/754522, pp.8-12

2 Overview of the Bill

Background to the Bill

2.1 Noting that the *Local Government Act 2008* was enacted 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, the Minister for Local Government, Housing and Community Development, the Hon Gerald McCarthy MLA, advised the Assembly that:

> As this has been a new and evolving system of local government for the Northern Territory, a review of the Act has been conducted to ensure that the legislation is effective and contemporary.
>
> The Bill supports democracy, transparency and financial accountability within the local government sector. It also provides measures to strengthen local decision making by improving working relationships amongst councils, local authorities and their communities.[2]

Purpose of the Bill

2.2 As highlighted in the Explanatory Statement, repealing and replacing the *Local Government Act 2008*, the Bill establishes the *Local Government Act 2019*:

> The underlying principles for the *Local Government Act 2019* are that local government is a distinct and essential sphere of government and that the system of local government needs to be: flexible and adaptable to the diverse interests and needs of the many communities within the Territory. The system of local government also needs to be comprehensive, democratic, responsive to community needs, and accountable to both local communities and the public generally.[3]

[2] Daily Hansard, *Wednesday 18 September 2019,* https://www.territorystories.nt.gov.au/jspui/handle/10070/754522, p.8
[3] Explanatory Statement, *Local Government Bill 2019 (Serial 107),* https://parliament.nt.gov.au/committees/spsc/107-2019, p.1

3 Examination of the Bill

Introduction

3.1 Submitters were generally supportive of the proposed legislation and acknowledged the extensive work undertaken by the Department to modernise the existing legislation and strengthen the governance and accountability requirements for local government in the Northern Territory.

3.2 However, clarification was sought regarding the operation of a number of clauses. The following discussion considers the main issues raised by submitters along with the advice subsequently provided by the Department of Local Government, Housing and Community Development (the Department).

Definition of Aboriginal Community Living Area Association

3.3 Pursuant to clause 7, an Aboriginal community living area association is defined as 'an incorporated association in which an Aboriginal community living area is vested.' The Central Land Council (CLC) raised concern that this definition fails to acknowledge that there are Aboriginal corporations, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) which own Aboriginal community living areas, and suggested that the definition be amended as follows:

> ***Aboriginal community living area ~~association~~ entity*** means an incorporated association or an Aboriginal corporation in which an Aboriginal community living area is vested.[4]

3.4 However, as the Department explained:

> The *Pastoral Land Act 1992* provides for Aboriginal community living areas. Under that Act, the land of an Aboriginal community living area can only be vested in an association that is incorporated under the *Associations Act 2003* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).
>
> The definition of an 'Aboriginal community living area association' at clause 7 of the Local Government Bill 2019 refers to "an incorporated association in which an Aboriginal community living area is vested." This definition captures associations incorporated under the *Associations Act 2003* and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). The definition captures both types of body corporate capable of holding an Aboriginal community living area.[5]

Committee's Comments

3.5 The Committee is satisfied with the Department's explanation.

[4] Central Land Council, Submission 3, p.1

[5] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.1

Municipalities, Regions and Shires

3.6 Clause 15 provides that local government areas in the Northern Territory are classified as 'municipalities, regions or shires according to their geographical size, the density of their population and their degree of urbanisation.' However, City of Darwin recommended:

> the inclusion of 'city' for classifying local government areas. Including the definition of 'city' further strengthens Council's position to gain national and international recognition as the strong competitive capital city and the only capital city in Northern Australia.[6]

Committee's Comments

3.7 The Committee notes that the status of Darwin and Palmerston as cities is already recognised in legislation. Pursuant to the *Status of Darwin Act 1959,* 'the municipality of Darwin is constituted a city.' Similarly, the *Status of Palmerston Act 2000* provides that 'the town of Palmerston is declared to be a city.'

Local Government Representation Committee

3.8 Clause 27 provides for the establishment of an independent panel to conduct electoral representation reviews. Pursuant to clause 27(2) the membership of the Local Government Representation Committee is to consist of the Electoral Commissioner, the Surveyor-General, and the CEO of the prescribed corporation. As noted in the Department's information sheet, the latter refers to the CEO of the Local Government Association of the Northern Territory (LGANT).[7]

3.9 With regards to the latter, City of Palmerston suggested the Bill be amended to include:

> a nominated representative of the prescribed corporation, thus allowing the corporation to nominate someone it considers most appropriate. This could include a member of their Executive Committee or a representative from a Council, including an Elected Member.[8]

Litchfield Council also expressed the view that the Committee should include "an elected member to ensure local interests of residents are represented."[9]

3.10 In response, the Department advised the Committee that:

> The Local Government Representation Committee will include the Electoral Commissioner and the Surveyor-General, both very senior public servants with suitable knowledge and expertise. The Chief Executive Officer (CEO) of LGANT is the appropriate equivalent person from LGANT.
>
> Consideration was given to allowing the prescribed corporation to nominate a representative for the Committee. Consideration was also given to the Minister nominating a fourth person to be on the Committee. The latter option of a fourth Committee member nominated by the Minister was proposed in the consultation

[6] City of Darwin, Submission 5, p.1
[7] Department of Local Government, Housing and Community Development, *Draft Local Government Bill – Summary of Information Sheet,* https://dlghcd.nt.gov.au/local-government/local-government-bill-consultation, p.5
[8] City of Palmerston, Submission 2, p.2
[9] Litchfield Council, Submission 1, p.2

> draft version of the Bill. Feedback received was that an appointment by the Minister could be seen as political and potentially result in the independence of the Committee being questioned. For that reason, it was decided that the Committee should be comprised only of senior public servants and their counterpart.
>
> Consideration was given to having an elected member of a council on the Committee. However, there will be one Committee that reviews the constitutional arrangements of all 17 local government councils. It would not be appropriate for a council member to be on the Committee, as the member would have a conflict of interest when the committee reviewed the member's council. In addition, it is important that the Committee be, and be perceived as, independent.[10]

3.11 While supportive of an independent process to determine electoral boundaries, the Northern Territory Electoral Commission (NTEC) sought clarification as to who will be responsible for funding the panel to conduct these reviews:

> Presently councils conduct and fund their own representation reviews and may object to funding an independent process that determines their electoral boundaries. Historically, the Adelaide based firm Craig Rowe & Associates conducts the representation reviews for a number of councils with others opting to conduct them internally.
>
> As an indication of approximate budge, the cost of the 2019 Legislative Assembly (LA) redistribution was $240K, which did not incur any travel expenses to remote communities. The LA redistribution budget included costs for an external chair and four rounds of public consultation, whilst the proposed representation review would have an internal chair and only one round of public consultation. However, it is likely that the representation review panel would be required to travel to remote communities to consult on proposed changes to regional council ward boundaries.
>
> A ballpark estimate for the cost of the electoral representation reviews would be at least $200K and consideration is required on how this would be funded. Options for funding include:
>
> - directly charging councils (on a per electors basis)
> - the Department of Local government, Housing
> - the Commission being resourced to conduct the reviews.[11]

The Department subsequently advised that "the Northern Territory Government will be responsible for ensuring that the independent panel is funded."[12]

Committee's Comments

3.12 As advised by the Department, the Committee notes that councils will not incur any additional costs from the proposed introduction of an independent process to review and determine electoral boundaries, with the Local Government Representation Review Committee to be funded by the Government.

[10] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, pp.2-3
[11] Northern Territory Electoral Commission, Submission 4, pp.1-2
[12] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.3

Municipal, Regional or Shire Plans

3.13 Clause 35 provides that a council must adopt its municipal, regional or shire plan between 1 March and 30 June in each year, rather than between 1 April and 31 July as currently provided for under section 24(1) of the *Local Government Act 2008.* Litchfield Council registered its opposition to the change of date noting that:

> Changing the date for adoption of the municipal plan will increase administrative pressure on councils for the process of annual budget development. It will require staff to brief Councillors earlier in the year and might need Council to conduct special council meetings to ensure timelines are met. Legislation requires a public consultation process of 21 days and requires Council to consider submissions made in response, with revisions made if appropriate.
>
> Council understands that it is best practice to have a budget approved prior to the financial year starting, yet other jurisdictions appear to give appropriate timing for the adoption of budgets.[13]

Similar concerns were raised regarding the 30 June deadline for the preparation of long-term financial plans and the declaration of general and special rates as provided for in clauses 200, 237 and 238.[14]

3.14 Although a council's budget forms part of its municipal, regional or shire plan, the Committee notes that clause 35(4) proves that 'this section does not apply to the adoption of the budget or of an amended budget.' Subclause (5) further provides that 'the adoption of a budget or of an amended budget, operates to amend the municipal, regional or shire plan so that it conforms with the most recent budget of the council.'

3.15 However, given that Litchfield Council was of the view that the change of date was out of step with equivalent provisions in other jurisdictions, the Committee sought clarification from the Department as to the rationale for changing the date to 30 June. Advice was also sought regarding the timeframes by which municipal, regional or shire plans are required to be lodged with responsible agencies elsewhere in Australia.

3.16 In response, the Department advised the Committee that:

> It is not considered appropriate for a council to enter the beginning of a financial year without having a budget in place, as council expenditure is required to be in accordance with a budget adopted by council resolution. Many councils adopt their plan and budget before 30 June for this reason. Starting a financial year without a budget in place is not permissible for other spheres of government.
>
> The practical effect of bringing forward the cut-off date by one month for adopting a municipal, regional or shire plan will be nil for councils that adopt their plan by 30 June already. In 2019, the 2019-20 plan and budget were adopted before 30 June by the Alice Springs Town Council, Coomalie Community Government Council, City of Darwin, East Arnhem Regional Council, MacDonnell Regional Council, City of Palmerston and Victoria Daly Regional Council.
>
> For councils that do not always adopt their plan before 30 June, they will have to begin the planning and consultation process up to one month earlier. In 2019, the Litchfield Council adopted its 2019-20 plan and budget on 10 July.

[13] Litchfield Council, Submission 1, p.2
[14] Litchfield Council, Submission 1, p.2

> In Queensland, South Australia, Tasmania and Western Australia, a council is not required to adopt an annual plan and budget before the beginning of a financial year. In New South Wales, a council must adopt its 'operational plan', which is the equivalent to a municipal, regional or shire plan and includes the council's revenue policy (equivalent to a budget), by 30 June. In Victoria, a council must adopt its council plan and budget by 30 June.[15]

Committee's Comments

3.17 The Committee is satisfied with the Department's advice and acknowledges that adoption of municipal, regional or shire plans by 30 June is both best practice and consistent with requirements for other spheres of Government.

Professional Development of Members

3.18 Clause 45 provides that the CEO of the Agency may approve training courses for council members about the responsibilities of being a member of a council under the Act which members of a council must complete within 12 months of each general election. While supporting the provision of training for council members and the role of the Department and LGANT in taking the lead with regards to training for newly elected members, City of Darwin expressed the view that:

> this does not need to be a legislative requirement and a more effective clause would be for Council's to establish a policy position on Mandatory and Discretionary Professional Development … Council would like to understand how the professional development provisions in the Bill are going to be enforced.[16]

Committee's Comments

3.19 As provided for in the Code of Conduct at Schedule 1, the Committee notes that 'a member must undertake relevant training in good faith.' Failure to do so would be a contravention of the code of conduct and subject to the provisions of Division 2: 'Contravention of code of conduct by council members'.

3.20 The Committee also notes that the inclusion of a requirement for members to undergo professional development ensures that all council members are appraised of their responsibilities under the Act and that this training is consistent across councils which may not necessarily be the case if provided for by way of a council policy.

Disqualification

3.21 Clause 47 sets out the conditions under which a person is disqualified from election or appointment as a member of a council. NTEC raised concern as to how it is expected to administer and check the banned status of a candidate if included as an eligibility criteria for nomination:

> Currently, the Commission accepts a nomination form if the candidate has signed the declaration stating that they meet all eligibility criteria. The Commission seeks further clarification on how this provision could be practically administered given

[15] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.4
[16] City of Darwin, Submission 5, pp.1-2

> the number of candidates and the short time frame between the closer and declaration of nominations.[17]

3.22 However, as the Department explained, the current approach will still apply under the proposed legislation:

> When a person nominates to be a candidate in a council election, the person must complete a declaration stating that none of the disqualifying matters apply to them. Making a false or misleading declaration on such a form is a criminal offence.
>
> The closing time for nominations is generally the day before nominations are declared, meaning that it is not practical for all possible disqualifying factors to be investigated by the Northern Territory Electoral Commission (NTEC). Reliance is placed on a candidate's declaration and the fact that if the person is elected and later found to ineligible for office, the person will be disqualified from remaining in office. The NTEC only checks that a person nominating to be a candidate is enrolled as an elector for the area. …
>
> As with the matters that currently disqualify a person from being a council member, it will not always be possible to determine if a person is disqualified under any of the new matters in the brief period after a nomination form is submitted and before nominations are declared. The current approach, of relying on a candidate's declaration and the fact that if the person is elected and later found to be ineligible for office, the person will then be disqualified from remaining in office, will be continued. The NTEC will not have any additional obligation under the Bill to check the eligibility status of a candidate.
>
> This is more than just an 'honour system'. If a person makes a false declaration, they risk facing prosecution for committing an offence of making a misleading statement to an authorised officer in connection with an election, for which the maximum penalty is 50 penalty units (currently $7,750).[18]

Committee's Comments

3.23 The Committee is satisfied with the Department's advice and notes that the proposed legislation will neither change the current approach of relying on a candidate's declaration, nor create any additional obligations for NTEC to check the eligibility status of candidates in local government elections.

Allowances and Expenses

3.24 As provided for in clause 106, council members are entitled to be paid an ordinary allowance, extra meeting allowance and a professional development allowance. While supporting determination of the maximum amount of allowances by the Remuneration Tribunal established under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*, City of Palmerston expressed the view that:

> The Independent Remuneration Tribunal must review the allowances at least once each term of Council, and that allowances must at minimum include an annual increment increase.[19]

[17] Northern Territory Electoral Commission, Submission 4, p.2
[18] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.6
[19] City of Palmerston, Submission 2, p.1

3.25 While noting that clause 108 provides that allowances are to be fixed for each financial year as part of the council's budget, the Committee sought clarification from the Department as to how often it is anticipated that determinations will be made in relation to maximum allowances for council members and, if they are not made annually, whether such determinations will provide for annual increment increases.

3.26 In response, the Department advised that:

> It is intended that the Remuneration Tribunal will be asked to review council member allowances soon after commencement of the Local Government Bill 2019. Beyond the initial review, reviews will occur as required. If there is no significant reason to have the Remuneration Tribunal conduct a review, public money should not be spent simply to 'tick a box'. If the Local Government Association of the Northern Territory or a council believes there is a good reason to review allowances, a request can be made to the Minister.[20]

As provided for in clause 369 of the Bill, the Department further advised that "allowances will be adjusted annually in line with the Consumer Price Index."[21]

3.27 Clause 109(2) provides that councils may adopt a policy providing that council members are entitled to payment or reimbursement of other reasonable expenses and non-monetary benefits that may be incurred or required as a result of undertaking official duties. City of Palmerston sought clarification as to the types of matters that may be covered by such policies:

> It is acknowledged that the Bill has made provision for expenses and benefits. This is supported as it will assist in attracting more members of the community to seek becoming an elected member by easing any financial burdens. It would be of benefit if guidelines and/or definitions are developed to provide clarity. For example, would indirect costs such as a member requiring to pay for childcare to undertake official duties fall within the Bill.[22]

3.28 However, as the Department pointed out, the Bill seeks to provide sufficient flexibility for councils to determine reasonable and appropriate expenses based on their particular circumstances:

> Local government councils form an independent sphere of government. There are 17 vastly different councils within the Northern Territory. These councils have different needs and different budget capacities.
>
> On 11 June 2019, the City of Darwin voted against a motion that "a report be prepared, outlining options to provide occasional childcare for both elected members and staff during council meetings and workshops." However, there may be other councils that would support the provision of childcare services to members. The Local Government Bill 2019 enables an individual council to determine what is reasonable and appropriate for that council.[23]

3.29 City of Darwin expressed the view that, similar to Queensland[24], the Bill should make provision for local governments to contribute to a super scheme for elected

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[20] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.7

[21] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.7

[22] City of Palmerston, Submission 2, p.3

[23] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.8

[24] *Local Government Act 2009* (Qld), s 226

members.[25] It is noted that for a person to be eligible for the superannuation guarantee rate (currently 9.5%) on their earnings, they must meet the extended definition of 'employee' under section 12 of the *Superannuation Guarantee (Administration) Act 1992* (Cth). Section 12(9A) provides that a person who holds office as a member of a local government council is not classified as an employee of the council.

3.30 However, pursuant to subsection 12(10), paragraph 12-45(1)(e) in Schedule 1 to the *Taxation Administration Act 1953* (Cth) provides that local government members may be eligible for the superannuation guarantee rate on their earnings if the council withholds an amount for PAYG taxation purposes from the allowances of:

> a member of a local governing body where there is in effect, in accordance with section 446-5, a unanimous resolution by the body that the remuneration of members of the body be subject to withholding under this Part.[26]

Committee's Comments

3.31 The Committee is satisfied with the Department's clarification and notes that the Department further advised that it will:

> provide guidance materials to councils on all the new requirements under the Bill and will have a hotline for council members or staff to call with any questions. The Department will also provide assistance to councils as they develop policies to comply with the new Act. Councils will need policies which are suited to their circumstances and resources. Such decisions will be made by the council and be public and transparent.[27]

3.32 In relation to City of Darwin's view that provision be made to allow local governments to contribute to a super scheme for elected members, the Committee notes that the Queensland provision is somewhat unusual and is not replicated in equivalent legislation elsewhere in Australia. In determining allowances for council members, it is noted that the Remuneration Tribunal would be aware that members are not eligible for the superannuation guarantee rate on their allowances entitlement.

3.33 As indicated previously, in accordance with the provisions of the *Superannuation Guarantee (Administration) Act 1992* (Cth) and the *Taxation Administration Act 1953* (Cth), members of a Northern Territory local government council may unanimously decide that they wish to be subject to PAYG taxation and then be eligible for the superannuation guarantee rate on their member allowances.

Conflict of Interest

3.34 Clause 114 provides that a member has a conflict of interest in a question arising for decision by the audit committee, council, council committee or local authority if the member or an associate of the member has a direct interest; and indirect financial

[25] City of Darwin, Submission 5, p.2
[26] *Taxation Administration Act 1953,* Schedule 1, paragraph 12-45
[27] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.8

interest; and indirect interest by close association; or an indirect interest due to conflicting duties in how the question is decided.

3.35 City of Palmerston expressed the view that this definition could be broadened and recommended that:

> the provisions relating to conflict of interest be amended to align them with the considerations of ss 8-16 of the *Independent Commissioner Against Corruption Act.* This will ensure that when members are considering whether or not they are conflicted, they balance these considerations against the requirements of the ICAC.[28]

The Committee notes that City of Darwin were also of the view that this section should be more closely aligned with the provisions of the *Independent Commissioner Against Corruption Act 2017.*[29]

3.36 In response, the Department advised the Committee that:

> The conflict of interest requirements in the code of conduct at Schedule 1 of the Local Government Bill 2019, which will apply to all council members, have been carefully designed, in consultation with the Department of the Attorney-General and Justice, to align with the *Independent Commissioner Against Corruption Act 2017.* The requirements are very broad and expressly include perceived conflicts of interest. …
>
> The offence at clause 115 of the Bill for not declaring a conflict of interest at a meeting is more narrowly focussed, with the interests relevant to the offence defined at clause 114. These conflicts of interest are more narrowly focussed because they amount to an offence. A wide definition would not be practical for the purpose of prosecution. A widely defined offence for not declaring any kind of perceived conflict of interest could lead to a culture of over-declaration for fear of committing an offence and result in council meetings regularly having difficulty in making quorum.
>
> The *Independent Commissioner Against Corruption Act 2017*, applies to council members and staff and does not contain an offence for failure to declare a conflict of interest. Rather, it allows certain types of conduct to be investigated by the Independent Commissioner Against Corruption, including "failure to manage adequately an actual or perceived conflict of interest."[30]

3.37 Given that clause 115 provides that a conflict of interest need only be declared in a matter that has arisen or is about to arise before an audit committee, a council committee or a local authority, City of Palmerston advised that it was also of the view that:

> a conflict of interest should be declared if any actions or activities where a conflict exists may result in financial or non-financial impact to the Council.[31]

3.38 Noting that extensive consideration was given to the circumstances in which a member ought to be required to declare a conflict of interest, the Department pointed out that:

> Members of councils, audit committees, council committees and local authorities can be approached by members of the public who wish to discuss matters related

[28] City of Palmerston, Submission 2, p.2
[29] City of Darwin, Submission 5, p.2
[30] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.8
[31] City of Palmerston, Submission 2, p.2

> to the council. It is when a matter arises before a council, audit committee, council committee or local authority that may require a resolution to make a decision or note information that it is important that a member declares a conflict, leaves the meeting while the matter is considered and does not try and influence the other members.
>
> The conflict of interest requirements in the code of conduct at Schedule 1 of the Local Government Bill 2019, which will apply to all council members, apply any time a member is undertaking official functions or responsibilities.[32]

Committee's Comments

3.39 The Committee is satisfied with the Department's advice. The Committee also notes that pursuant to clauses 111, 113, 116 and 117, council CEO's are required to keep and publish a register of declared gifts and benefits received by council members; a register of annual returns of interests of council members; and a register of declared conflicts of interest disclosed by council members.

Code of Conduct

3.40 Pursuant to clause 119(2), Schedule 1 sets out the Code of Conduct which governs the conduct of members of an audit committee, a council, a council committee and a local authority. City of Palmerston suggested that the proposed Code of Conduct could be strengthened:

> It is considered that the Bill could provide for further protections and holding members to account. An example being that members are not considered employees and therefore are not covered by legislation relating to matters such as bullying, harassment and the criminal code.[33]

3.41 The Committee notes that the Code of Conduct in the Bill as introduced was amended from the consultation draft to include, at clause 4, a specific prohibition on bullying. While noting that clause 5 of the Code of Conduct provides that a member must respect cultural diversity and must not therefore discriminate against others or the opinions of others, on the ground of their cultural background, and must act with respect for cultural beliefs and practices in relation to other members, council staff, electors and members of the public, the Committee sought the Department's advice as to why the Code of Conduct does not prohibit discrimination on other grounds such as those provided for in section 3(b) of the *Anti-Discrimination Act 1992* (NT).

3.42 The Department subsequently advised the Committee that:

> The *Anti-Discrimination Act 1992* will continue to apply to councils to the full extent it does now. The code of conduct in Schedule 1 of the Local Government Bill 2019, which applies to members of councils, audit committees, council committees and local authorities, does not replace the effect of the *Anti-Discrimination Act 1992.* For that reason, it is not necessary that the code of conduct prohibit the types of discrimination that are already prohibited by the *Anti-Discrimination Act 1992.*
>
> If a person believes that they have been discriminated against by a member, in a way that is prohibited by the *Anti-Discrimination Act 1992*, the person can seek

[32] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.9
[33] City of Palmerston, Submission 2, p.4

> information about their rights from the Anti-Discrimination Commission. The Commission can help a person understand: the person's rights; what potential remedies exist; and the process for making a formal complaint regarding any alleged discrimination. … The code of conduct is aligned with the objects of the *Anti-Discrimination Act 1992* in the sense that nothing in the code is inconsistent with those objects.[34]

3.43 Litchfield Council raised concerns that the process for dealing with complaints regarding contraventions of the code of conduct, as set out in clauses 120 – 132, will:

> place an administrative burden on Council through the establishment of policies and procedures to deal with complaints. Furthermore, significant training of Councillors would be required to undertake a process of complaint handling.
>
> Whilst Council can maintain a policy (s121) to refer all complaints to a third party (s122) the Council still needs to decide on the complaint. This still has the potential to exasperate strained relationships that may exist between Councillors as independence of decision making may be questioned.
>
> Council recommends that complaints need to be assessed and determination made by an independent party. Failure to comply with the determination or make a determination can then be referred to NTCAT for assessment, determination and enforcement.[35]

3.44 The Department subsequently advised the Committee that:

> A council may refer a complaint to third party such as a mediator or someone experienced in local government issues. The third party may be able to help the parties resolve the matter. The third party will report back to council and may make a recommendation to council about a decision or way forward.
>
> A council can resolve to take no action (without deciding whether there was a contravention) or decide whether there was a contravention. The council as a corporate body must take responsibility for its members and its corporate personality. While councils should be able to seek assistance, they may not obfuscate their corporate responsibility by totally passing off the matter to a third party.
>
> A council decision can be appealed to the prescribed corporation by either of the parties. It would not be appropriate if the third party, who may be a mediator, had to issue a decision notice that could then be appealed. A mediator does not decide a matter and does not make appealable decisions.
>
> It should be noted that the respondent to a complaint and, if the complainant is a member of the council, the complainant, have the right to refer a complaint directly to the prescribed corporation.[36]

3.45 The Department further advised that it will provide:

> guidance materials and training in relation to the handling of code of conduct complaints. The guidance materials will include processes, procedures and approved forms. Councils will be given information and assistance in developing their policies in relation to a contravention of the code of conduct.[37]

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[34] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.10

[35] Litchfield Council, Submission 1, p.3

[36] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.11

[37] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.11

Committee's Comments

3.46 The Committee notes the Department's advice and also points out that, irrespective of whether councillors are employees or not, they are subject to the provisions of the *Criminal Code Act 1983* and any other legislation, such as the *Anti-Discrimination Act 1992*, in the same manner as all other members of the public in the Northern Territory.

3.47 Following amendments to the 'Code of conduct' at Schedule 1 from the consultation draft, the Committee also notes that the numbering has not been updated and as currently drafted includes two clause 4's. As a correction of this nature is within the scope of a Clerk's amendment as provided for under Standing Order 165, the Committee has advised the Clerk accordingly.[38]

Campaign Donation Return

3.48 Clause 148 introduces political disclosure requirements for all council candidates to submit a campaign donation return. NTEC raised concerns regarding the practical implications of administering this provision for regional councils noting that:

> The recent experience at the 2016 Territory election highlighted the difficulty in collecting disclosure forms from independent candidates, especially those based in remote areas. Limited access to telecommunications through the internet, email and telephone made it difficult to contact candidates in respect to complying with the financial disclosure and compliance laws. In 2016, 17 candidates failed to lodge a return and 27 lodged late returns. It is extremely difficult and expensive to enforce compliance to regional council candidates.
>
> Compliance is going to be even more problematic than LA elections as there are many more remote candidates at the local government elections. Nearly all of these candidates conduct their campaigns on small budgets. The administration of financial disclosure and compliance obligations for remote candidates will be near impossible to administer.
>
> Consideration should be given to having disclosure only for principal members or alternatively only members elected to council as the Commission could request councils to assist elected members in complying with financial disclosure and compliance obligations.
>
> The introduction of disclosure requirements for local government elections will necessitate compliance reviews on returns to verify their accuracy and completeness. The estimated cost of these compliance reviews would be at least $25K. This will be an additional cost to councils. Furthermore, this cost would increase if all candidates are required to submit campaign donation returns.[39]

3.49 Noting that NTEC has been extensively consulted over the past four years in the development of electoral related matters in the Bill, the Department advised the Committee that:

> NTEC's concerns with the practicalities of the campaign donation disclosure requirements have been understood and different options that could mitigate the practical challenges have been carefully considered.
>
> In the consultation draft version of the Bill, it was proposed that only principal member (Mayor or President) candidates would have to submit returns. In the

[38] Legislative Assembly of the Northern Territory, *Standing Orders – In Force as of 21 April 2016,* https://parliament.nt.gov.au/__data/assets/pdf_file/0005/377789/Standing-Orders-21-April-2016.pdf, p.45

[39] Northern Territory Electoral Commission, Submission 4, p.2

formal submissions received from Alice Springs Town Council, the Barkly Regional Council, the City of Darwin, the City of Palmerston, the Coomalie Community Government Council, the Local Government Association of the Northern Territory and the Top End Regional Organisation of Councils, it was indicated that this was considered inappropriate and that all candidates should have to submit returns.

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

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

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

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

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

Consideration was also given to only requiring successful candidates to submit returns. However, it is considered that such an approach would undermine the transparency sought by these provisions, being that the public can see who has been contributing to all election campaigns.[40]

Committee's Comments

3.50 The Committee is satisfied with the Department's advice and is of the view that, in light of the feedback on the consultation draft and the Government's policy position on donation disclosures, the provisions within the Bill seek to promote transparency and accountability in relation to local government election campaigns.

Shared Services Policy

3.51 Clause 216(1) provides that 'a Council must, by resolution, adopt a policy for shared services.' While supportive of this provision, Litchfield Council sought clarification as to the intended operation of this clause given the principles set out in Part 13, Division

[40] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, pp.12-14

2 'Collective Procurement' of the Local Government (Accounting) Regulations 2008.[41]

3.52 However, as the Department pointed out to the Committee:

> Shared services and procurement are different concepts. Accordingly, clause 216 of the Local Government Bill 2019 addresses different matters from the collective procurement regulations in Part 13, Division 2 of the Local Government (Accounting) Regulations 2018. Procurement is the process of acquiring goods or services under the current Regulations and it is intended that similar Regulations for collective procurement will made under the Bill.
>
> A shared service can be where a service is jointly provided by more than one council. For example, some councils have jointly set up a program to collect and recycle abandoned vehicles over multiple council areas. In such a scenario, it is possible for councils to undertake collective procurement, but collective procurement is not, of itself, a shared service.
>
> Another type of shared service is where a council provides a service not only to its own council area but to another council's area on behalf of that council. For example, a council might have authorised officers that round up and impound stray dogs in its own council area and also provide the same services in another council area on behalf of that other council.[42]

Committee's Comments

3.53 The Committee is satisfied with the Department's clarification.

Rates and Charges

3.54 As detailed below, submitters sought clarification regarding the anticipated operation of a number of clauses in Chapter 11 'Rates and Charges' associated with rateability, liability for rates, assessment records, overriding statutory charges, and the sale of land.

Special cases

3.55 Clause 223 provides for some special cases in relation to rates. Subclause (1) provides that land owned by the Commonwealth is only rateable if the Commonwealth agrees. Pursuant to subclause (2), although a Land Trust is not liable to rates, an occupier of land owned by the trust is liable to rates. If land owned by the Trust is leased, the leasehold estate constitutes the rateable land for the purposes of the Act. Similarly subclause (3) provides that although an Aboriginal community living area association is not liable to rates, an occupier of the land is liable to rates and where the land is leased, the leasehold estate is rateable.

3.56 Furthermore, as noted in the Explanatory Statement:

> Subclause (4) provides that land owned by a Land Trust or an Aboriginal community living area association is not subject to the clauses in this chapter which allow overdue rates to become a charge on the land. Land owned by a Land Trust or Aboriginal community living area association cannot be sold for

[41] Litchfield Council, Submission 1, p.3

[42] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.14

> non-payment of rates. The note for sub-clause (4) clarifies that this sub-clause does not protect a leasehold estate from such a charge or from being sold for non-payment of rates.[43]

3.57 The CLC raised concerns that, as currently drafted, clause 223 does not address situations where an Aboriginal corporation owns land in a remote community which does not fall within the definition of 'Aboriginal community living area'. As provided for in clause 7, an Aboriginal community living area is defined as 'an area granted as an Aboriginal community living area under Part 8 of the *Pastoral Land Act 1992,* or the corresponding previous legislative provisions.' As the CLC pointed out:

> An example in the CLC's region is the Aputula community (Finke) where Aputula Aboriginal Corporation and Aputula Housing Aboriginal Corporation own land which is not Aboriginal land or Aboriginal CLA [community living area] and they are essentially land holding corporations, similar to an Aboriginal community living entity.[44]

3.58 The CLC subsequently recommended that the Bill be amended to include an additional subclause, similar to subclause 223(3), to provide that:

> An Aboriginal corporation which owns land in a remote community is not liable to pay rates but:
>
> (a) an occupier of land owned by the Aboriginal corporation (other than the Aboriginal corporation itself) is liable to pay rates; and
>
> (b) If land owned by the Aboriginal corporation is held under a lease form the Aboriginal corporation, the leasehold estate constitutes the rateable land for the purposes of this Act.[45]

3.59 However, as the Department explained to the Committee:

> It is not intended that corporations incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) be generally exempt from paying rates. A corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) can purchase commercial property and operate commercial businesses.
>
> However, some corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) are registered as charities or public benevolent institutions. Under clause 222(1)(g) of the Local Government Bill 2019, land used for a non-commercial purpose by a public benevolent institution or charity that is registered with the Australian Charities and Not-for-profits Commission is exempt from rates.
>
> It should be noted that councils are able to grant a rate concession under clause 250 of the Bill if satisfied that the concession would promote a purpose that provides a public benefit.
>
> The suggested amendment is not appropriate as an Aboriginal Corporation which holds land should pay rates unless it meets one of the exemption categories or is granted a concession. If an Aboriginal corporation leases land, it could recoup the cost of rates through the lease agreement.
>
> It should also be noted that under the 'Intergovernmental Agreement on Competition and Productivity – Enhancing Reforms' (December 2016), the Northern Territory is obliged to apply competitive principles to ensure that

[43] Explanatory Statement, *Local Government Bill 2019 (Serial 107),* https://parliament.nt.gov.au/committees/spsc/107-2019, p.57
[44] Central Land Council, Submission 3, p.1
[45] Central Land Council, Submission 3, pp.1-2

> regulatory frameworks and government policies binding the public or private sectors do not unnecessarily restrict competition. There is no intention that the Local Government Bill 2019 apply any additional competitive principles to Aboriginal corporations operating in the Northern Territory. However, exempting Aboriginal corporations from paying rates, even if the relevant land is being used commercially, would be anti-competitive.[46]

3.60 Consequential to the above, and taking into consideration the CLC's previous comments regarding the definition of an Aboriginal community living area association outlined in paragraph 3.2 above, the CLC also suggested that clause 223(4) be amended to encompass an Aboriginal community living area 'entity', rather than 'association', or land in a remote community owned by an Aboriginal corporation.[47]

3.61 In response the Department advised that:

> Unlike 'normal' freehold land, clause 223(4) of the Bill provides that rates cannot become a charge on land in relation to land owned by Land Trusts and Aboriginal community living area associations. This recognises and preserves the status of that land as being different from usual freehold land.
>
> A corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) can operate as a commercial business and buy and sell freehold land. Such corporations are not automatically exempt from rates. If rates are owed by a corporation, over land which is not owned by a Land Trust or Aboriginal community living area association, the rates can become a charge on the land.
>
> It would be inappropriate to amend the legislation in the way proposed because the clause in question is to protect Land Trusts and Aboriginal community living area associations, not to exempt Aboriginal corporations generally.[48]

Committee's Comments

3.62 The Committee is satisfied with the Department's explanation.

Joint and several liability

3.63 Clause 228(1) provides that 'the owner and occupier (if not the owner) of an allotment are jointly and severally liable for rates payable in respect of an allotment.' The CLC suggested that, similar to the note for clause 229(2), a note should be included for clause 228(1) to clarify that:

> In the case of an allotment owned by the Land Trust or an Aboriginal community living area entity, the Land Trust or the Aboriginal community living area entity is not liable to pay rates, only the occupier will be liable for rates payable in respect of an allotment.
>
> In the case of an allotment in a remote community owned by an Aboriginal corporation, the Aboriginal corporation is not liable to pay rates, only the occupier will be liable for rates payable in respect of an allotment.[49]

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[46] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.15
[47] Central Land Council, Submission 3, p.6
[48] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.16
[49] Central Land Council, Submission 3, p.6

3.64 However, taking into consideration the Department's previous advice regarding not exempting Aboriginal corporations generally from the payment of rates, it was pointed out that:

> The note proposed, to the extent that it applies to land owned by a Land Trust or an Aboriginal community living area association, is not necessary, as these matters are covered by clauses 223(2)-(3) of the Bill.[50]

Committee's Comments

3.65 The Committee is satisfied with the Department's advice.

Principal ratepayer for an allotment

3.66 Clause 229(2) provides that whilst the owner of an allotment is the principal ratepayer for an allotment, 'the occupier of the allotment is the principal ratepayer if the owner is not liable to rates for any reason.' The note for subclause (2) then clarifies that:

> In the case of an allotment owned by a Land Trust, the Trust itself is not liable to rates so the lessee (if there is a lessee) is treated under this Act as the owner and hence the principal ratepayer for the allotment. If there is no lessee, the occupier may be liable for rates (see clause 228(2)) and, if so, would be the principal ratepayer for the allotment.[51]

3.67 The CLC expressed the view that this note does not address situations where an allotment is owned by an Aboriginal community living area entity or, in the case of an allotment in a remote community, an Aboriginal corporation. The CLC subsequently suggested that the note be amended accordingly.[52]

3.68 However, as the Department explained to the Committee:

> The note for clause 229(2) is explanatory in nature to assist interpretation about who the principal ratepayer is. It applies similarly where an allotment is owned by an Aboriginal community living area entity, because of the definition of 'owner' at clause 7 of the Bill. If the land is within an Aboriginal community living area and is held under lease – the lessee is treated as the owner.
>
> There is no need to amend the Bill as it already provides that Aboriginal community living area associations are not liable to pay rates at clause 223(3). It is not intended that land owned by any corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) be exempted from rates. Any corporation can buy and sell property and operate commercial businesses. Such corporations are entitled to the same exemptions and concessions as any other corporation.
>
> It is the nature of the status of the land it holds, not the corporate nature of the land owner, which makes a Land Trust or Aboriginal community living area association exempt from rates.[53]

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[50] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.16

[51] Explanatory Statement, *Local Government Bill 2019 (Serial 107),* https://parliament.nt.gov.au/committees/spsc/107-2019, p.59

[52] Central Land Council, Submission 3, pp.6-7

[53] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.17

Committee's Comments

3.69 The Committee is satisfied with the Department's explanation.

Assessment record

3.70 Clause 230(4) provides that 'a person with sufficient interest in the assessment record may inspect or copy the assessment record ….' Clause 230(5) then provides that 'a council may, by resolution, adopt a policy to provide for what constitutes a sufficient interest in the assessment record.' While supporting the updates to this clause, Litchfield Council suggested that:

> It would be beneficial to add a definition of 'sufficient interest' instead of leaving the definition up to Council policy decision which may create inconsistency between councils.[54]

3.71 Noting that consideration was given to providing a definition of 'sufficient interest', the Department advised that it was determined that:

> any definition was likely to result in some unintended consequences or exclusions. The Department also sought advice from the Information Commissioner when the drafting instructions for this clause were being developed. It is preferable that these matters be dealt with by a policy because this will allow council officers some flexibility to make a sensible judgement in relation to actual situations, rather than having to apply a clause in the Bill, irrespective of any unforeseen circumstances.[55]

Committee's Comments

3.72 The Committee is satisfied with the Department's advice. As previously advised, prior to the commencement of the proposed legislation the Committee understands that councils will be given training and provided with guidance materials regarding the new requirements under the Bill. The Department also noted that:

> staff will be available to answer any questions, discuss any concerns and give feedback on draft policies. In addition, the Department will have a hotline that council staff can ring with any questions about the new local government legislation.[56]

Overdue rates to be charge on land

3.73 Clause 255(2)(b) provides that rates do not become a charge over land within an Aboriginal community living area. The CLC suggested that, for completeness, this clause should also refer to Aboriginal land and freehold land in a remote community owned by an Aboriginal corporation.[57]

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[54] Litchfield Council, Submission 1, p.3
[55] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.18
[56] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.18
[57] Central Land Council, Submission 3, p.7

3.74 However, as the Department explained:

> Clause 255(2)(a) provides that rates do not become a charge over land unless the owner of the land is a ratepayer who is liable for the rates that are in arrears. Because clause 223(2) provides that a Land Trust is not liable to rates, rates cannot become a charge on land owned by a Land Trust.
>
> It is not intended that land owned by a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) be exempted from rates. Such a corporation can purchase commercial property and operate commercial businesses. Such a corporation would be eligible for the usual exemptions and concessions available to all corporations generally.[58]

Committee's Comments

3.75 The Committee is satisfied with the Department's explanation.

Sale of land

3.76 Clause 260(1) provides that if the full amount of outstanding rates is not paid within the time allowed in a warning notice given under section 259(1), the council may sell the land. However, as provided for in subclause (3)(b), if the land is a leasehold estate granted by a Land Trust, the sale must be made as approved by the relevant land council. The CLC expressed the view that, consistent with its functions under 23(1)(eb) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), clause 260(3) should be amended to:

> extend the requirement of Land Council's approval of the sale of a leasehold estate granted by a CLA [community living area] entity, as well as approval by the relevant Aboriginal corporation of the sale of a leasehold granted by it in a remote community.[59]

3.77 However, as highlighted by the Department:

> Section 23(1)(eb) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) provides that a function of a Land Council is "for land that is a community living area and in the area of the Land Council – to assist the owner of the land, if requested to do, in relation to any dealings in the land (including assistance in negotiating leases of, or other grants of interests, in the land)".
>
> Automatically requiring Land Council approval of the sale of a leasehold estate granted by an Aboriginal community living area association in these circumstances is a step further than the current law, where the association may request the assistance but does not have to. Expanding a legislated function of Land Councils would almost certainly require amendment of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and consultation with the Australian Government.
>
> However, if an Aboriginal community living area association was to lease its community living area, it can include terms within the lease that, for example, the leasehold estate may not be sold or assigned to any person not approved by the association. In the event that an Aboriginal community living area association wishes to lease its community living area, it is through the lease agreement that the association can further protect its interests.

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[58] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, pp.18-19

[59] Central Land Council, Submission 3, p. 2

> Other than for Land Trusts and community living area associations, where freehold land is owned by a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), the usual law in relation to rates and freehold land applies.[60]

Committee's Comments

3.78 The Committee is satisfied with the Department's explanation.

Roads

3.79 Litchfield Council noted that clause 273 'Establishment of new road' and clause 274 'Substantial temporary road closure' have been copied directly from sections 18 and 20 of the Local Government (Administration) Regulations 2008.[61] Given their procedural nature, Litchfield Council suggested that they should remain in the Regulations.[62] The Committee sought clarification from the Department as to the rationale for including these provisions in the primary legislation.

3.80 In response, the Department advised the Committee that:

> Clause 273, which sets out how a new road is established, is an important matter affecting land and it is appropriate that it is included in the primary legislation. The clause enables land to be re-purposed as a road and requires consultation with the public.
>
> Similarly, clause 274, which sets out the requirements for closing a road for a substantial period of time, is important and it is appropriate that it is included in the primary legislation. The clause is at a high level and requires consultation with the Minister and the Member of the Legislative Assembly in whose electoral division the road is located.[63]

3.81 With regards to the latter, City of Palmerston advised that while they acknowledged the need for councils to consult with the Minister where it is proposed to close a road temporarily but for a substantial period, they did not support the requirement for councils to also consult the MLA for the electoral division in which the road is situated:

> We do not support the legislated requirement to consult the local Members of the Legislative Assembly (MLA) on a specific Council controlled and managed issue. MLA's like all community members may comment as part of any community consultation process. This inclusion in the Bill may lead to perceived political involvement.[64]

3.82 However, as the Department pointed out, this is not a new requirement:

> This is a continuation, without any change, of the existing requirements in the Local Government (Administration) Regulations 2008. In the Northern Territory, with its small population, constituents have abundant access to their local Members of the Legislative Assembly.
>
> When a road is to be closed, constituents often contact their local member. Local members have local knowledge of the views of their constituents and the area. A

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[60] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.20
[61] Local Government (Administration) Regulations 2008, ss18 and 20
[62] Litchfield Council, Submission 1, p.3
[63] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.20
[64] City of Palmerston, Submission 2, p.2

> local member may have relevant information to contribute to the consultation process. A council is not bound by the views of a local member, it must simply consider any written submissions the member makes.[65]

Committee's Comments

3.83 The Committee is satisfied with the Department's advice.

Content of Annual Reports

3.84 The CLC raised concern that the requirement for annual reports to include 'an itemisation of the salary, allowances or any other payments made to, or fringe benefits received by or on behalf of, the CEO' as provided for in clause 286(e) of the exposure draft has been removed from the Bill as introduced.[66] Noting that all commonwealth funded agencies will be required to report CEO's salaries in their annual reports from this financial year, the CLC questioned removal of this requirement from the proposed legislation and suggested that for consistency and transparency this subclause should be reinstated.[67]

3.85 However, the Department noted that:

> The policy intention has not changed and CEO salaries will be reported. During consultation on the draft Bill, some stakeholders indicated that the Australian Accounting Standard AASB 124 already requires the remuneration of key management personnel to be included in a council's annual financial statement. It is considered preferable that details of a CEO's remuneration be included in a council's annual financial statement, rather than elsewhere in the annual report, because the financial statement has to be audited.
>
> It is intended to use the power of clause 207(2)(b) of the Bill to prescribe, in the Regulations, requirements for council annual financial statements. It is intended that a Regulation will be made that requires the CEO's remuneration to be reported separately from the figures for all other key management personnel in the annual financial statement. This will achieve the intended accountability and transparency and will be subject to the annual audit of financial statements.[68]

Committee's Comments

3.86 The Committee is satisfied with the Department's response and acknowledges that the approach taken in the proposed legislation complies with the relevant Australian Accounting Standards and ensures that the remuneration of CEO's is subject to the annual audit of financial statements.

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[65] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.20

[66] Department of Local Government, Housing and Community Development, *Draft Local Government Bill - Consultation Draft Only,* https://dlghcd.nt.gov.au/local-government/local-government-bill-consultation, clause 286(e)

[67] Central Land Council, Submission 3, p.3

[68] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.21

Defaulting Councils

3.87 City of Palmerston raised concern that the Bill only empowers the Minister to intervene in a council's affairs when there is a serious financial irregularity and recommended that:

> The Minister has powers to intervene on matters unrelated to financial affairs. A general failure in the administration of a council's affairs should be sufficient, without reliance on this being related to financial matters.[69]

3.88 However, the Committee notes that clause 316 provides that the Minister may require a council to take specified remedial action if satisfied that deficiencies have been identified in the conduct of a council's affairs and that action must be taken to address them. As noted by the Department, there are a range of possible situations where the Minister's powers to make such an order could be useful "for example, where a council failed to appoint a new CEO after a CEO resigned; or had formed a corporation without the Minister's approval."[70]

3.89 Clause 317 provides that the CEO of the Agency may appoint a financial controller for a council or a local government subsidiary if the CEO considers that the council or local government subsidiary is not performing its financial responsibilities appropriately, or is not complying with the Act. Litchfield Council raised concern that:

> The Draft Bill does not identify the process prior to the appointment of the financial controller and there is no definition of 'appropriately performing its financial responsibilities' in the Draft Bill. It appears that the introduction of Section 317 gives the CEO of the Department the right to implement this position without prior notice to Council for any financial concerns the Department might have.
>
> Council recommends the appointment of a position like this should not be made without prior consultation of the Council and should include a mechanism of warning the Council and opportunity to rectify before the introduction of such financial controller.[71]

3.90 With regards to the anticipated process prior to the appointment of a financial controller, the Department advised that:

> The Agency would be in contact with a council or local government subsidiary about any concerns regarding financial management. Possible solutions would be explored with the council or subsidiary. If the options were not taken up or if the Department's advice was ignored, a council or subsidiary may be warned that if it does not take certain steps (or refrain from taking certain steps) in a specified timeframe, a financial controller may be appointed.
>
> However, there are no set rules or process that would be practical and appropriate in all situations. An emergency could arise. If the Agency become aware of a need to quickly appoint a financial controller to prevent a council from losing a significant amount of public monies for example in an unlawful transaction, it may be necessary to act quickly and with little or no warning. This would be a highly unusual circumstance. …

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[69] City of Palmerston, Submission 2, p.2

[70] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.22; see also clause 39 which prohibits a council from forming a corporation without the approval of the Minister in consultation with the Treasurer.

[71] Litchfield Council, Submission 1, pp.3-4

> Providing a warning that a financial controller will be appointed if a council does not rectify certain matters in a specified timeframe is generally best practice but is not suitable as a mandatory requirement. Otherwise the utility of the power to appoint a financial controller would be undermined. The Agency does not want to appoint a financial controller if it can be avoided, nor does it want to surprise a council or subsidiary by appointing a financial controller with little warning. Nevertheless, it is more important that public money is protected than councils or subsidiaries always receive warning of such an appointment.

3.91 In relation to what is meant by the phrase 'performing its financial responsibilities appropriately, the Committee heard that:

> This could include, but is not limited to: spending money from a reserve where the money has been reserved for another purpose; entering into a loan agreement without proper authorisation; or spending money in a way that will result in a council or subsidiary becoming insolvent.
>
> It was a deliberate choice not to define the phrase 'performing its financial responsibilities appropriately'. By leaving the concept at a high level, it can be applicable across a range of scenarios. If it was defined too precisely, there could be unforeseen circumstances where a financial controller cannot be appointed and the Minister must instead consider placing a council under official management with the council members being suspended.[72]

Committee's Comments

3.92 The Committee is satisfied with the Department's advice.

Legal Proceedings

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

> This section will delay Council's response and interfere with Council's operations, compromising the separation of powers between the CEO and Council.[73]

3.94 City of Darwin also objected to the requirement for a Council resolution for the commencement of legal proceedings and suggested that:

> in its place Council be required to adopt a policy on the commencement of legal proceedings. A policy position would then be further supported by Council's delegations to the Chief Executive Officer.[74]

3.95 The Committee sought clarification from the Department as to the types of legal proceedings that are likely to be prescribed by regulation and what consultation will be undertaken with councils regarding the development of regulations in this regard. In response, the Department advised that:

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[72] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.24
[73] Litchfield Council, Submission 1, p.4
[74] City of Darwin, Submission 5, p.2

> The consultation draft version of the Bill did not contain any exceptions to the requirement that legal proceedings not be commenced without a council resolution. Through consultation, the exceptions now in clause 329(3) were suggested. The ability to prescribe further exceptions is considered important, so that if some unforeseen types of proceedings that are operational in nature are identified, exceptions can be added in the Regulations.
>
> The ability to initiate Fair Work proceedings or legal proceedings regarding procurement contract breaches are not matters that have previously been raised with the Agency. These suggestions will be discussed with councils and carefully considered, as will any other suggestions, when consultation is undertaken in relation to the Regulations to be made under the Bill.[75]

Committee's Comments

3.96 The Committee is satisfied with the Department's clarification and notes that prescribing the types of legal proceedings that may be commenced in the absence of a Council resolution in the Regulations will ensure consistency, transparency and accountability across local governments that would not necessarily be achieved if the commencement of legal proceedings was determined by a council policy.

Contracts

3.97 The CLC raised concern that clause 212 of the exposure draft has been removed from the Bill as introduced and suggested that it should be reinstated.[76] This clause provided that in entering into a contract, a council must have regard to the following principles:

(a) Support of local business and industry;

(b) ethical behaviour and fair dealing;

(c) value for money;

(d) environmental protection;

(e) open and effective competition.[77]

3.98 As highlighted by the Department, it is now intended that:

> The sound contracting principles will be included in the procurement requirements in the Regulations to be made under the Bill.
>
> After feedback during consultation from the Department of Trade, Business and Innovation, it is planned that the principle of 'support for local business and industry' will be replaced with a similar principle better aligned with the Northern Territory Government's principles – 'enhancing the capabilities of Territory enterprises and industries.'
>
> The principles of 'ethical behaviour and fair dealing; 'value for money'; environmental protection' and 'open and effective competition' will remain. An additional principle of 'employment of Aboriginal people' will be added.[78]

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[75] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.25

[76] Central Land Council, Submission 3, pp.2-3

[77] Department of Local Government, Housing and Community Development, *Draft Local Government Bill - Consultation Draft Only,* https://dlghcd.nt.gov.au/local-government/local-government-bill-consultation, clause 212

[78] Department of Local Government, Housing and Community Development, *Responses to Written Questions – Local Government Bill 2019*, 23 October 2019, https://parliament.nt.gov.au/committees/spsc/107-2019, p.25

Committee Comments

3.99 The Committee is satisfied with the Department's advice and welcomes the fact that the contracting principles will be included in the procurement requirements in the Regulations to be made under the Bill.

Appendix 1: Submissions Received and Public Briefing

Submissions Received

1. Litchfield Council
2. City of Palmerston
3. Central Land Council
4. Northern Territory Electoral Commission
5. City of Darwin

Public Briefing – 23 September 2019

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

Note

Copies of submissions and the transcript from the public briefing are available at: https://parliament.nt.gov.au/committees/spsc/107-2019

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