NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT ACT

As in force at 12 April 2000

Table of provisions

Part I Preliminary

1 Short title 1
2 Commencement 1
3 Interpretation 1
4 Delegations by Minister 7

Part 2 Councils

Division 1 Councils

5 Councils and titles 8
6 Council area may have non-contiguous parts 8
7 Council a body corporate, &c. 8
8 Council offices 9

Division 2 Members of councils

9 Qualification as member 9
10 Declaration by members 10
11 Vacancy in office of member 10
12 Appointments to fill certain vacancies 11
14 Disqualification as member may be determined 11

Division 3 Meetings

15 Address for service, &c. 12
16 Place where meetings held 12
17 Quorum 12
18 Chairman of meetings 12
19 Voting 13

Division 4 Interests of members

20 Interests of members of councils or committees 13
21 Action after disclosure 15
22 Offence, &c. 16

Division 5 Allowances and expenses

23 Allowances and expenses 17

Division 6 Miscellaneous

24 Minister may do certain things in relation to elections 17
25 Conduct prejudicial to elections 18
26 Periodic review of electoral representation by council 18
27 Validity of actions of council 19
28 Protection of members, officers, &c., against legal proceedings 19

Part 3 Matters specific to municipal government

Division 1 Constitution of municipalities

29 Constitution of municipality 20
30 Boundaries of municipalities and wards, &c. 20
31 Correction of error 21
32 Application for exercise of powers 21
33 Consequences where power exercised 23

Division 2 Municipal council membership

34 Composition of municipal councils 23
35 Titles of members 24
36 Deputy mayor 24

Division 3 Municipal elections

37 First general election 25
38 General elections 25
39 By-elections 25
40 Date for holding by-elections, &c. 25
41 Enrolment 25
42 Electors shall vote 26
43 Roll of electors 26
44 Returning officer 26
45 Delegations by returning officer 26
46 Nomination day 26
47 Nomination 27
48 Conduct of elections 27
49 Adjournment of polling in emergency 27
49A Disputed elections 28

Division 4 Meetings of municipal councils

50 First meeting of municipal council 28
51 Ordinary meetings 28
52 Special meetings 28
53 Special meetings of committees 29
54 Notice of meeting of council 29

55 Conduct of meetings 29
56 Meetings open except as prescribed 29
57 Minutes 29

Part 4 Rates and charges

Division 1 Ratable land

58 Ratable land 30

Division 2 Rate book

59 Rate book 32
60 Maintenance of rate book 32
61 Ratepayer to advise of change of address 32
62 Entries relating to urban farm land 32
63 Appeals relating to entry in rate book 33

Division 3 Rates and Charges

64 Declaration of rates and charges 34
65 Assessed value as basis of valuation 35
66 Uniform rate 35
67 Differential rates 36
68 Rates on multi-zoned parcels 36
69 Local rate 37
70 Public submissions on proposed local rate 38
71 Urban farm land rate 38
72 Minimum rates 38
73 Special rate 39
74 Charges for services in relation to land 39

Division 4 Payment of rates and charges

75 Public notice of rates and charges 39
76 Levying rates and charges 39
77 Persons liable to pay rates and charges 40
78 Apportionments 41
79 Liability for one rate only 42
80 When rates and charges due and payable 42
81 Discount for prompt payment 42
82 Penalty for late payment 42
83 Council to pay interest on certain rates refunded 43
84 Application of payments 44
85 Combined rates to be apportioned by council 44

Division 5 Concessions

86 Waiver or deferment of rates or charges 44

87 Financial hardship resulting from valuation, &c., changes 45
88 Ratepayer may request review 45
89 Concessions relating to public benefit 46

Division 6 Recovery of unpaid rates or charges

90 Rates and charges a charge on land 46
91 Council may require occupier to pay rent in payment of rates or charges 47
92 Council may sue for rates or charges 48
93 Proof of declaration of rates and charges 48
94 Sale of land for unpaid rates and charges 48
95 Prohibition on certain persons buying other than at auction 49

Part 5 Matters specific to community government

Division 1 Application

96 Application of Part 50

Division 2 Constitution of community government councils

97 Contents of community government schemes 50
98 Scheme may provide for rates and charges 51
99 Model provisions for schemes 52
100 Application for constitution of community government council 52
101 Explanation of application 52
102 Preparation of draft community government scheme 53
103 Exhibition of draft scheme 53
104 Consultation 54
105 Approval of scheme 54
106 Notice of approval of scheme 55
107 Replacement or amendment of schemes 56
108 Approved scheme to be law of the territory 56

Division 3 Community government council elections

109 First general election 57
110 First members may be appointed 57
111 General elections 58
112 By-elections 58
113 Electors shall vote 58
114 Clerk to notify Minister of election results 58
114A Disputed elections 59

Part 6 Powers and functions of councils

Division 1 Powers

115 Powers of councils 59
116 Council may carry out work for other persons 59
117 Contracts 60
118 Council may compound 60
119 Members and officers, &c., of council may enter land, &c., for certain purposes 61

Division 2 Functions

120 Councils charged with peace, order and good government of area 61
121 Functions of municipal councils 61
122 Functions of community government councils 62
123 Performance of function, &c., on behalf of Territory 62
124 Function performed outside council area 63
125 Members, &c., to act only in relation to functions of council 63
126 Council shall act as trustees of cemetery 63
127 Council's powers under *Places of Public Entertainment Act* 63
128 Minister may extend animal control, &c., powers 63

Division 3 Council property

129 Property 64
130 Compulsory acquisition of property 65

Division 4 Roads

131 Control of roads 66
132 Things growing or erected on, or affixed to, roads 67
133 Fee simple in permanently closed roads 68

Division 5 Committees

134 Standing committees 68
135 Management committees 69
136 Advisory committees 69

Division 6 Meetings of electors

137 Meetings of electors 70
138 Chairman of meeting of electors 70
139 Voting at meeting of electors 70
140 Proceedings at meeting of electors 71
141 Council to consider resolutions 71

Division 7 Officers and employees of councils

142 Clerk 71
143 Other officers or employees 72
144 Delegations by council to officers, &c. 72
145 Interests of officers and employees 73
146 Fidelity insurance 73
147 Portability of long service leave 73
148 Suspension or dismissal of officers or employees 74

Division 8 Administration

149 Access to information 74
150 Referendum or survey by council 75
151 Fees payable under other Acts, &c. 75
152 Advice and proposals 75

Division 9 Financial administration

153 Financial accounts 76
154 Income 76
155 Expenditure 76
156 Allocation of income and expenditure 76
157 Council funds 76
158 General fund 76
159 Trust fund 77
160 Expenditure from trust fund 77
161 Bank account 77
162 Estimates 78
163 Council should not budget for deficit 78
164 Statements of income and expenditure 78
165 Annual financial statement and annual report 78
166 Investment of surplus money 78
167 Reserves or provisions 78
168 Long service leave provision 79
169 Loan repayment reserve 79
170 Borrowings and overdraft 79
171 Use of loan money restricted 79
172 Renewal loan 80
173 Sale of assets purchased from loan 80
174 Council may issue debentures, &c., as security 80
175 Territory grants and subsidies 81
176 Unclaimed deposit or trust money or property 81

Division 10 Auditor and audits

177 Auditors 81
178 Persons disqualified as auditors 82
179 Vacancy 83

180 Minister may appoint auditor in certain circumstances 83
181 Powers and duties of auditor 84

Division 11 Minister may require compliance

181A Minister may require compliance 86

Part 7 Regulatory

Division 1 By-laws

182 Power to make by-laws 87
183 Proposed by-laws inconsistent with regulation under other Act 87
184 Making by-laws 88
185 Model provisions for by-laws 89
185A Court may order destruction of animal 89
186 By-laws relating to animal control 89
186A Registration of non-resident dogs 90
187 By-laws relating to fees, &c., licences, &c. 90
188 By-laws relating to works 90
189 By-laws may provide for matters of evidence and burden of proof 91
190 By-laws may provide for prohibition, &c. 91
191 By-laws may provide for enforcement 91
192 By-laws may create regulatory offences 91
193 Penalties 92
194 Infringement offences and notices 92
195 By-laws in relation to offences concerning motor vehicles 93
196 Inconsistency between by-law and trust 94
197 Regulations under other Act to prevail over existing by-laws 94
198 Applicability of By-laws 95
199 Offences under by-law and another law of Territory 95
200 Proof of by-laws 95
201 By-laws to be made available to public 95

Division 2 Regulations

202 Regulations 96
203 Council may enter into agreement to administer regulations 96

Division 3 Authorised persons

204 Appointment of authorised persons 97
205 Powers of authorised persons 97
205A Additional powers of authorised persons in relation to animals in an emergency 98
205B Assistance of police 99
206 Entry warrant 99

Division 4 Miscellaneous

207 Proceedings 100
208 Fines and penalties to be paid to council 100
209 Service of summons, &c., on council 101
210 Service of notices 101
211 Continuing effect of notice served on owner or occupier 101
212 Recovery of damages, &c. 101
213 Documents kept in electronic form 102
214 Proof of service of notices, &c. 102
215 Proof of minutes 102
216 Proof of certain matters not required 102
217 Proof of public road, &c. 103
218 Proof that person owner, &c. 103
219 Averments as to official traffic signs 104

Part 8 Miscellaneous

220 Occupier may carry out required work in certain circumstances .. 105
221 Rights of owner regarding entry to carry out required work where land, &c., is occupied 105
222 Notice of change of ownership of land 106
223 Certificate of liabilities, notices, orders, &c. 106

Part 9 Local Government Association

224 Incorporation of Local Government Association of the Northern Territory 107

Part 10 Local Government Tribunal

225 Local Government Tribunal 108
226 Powers of Tribunal 108
227 Registrar of Tribunal 109
228 Certificate relating to orders 109
229 Sittings of Tribunal 110
230 Tribunal not bound by strict legal procedure 110
231 Representation of parties 110
232 Persons summoned to attend 110
233 Witness to give sworn evidence 110
234 Tribunal may order costs 111
235 Appeal against council decision 111
236 Application under section 94 for directions 112
237 Appeal against surcharge 112
238 Obligation to pay rate or charge not suspended 112
239 Rules and procedures 113
240 Appeal to Supreme Court 113

Part 11 Inspectors and inspections

241 Appointment of inspectors of local government 113
242 Functions of inspectors 113
243 Powers of inspectors 114
243A Compliance with report 115
244 Procedure where inspector considers expenditure, &c., should be disallowed 116
245 Inspector to make surcharge in certain circumstances 116
246 Person surcharged may appeal to Tribunal 117
247 Surcharge a debt due to council 117
248 Council may appropriate certain money, &c., in satisfaction of surcharge 117
249 Member owing surcharge 118

Part 12 Inquiries

250 Minister may establish inquiry 118
251 Protection of Commissioner 118
252 Not bound by rules of evidence 118
253 Submissions 118
254 Access to documents, &c. 119
255 Power to summons 119
256 Witnesses may be represented by counsel 120
257 Examination upon oath or affirmation 120
258 Refusal to swear or give evidence 120
259 Protection and liability of witnesses 120
260 Inquiry may be held in private 120
261 Publication of reports of proceedings 120
262 Minister may redirect inquiry 121
263 Outcome of inquiry 121

Part 13 Dismissal of members of councils

264 Dismissal of members of council 122
265 Community government scheme may be repealed 124

Part 13A Personal liability

265A Restriction of liability 124
265B Confidentiality of information 125
265C Destruction, &c., of records 125

Part 14 Repeal, savings and transitional

266 Repeal 126
267 Savings 126
268 Transitional 126

Schedule 1 Acts Repealed

Schedule 2

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 12 April 2000

LOCAL GOVERNMENT ACT

An Act to continue to provide for the constitution of municipalities and community government areas and for the election of self-governing authorities to control municipalities and community government areas, to provide for a similarity of power and function between self-governing authorities, and for other purposes

Part I Preliminary

1 Short title

This Act may be cited as the *Local Government Act*.

2 Commencement

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

In this Act, unless the contrary intention appears:

acting clerk means a deputy clerk or other person when acting as the clerk.

acting mayor, in relation to a municipality, means the deputy mayor or other person when acting as the mayor.

adopted estimates means the estimates of a council as adopted by resolution under section 162 and as may be amended from time to time by the council under that section.

alderman means a person who is appointed or elected to the office of alderman for a municipality or ward of a municipality and who holds office as an alderman under this Act.

assessed value, in relation to land, means one or more of the valuations in the valuation roll which a council determines as the assessed value for the land.

Association means the Local Government Association of the Northern Territory constituted by section 224.

auditor means the person who is appointed and holds office under section 177 as the auditor of a council.

authorised holding means:

(a) a business area;

(b) a market garden area; or

(c) a residence area,

being areas of land occupied under the ***repealed Act***, within the meaning of section 4(1) of the *Mining Act*, where the occupation is continued in force by section 191(19) of that Act.

authorised person means an authorised person within the meaning of section 204.

by-election means an election held under section 39 or section 112.

by-law means a by-law made by a council.

charge, where a charge is made in relation to land, includes a penalty imposed for late payment of the charge.

Chief Electoral Officer means the Chief Electoral Officer within the meaning of the *Electoral Act*.

clerk means a natural person appointed under section 142 as the clerk of a council, and includes an acting clerk.

Commissioner means a person appointed under section 250 as a Commissioner to conduct an inquiry under this Act.

committee means a committee of a council established under section 134, 135 or 136.

community government area means a community government area constituted and in existence under a community government scheme.

community government council means the community government council for a community government area elected or appointed in accordance with Part 5.

community government scheme means a scheme approved under section 105.

council means a municipal council or, as the case may be, a community government council.

council area means a municipality or, as the case may be, a community government area.

deputy clerk means a natural person appointed under section 142(3) to be the deputy clerk of a council.

deputy mayor means a member who is appointed:

(a) under section 36(1), to be the deputy mayor; or

(b) under section 36(2), to fill the vacancy in the office of deputy mayor.

differential rates means rates calculated under section 67.

document means any record of information and includes, in addition to a document in writing:

(a) any book, map, plan, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other device) of being reproduced therefrom; and

(d) any film, negative, disc, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other device) of being reproduced therefrom.

election means a general election or by-election.

elector means a person who is entitled to be enrolled for, and to vote at, an election held in relation to a council area.

flat rate per parcel means a general rate declared at the same amount on each parcel of land within a municipality or within a specified:

(a) ward;

(b) town, within the meaning of the *Crown Lands Act*;

(c) part of a municipality; or

(d) zone, under the applicable development provisions under the *Planning Act*,

without regard for the assessed value of the parcel of land.

footpath means that part of a road which has been made or set apart for use otherwise than for the passage or accommodation of motor vehicles.

general election means an election for a municipal council under section 38 or for a community government council under section 111.

general rates, in relation to a parcel of land, means the amount raised by a municipality as rates for general purposes:

(a) by applying a uniform rate or differential rate to the assessed value of the parcel; or

(b) by a flat rate per parcel.

inspector means an inspector of local government appointed under section 241.

land, for the purposes of Part 4, means a parcel of land registered under the *Real Property Act* and includes a unit within the meaning of the *Unit Titles Act* and an authorised holding.

local rate means a rate declared under section 69 for a specific purpose in relation to a part of a municipality.

mayor, in relation to a municipality, means the person who is elected under this Act and declared under section 48, or appointed under section 12(2), as the mayor of the municipality and includes an acting mayor.

member, in relation to a council, means an alderman or member of a community government council and includes the mayor, president, chairman or person, by whatever name called, presiding over the council.

municipality means a part of the Territory constituted under section 29 or 30(1)(c)(ii) as a municipality and in existence under this Act.

municipal council means the body corporate which exists as a result of the constitution of a municipality and consists of the mayor and aldermen elected or appointed, under this Act, to the council.

nomination day, in relation to a municipal election, is the day calculated under section 46 in relation to the election.

occupier means a person who, either jointly or alone, has the actual physical possession of land to the substantial exclusion of other persons from participating in the enjoyment of the land.

officer or employee means a person who is appointed by a council to an office of the council or is otherwise employed by a council and includes the clerk and auditor but does not include a member of a council as such.

ordinary meeting means a meeting of a council held at more or less regular intervals to satisfy the requirements of this Act or a scheme.

owner, in relation to land, includes:

(a) the registered proprietor under The *Real Property Act*, 1886 of the State of South Australia in its application to the Territory, as amended by the *Real Property Act*, of an estate of freehold in possession;

(b) as regards land not under that Act, a person who is seized of an estate of freehold in possession or, if that estate is subject to a redemption under mortgage, the person who upon payment of the mortgage would be entitled to a conveyance of such an estate;

(c) a person who has agreed to purchase an estate of the nature mentioned in paragraph (a) or (b) and is, under the terms of the agreement for purchase, entitled to possession of, or to receive the rents and profits from, the land; and

(d) a person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits from the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise.

part of a municipality means 2 or more parcels of ratable land in the municipality which together indicate a commonality of location, use, topography or other feature and which are adjoining or are only separated by a reserve, road, river, watercourse or tidal or non-tidal water or other like division.

President means the President of the Tribunal.

presiding member means the mayor, president, chairman or person, by whatever name called, presiding over a council, and includes a deputy or other person when acting as the presiding member.

ratable land means all land which, under section 58(1), a municipal council must rate.

rate means a rate declared under this Act by a council and includes a penalty imposed for late payment of the rate.

rate book means the record kept under section 59.

ratepayer means the person liable under this Act to pay the rates in relation to a parcel of land.

register of interests means the register kept by a clerk for the purposes of section 21(1).

Registrar of the Local Court has the same meaning as in the *Local Court Act*.

resident, in relation to a community government area or an area in respect of which an application has been made to establish a community government council under section 100 (and has not been withdrawn), means a person who:

(a) has attained the age of 18 years; and

(b) has been, for not less than 3 months, ordinarily resident in the area.

residential unit means a dwelling house, flat or other substantially self contained residential unit but, except in section 77(6) and 122(3)(b), does not include a unit within the meaning of the *Unit Titles Act*.

returning officer, in relation to an election in a municipality, means the person appointed under section 37(1) or 50 as the returning officer for that election.

road means:

(a) in relation to a municipality, land which:

(i) at the date when this Act comes into operation is a road within the meaning of the *Control of Roads Act*;

(ii) is proclaimed, dedicated, resumed or otherwise established as a public street, road or thoroughfare;

(iii) comprises a street, road, court, alley, thoroughfare or cul-de-sac of which the public has had uninterrupted use, whether before or after the date when this Act comes into operation, or partly before and partly after that date, for at least 5 years and which the council, by notice in the *Gazette*, declares to be a public road;

(iv) is reserved or left as a road in a sub-division of Crown lands; or

(v) is conveyed or transferred to a council in fee simple and is accepted by the council as a road; and

(b) in relation to a community government area, land which is specified as a road in the area by notice under section 131(2).

scheme means a community government scheme.

special meeting means a meeting of a municipal council summoned under section 52.

special rate means a rate declared under section 73 at the same amount on each parcel of land within a municipality for a specified purpose relating to the whole of the municipality.

Tribunal means the Local Government Tribunal continued under section 225.

uniform rate means a rate calculated under section 66.

urban farm land means a parcel of land which is more than 0.8 ha in area and which is wholly or mainly used for the time being by the occupier for carrying on a prescribed business or industry and from which the whole or a substantial part of the occupier's livelihood is derived.

valuation roll means the valuation roll prepared and maintained under the *Valuation of Land Act*.

4 Delegations by Minister

(1) The Minister may, by instrument in writing, delegate to a person any of the Minister's powers and functions under this Act, other than this power of delegation.

(2) A delegation under subsection (1) may be made to a named person or to the person for the time being holding, acting in or performing the duties of a named office, designation or position.

(3) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purpose of this Act, be deemed to have been exercised or performed by the Minister.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

Part 2 Councils

Division 1 Councils

5 Councils and titles

There shall be a council for each municipality and community government area, and the council shall be known by the name of its municipality or community government area in one of the following forms:

(a) the ..... City Council;

(b) the ..... Town Council;

(c) the ..... Shire Council; or

(d) the ..... Community Government Council.

6 Council area may have non-contiguous parts

A council area may consist of 2 or more non-contiguous areas of land.

7 Council a body corporate, &c.

(1) A council is a body corporate with perpetual succession and a common seal, and shall be capable:

(a) of suing and being sued;

(b) of acquiring, holding and disposing of real or personal property; and

(c) subject to this Act, of doing and suffering all such other acts and things as a natural person may do and suffer.

(2) The common seal of a council shall:

(a) bear the name of the council together with such other words, letters, signs and devices as it thinks fit; and

(b) be kept at the council office.

(3) A person who affixes the common seal of a council other than in pursuance of a resolution of the council commits an offence.

Penalty: $2,000.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of a council affixed to a document and, unless the contrary is proved, presume that it was duly affixed.

8 Council offices

Unless the Minister approves, in writing, another location, a council shall establish and maintain an office in its council area which shall be open, as the council determines, to the public.

Division 2 Members of councils

9 Qualification as member

(1) Subject to subsection (2), a person shall not hold or, if the person is a member, continue to hold, office as a member of a council if that person:

(a) is not validly enrolled as an elector for the council area or, subject to a scheme, if validly enrolled, changes residence to a place outside the area or takes any other action which, if an election were held as soon as practicable after the change of residence or the taking of the action, would invalidate that enrolment as an elector for that election;

(b) holds a judicial office, other than as a justice of the peace;

(c) is an undischarged bankrupt;

(d) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit;

(e) has been sentenced to a term of imprisonment for 12 months or more for an offence and that term has not expired;

(f) holds an office of profit under, or at the disposal of, a council other than a community government council;

(g) owes the council the amount of a surcharge or part of a surcharge for a period of more than 6 months commencing with the day on which the person was disqualified from carrying out any duties of office under section 249;

(j) in relation to land within the council area, owes the council rates or charges which have been due and payable for more than 6 months; or

(k) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment.

(2) A person is not disqualified from holding or continuing to hold office as a member of a council by reason only that the person receives or is entitled to receive an allowance fixed or paid under section 23.

(3) A member retiring from or ceasing to hold office is, if qualified, eligible for re-election.

10 Declaration by members

A person elected or appointed or re-elected or re-appointed to be a mayor or alderman of a municipality, or a presiding member or member of a community government council, shall not act in that office until a prescribed declaration has been made and lodged with the clerk.

11 Vacancy in office of member

(1) The office of a member of a council becomes vacant where the member:

(a) dies;

(b) is disqualified under section 9 from continuing to hold office;

(c) except as otherwise provided by a scheme, is absent, without leave of the council, from all council meetings held during a continuous period of 3 months;

(d) fails to complete a prescribed declaration under section 10, or lodge it with the clerk, before the expiration of 3 months after election or appointment as a member;

(e) signs a notice of resignation under subsection (3); or

(f) is disqualified from holding or continuing to hold office pursuant to a determination of the Tribunal.

(2) In relation to a municipal council, the office of an alderman becomes vacant where the alderman is:

(a) at a by-election, elected mayor; or

(b) under section 12(2), appointed by the council to be the mayor.

(3) The resignation of a member takes effect on receipt by the clerk of a written notice of resignation or on such later date, not more than 14 days in advance, as may be specified in the notice of resignation (but once the notice is received by the clerk the resignation cannot be withdrawn).

(4) Where, under subsection (1) or (2), the office of a member becomes vacant the clerk shall, as soon as practicable, notify:

(a) the council; and

(b) the Chief Electoral Officer or the returning officer (where this is not the clerk),

of the occurrence of the vacancy.

12 Appointments to fill certain vacancies

(1) Where the office of an alderman becomes vacant within 12 months of the next general election, the vacancy so created may be filled by the appointment by the municipal council of a person to act as an alderman and a person so appointed shall hold office until the declaration of the poll at that election, but if no appointment is made the vacancy shall not be filled before that election.

(2) Where the office of the mayor becomes vacant within 12 months of the next general election, the municipal council shall appoint an alderman to be the mayor and the alderman so appointed shall hold office as the mayor until the declaration of the poll of that election.

(3) A vacancy in the office of a member of a community government council shall be filled in accordance with its scheme.

14 Disqualification as member may be determined

Where the clerk or another person (being a person ordinarily resident in the council area) has reason to believe that a member is not qualified to hold, or continue to hold, office as a member, the clerk shall, as soon as practicable, and the person may, apply to the Tribunal for a determination as to whether the member is so qualified.

Division 3 Meetings

15 Address for service, &c.

Each member and member of a committee (not being a member of the council) shall provide the clerk with an address for service and, for the purposes of this Act, a notice summoning an ordinary meeting of the council or a committee is served on a member where it is posted to that address or is served personally or the content of the notice is transmitted to the member by telephone, radio or facsimile.

16 Place where meetings held

Each meeting of a council and its committees shall be held at the council office or at such other place as the council or committee thinks fit.

17 Quorum

(1) Subject to this Act or a scheme, a quorum at a meeting of:

(a) a council shall be a majority of the members of the council then in office; or

(b) a committee shall be a majority of the members of the committee.

(2) Subject to anything to the contrary in a scheme, where, at the expiration of 30 minutes after the time fixed for a meeting of a council or committee a quorum is not present, the presiding member or chairman or, in their absence the clerk, shall, without the need for further notice, postpone the meeting to a date, time and place, as is thought fit.

(3) A member cannot participate in a meeting of a council or committee unless personally present at the meeting.

18 Chairman of meetings

The presiding member of a council shall chair all meetings of the council, other than committee meetings, unless appointed as chairman of that committee.

19 Voting

Subject to this Act or a scheme, in relation to a question before a meeting of a council or committee:

(a) each member or member of the committee, as the case may be, present is entitled to one vote which, except for an abstention because of a member's interest in a matter (which abstention shall be recorded), shall be exercised and the question decided by a majority of votes of the members present;

(b) unless the council or committee unanimously agrees to a secret ballot on the question, voting shall be by a show of hands; and

(c) in the case of an equality of votes, the question is resolved in the negative.

Division 4 Interests of members

20 Interests of members of councils or committees

(1) Where a member of a council or a committee of a council has or may have an interest in a matter before the council or committee, the member shall, as soon as practicable at a meeting at which the matter is to be dealt with and before the matter is discussed or debated, declare the interest or possible interest to the council.

(2) For the purposes of subsection (1), a member has an interest in a matter before the council or committee where:

(a) the member, or a nominee of the member, is a member of a company or other body with which a contract is made or proposed to be made, or which has a direct or indirect interest in a matter under consideration, by the council or committee;

(b) the member is a partner with, or an agent for, or consultant to, or is or is in the employment of, a person with whom a contract is made or is proposed to be made or who has a direct or indirect interest in a matter under consideration, by the council or committee;

(c) the member is a member of an incorporated company which consists of not more than 25 persons, or a director, manager, or employee of, or agent for, such a company, which has an interest in a matter before the council or committee; or

(d) the spouse of the member (including a person to whom the member is not legally married but who is living as a spouse on a bona fide domestic basis) has an interest of a kind referred to in paragraph (a), (b) or (c) and the member is aware of that interest.

(3) For the purposes of subsection (1), a member shall not be taken to have an interest where the member or spouse (within the meaning of subsection (2)(d)) has an interest referred to in subsection (2):

(a) only as an elector or ratepayer and in common with, and to the same extent as, other electors or ratepayers;

(b) only because a matter, contract or proposed contract entails expenditure from money of or held by the council, and the member or spouse is, by paying rates or charges, a contributor to that money;

(c) in relation to the declaration of rates and charges or the fixing of a fee, fare, rent or due by the council;

(d) in relation to the terms and conditions on which the right to participate in services, including the supply of goods, is offered to the public;

(e) only as a consumer of gas, electricity or water supplied by the council in like manner, and subject to the same terms and conditions as are applicable to persons who are not members;

(f) only in planning and development matters which have a general application throughout the council area or where the interest of the member or spouse is an interest in common with a large number of electors within the part of the council area affected by the matter;

(g) in relation to the consideration of an application or request for a consent, permission, approval, authorisation, licence, permit, exemption or other right or privilege by or under this or another Act, provided that the extent of the interest of the member or spouse, as the case may be, is the same as other persons who are not members;

(h) only through service on local community bodies or membership of clubs, unions or other organisations which are non-profit organisations and where no personal gain to the member or spouse is involved;

(j) by reason of the member or spouse being insured by the council in pursuance of this Act;

(k) by reason of the receipt by the member of a travelling allowance under section 23 or other allowances or in pursuance of a resolution of the council;

(m) as a member of a body or institution, whether incorporated or not, resulting from an appointment or nomination for appointment made by the council or as a result of receiving fees or expenses in relation to that membership, if the purposes or objects of the body or institution are predominantly to benefit the public or are predominantly benevolent, philanthropic or charitable in nature, notwithstanding that the body or institution may incidentally make a commercial gain or profit in carrying out its purposes or, as the case may be, pursuing its objects;

(n) if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the member might make in relation to a matter; or

(p) in relation to a question as to whether an application should be made to the Minister for the suspension, under section 21(3), of the application of section 21(2) to or in relation to the member.

21 Action after disclosure

(1) Where, under section 20(1), a member declares an interest or possible interest, the clerk shall record the declaration in:

(a) the minutes of the meeting; and

(b) a register of interests kept, in the prescribed form, for that purpose.

(2) Subject to subsection (4), a member who has, under section 20(1), declared an interest or possible interest in relation to a matter shall not remain at the meeting during consideration or discussion of, or the taking of a vote on, a question in relation to the matter.

(3) Where the Minister is of the opinion that the business of a council may be or has been impeded by subsection (2), the Minister may, by notice to the council, suspend the application of that subsection.

(4) Where, under subsection (3), the Minister suspends the application of subsection (2), a member who has, under section 20(1), declared an interest or possible interest in a matter before the council may remain at the meeting or meetings during consideration of, and take part in the discussion on, that matter, to the extent permitted by the suspension, but, except where permitted by the suspension in the case of a possible interest, shall not vote on the matter.

(5) The Minister may, conditionally or unconditionally, allow, by notice to the council, a member or a member of a committee of a council to vote on a matter on which the member would otherwise be disqualified by this Division from voting if the Minister is of the opinion:

(a) that the number of members prevented from voting would be so great a proportion of the whole as to impede the transaction of business; or

(b) that it is in the interest of the residents of the council area to do so.

(6) A member shall not make improper use of information acquired as a member which might lead to gaining, directly or indirectly, an advantage for the member or for another person, or cause detriment to the council.

22 Offence, &c.

(1) A member who contravenes or fails to comply with section 20(1) or section 21(2) or (6) is guilty of an offence.

Penalty: $10,000.

(2) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant did not know that:

(a) he or she had an interest in the matter before the council or committee; or

(b) the matter in which he or she had an interest was the subject of consideration at the council or committee meeting.

(3) A person found guilty of an offence under subsection (1) is disqualified from holding, and shall not hold, office as a member of a council or committee of a council during the period of 7 years after the finding of guilt.

(4) Where a member has taken part in a discussion or voted on a matter in which the member has an interest, the vote and a consequential resolution of the council may be declared void by the Tribunal on application by an aggrieved person.

Division 5 Allowances and expenses

23 Allowances and expenses

(1) At its first or second ordinary meeting in each financial year, a council may, by resolution, fix allowances to be paid for the financial year to its presiding member, any deputy to that member, any person acting for those members and to its other members.

(2) Where, under subsection (1), a council fixes an allowance it shall determine the method, conditions and intervals of payment (but not in advance) of that allowance and, subject to subsection (3), that allowance shall be paid accordingly.

(3) Notwithstanding subsection (2), an allowance to a presiding member of a council may be paid in advance.

(4) A council may pay to or on behalf of members a reasonable amount towards their necessary out-of-pocket expenses for conveyance and subsistence in travelling:

(a) to and from a meeting of the council, or a meeting of a committee of the council; or

(b) on business of the council in compliance with a prior resolution of the council.

Division 6 Miscellaneous

24 Minister may do certain things in relation to elections

(1) Where an act required by or under this Act to be done on or before a specified day or within a specified time is not done, the Minister may, whether or not the specified day is past or the specified time has expired, extend the time for doing that act, or cause that act to be done, in order that the holding of an election is not impeded.

(2) For the purposes of this section, the Minister or a person authorised in writing by the Minister for that purpose has such power as is reasonably necessary to enable the performance of the functions or the exercise of the powers by or under this Act of any person.

(3) An act done or caused to be done under this section shall be deemed to have been done in accordance with this Act and the person by whom it was done or caused to be done shall be deemed to be the person required or permitted by this Act to do or cause it to be done.

25 Conduct prejudicial to elections

A person shall not cause an obstruction or disturbance or do another act or thing which interferes with or is prejudicial to, or is likely to interfere with or be prejudicial to, the fair conduct of an election.

Penalty: $2,000.

26 Periodic review of electoral representation by council

(1) A council shall before 31 May 1995, and at least once in every continuous period of 4 years after that date, complete a review to determine:

(a) whether the existing number of members of the council provides a fair and equitable representation for the electors;

(b) whether, in the case of a community government area where the residents have requested amendments to those provisions of the area's scheme relating to the representation of electors, such amendments should be made;

(c) whether an alteration to the council area is desirable;

(d) where the council area is divided into wards, whether an alteration to the boundaries of those wards is desirable, or whether the wards, or any of them, should be abolished;

(e) where the council is not divided into wards, whether it should be so divided; and

(f) where electoral representation in a community government area has a basis on matters other than residency, whether that basis should be amended.

(2) As soon as practicable after a review has been completed and the council has determined that:

(a) amendments are desirable, it shall, under section 32 or section 107, as the case may be, request the Minister to effect the amendments; or

(b) amendments are not desirable, it shall notify the Minister and, by either:

(i) notice in a newspaper circulating in the council area; or

(ii) where, in the opinion of the clerk, notice published in such a newspaper would not be sufficient notice of the

council's determination, notice in any other publication circulating in that area which the clerk considers would be sufficient notice of the council's determination,

the electors of its determination.

(3) Where a council fails to comply with subsection (1), the Minister may, under Part 12, appoint a person as a Commissioner to conduct an inquiry into the matters specified in subsection (1) and refer those matters to that person.

27 Validity of actions of council

The exercise of a power or performance of a function by a council shall not be affected by reason only of:

(a) there being a vacancy in the office of a member;

(b) there being a defect in the appointment or election of a member; or

(c) a member having acted in office while disqualified from holding the office.

28 Protection of members, officers, &c., against legal proceedings

(1) No action or proceeding, civil or criminal, shall lie against a person who is, or who has been, a member of a council or a committee for or in relation to an act or thing done in good faith by the person in the person's capacity as a member of the council or committee.

(2) A member of a council or committee, an authorised person or an officer or employee of a council is not personally liable for or in relation to a matter or thing done, or a contract entered into by:

(a) the council in good faith in pursuance of and for the purposes of this Act; or

(b) the member, authorised person or officer or employee in good faith in pursuance of and for the purposes of this Act and for or on behalf of the council.

Part 3 Matters specific to municipal government

Division 1 Constitution of municipalities

29 Constitution of municipality

The Administrator may, by notice in the *Gazette*, constitute a part of the Territory as a municipality, determine its boundaries and, subject to section 34, the maximum number of aldermen to be elected to its council and assign a name to the municipality so constituted.

30 Boundaries of municipalities and wards, &c.

(1) The Minister may:

(a) alter the boundaries of a municipality;

(b) annex a part of the Territory to a municipality;

(c) sever a part of a municipality and:

(i) declare that the part severed ceases to be a part of the municipality or forms part of another municipality; or

(ii) recommend to the Administrator that the part severed constitutes, by itself or with another part of the Territory, a new municipality;

(d) divide or re-divide a municipality into wards;

(e) determine or alter the boundaries of a ward within a municipality;

(f) alter the name of a municipality or assign a name to, or alter the name of, a ward within it;

(g) abolish wards within a municipality;

(h) subject to section 34, alter the maximum number of aldermen to be elected to the council of a municipality; or

(j) abolish a municipality.

(2) Where the Minister exercises a power under subsection (1)(d), (g) or (h), it shall not affect the council of the municipality or the filling of a vacancy on the council until immediately before the next general election.

(3) The Minister shall carry out an action under subsection (1) (other than under paragraph (c)(ii)) by notice in the *Gazette*, and shall cause details of that notice to be published in a newspaper circulating in the municipality to which the notice applies.

31 Correction of error

An error in, or omission from, a notice under section 29 or 30 may be corrected or supplied by the Administrator or, as the case may be, the Minister by a subsequent notice in the *Gazette*.

32 Application for exercise of powers

(1) Subject to subsection (3), a municipal council, electors or persons who, if an area were a municipality, would be qualified as electors for it, may apply to the Minister to either:

(a) request the Administrator to exercise the power under section 29; or

(b) exercise a power under section 30.

(2) An application under subsection (1) shall:

(a) in the case of an application by a council – be under the common seal of the council; and

(b) in the case of an application:

(i) by electors; or

(ii) by persons who, if an area were a municipality, would be qualified as electors for it,

be signed by not less than 20% of the persons who are, or would be, electors for the municipality, ward or part of the municipality or area to which the application relates and shall contain a declaration, in the prescribed form, that the signatures are the signatures of the electors or persons who have purportedly signed the application.

(3) An application under subsection (1) shall:

(a) be addressed to the Minister;

(b) be sent by post or delivered by hand to the Minister;

(c) nominate a person and specify an address for the service of notices in relation to the application;

(d) specify the power which the Minister should exercise; and

(e) where it relates to the constitution of a municipality or the alteration of the boundaries of a municipality or ward – contain sufficient information to enable all the boundaries of the new municipality, or altered boundaries, to be determined.

(4) Where the Minister receives an application under subsection (1), the Minister may, by notice served on the person nominated under subsection (3)(c), request further information in relation to the application.

(5) The Minister shall, within 6 months after receiving an application under subsection (1), determine to proceed under this section in relation to the application or decline to so proceed.

(6) Where, under subsection (5), the Minister determines to proceed, the Minister shall:

(a) within 6 months of so deciding, twice publish in a newspaper circulating in the municipality or part of the Territory to which the application relates a notice which, in the Minister's opinion, contains sufficient information to inform a person who may be affected by the application of the nature of the application; and

(b) where the applicants are not the council of the municipality to which the application relates, serve a copy of the application on the council, if a council exists in relation to the part of the Territory affected by the application.

(7) Where, under subsection (5), the Minister declines to proceed, the Minister shall, as soon as practicable, advise the applicant of the decision.

(8) Where, under subsection (6)(a), a notice has been published twice, a person who is affected by the application to which the notice relates may, before the expiration of 6 weeks after the date of the second publication, make written submissions in relation to the application to the Minister.

(9) Where in the opinion of the Minister an inquiry should be held in relation to an application under subsection (1), the Minister may, under Part 12, appoint a Commissioner to conduct the inquiry and refer the application to that person.

(10) After considering:

(a) an application under subsection (1);

(b) submissions, if any, under subsection (8) in relation to the application; and

(c) where an inquiry under Part 12 is held in relation to the application, the report of the Commissioner,

the Minister may:

(d) request the Administrator to exercise powers under section 29 in accordance with the application and this section; or

(e) exercise powers under section 30 in the same way.

33 Consequences where power exercised

(1) The Minister, in exercising a power under section 30, may, by notice in the *Gazette*, direct an adjustment of all property rights (including the disposition of the property), liabilities and other matters or things which may arise as a result of the exercise of the power and those rights, liabilities and matters shall, on the publication of that notice, be adjusted accordingly.

(2) Where a notice under subsection (1) is published in the *Gazette*, the Minister shall, as soon as possible after the publication, cause a copy of the notice to be served on the Registrar-General.

(3) Where, under subsection (1), an adjustment of property rights results in the acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth (otherwise than property of the Territory), the person from whom the property is acquired shall be entitled to receive for that property compensation on just terms in accordance with the prescribed procedures.

(4) The Registrar-General shall, on being served with a copy of a notice under subsection (1), without application, deed of grant or charge, exercise the powers and perform the functions of the Registrar-General under the *Real Property Act* in relation to each interest in land affected by the notice.

(5) Where an area ceases to be part of a municipality, the By-laws of the municipality no longer apply to or within that area.

Division 2 Municipal council membership

34 Composition of municipal councils

Subject to section 264, a municipal council shall consist of:

(a) a mayor; and

(b) not less than 4 aldermen,

elected or appointed in accordance with this Act.

35 Titles of members

(1) A municipal council may by resolution determine that the mayor, deputy mayor or aldermen of the council shall be known and referred to by a title other than that of mayor, deputy mayor or alderman.

(2) Where a municipal council has passed a resolution under subsection (1):

(a) a reference in this Act and the Regulations or another Act to a mayor, deputy mayor or alderman shall be deemed to be a reference to the title determined by the council; and

(b) a power exercised or a function performed by the mayor, deputy mayor or alderman by or under the title determined by the council shall, for the purposes of this Act and the Regulations or another Act, be deemed to have been exercised or performed by or under the name of the mayor, deputy mayor or alderman, as the case may be.

36 Deputy mayor

(1) At its first meeting after a general election, a municipal council shall appoint a member to be the deputy mayor for such period as the council may specify not exceeding the term of the council.

(2) Whenever there is a vacancy in the office of the deputy mayor, the council shall appoint a member to fill the vacancy.

(3) In the event of the illness or absence from a municipality of the mayor, during a leave of absence granted by the council to the mayor or while there is a vacancy in the office of the mayor:

(a) the deputy mayor shall be the acting mayor; or

(b) where the deputy mayor is not available to be the acting mayor, the members present at a meeting of the council shall appoint one of their number to be the acting mayor for the period during which the mayor is prevented from performing his or her duties or the office is vacant,

and the acting mayor may accordingly exercise the powers and shall perform the functions of the mayor.

Division 3 Municipal elections

37 First general election

(1) As soon as practicable after a municipality is constituted under this Act, the Minister shall, for the purposes of the first general election, appoint a person as the returning officer for the municipality.

(2) A returning officer shall, under this Division, conduct the first general election within 42 days after being appointed.

(3) For the purposes of the first general election referred to in subsection (1), the Minister or a person authorised by the Minister shall perform the functions, exercise the powers and discharge the duties of the municipal council and clerk.

38 General elections

(1) Subject to subsection (2), an election for each municipal council shall be held on the last Saturday in May during each leap year.

(2) Where an election under section 37 or 264(6)(b) has been held for a council within 12 months before the last Saturday in May in a leap year, an election under subsection (1) shall not be held for the council in the immediately ensuing leap year.

(3) For the purposes of this section, the year 2000 is a leap year.

39 By-elections

Where, under section 11, a vacancy occurs in the office of a member of a municipal council earlier than within 12 months before the day on which the next general election is to be held, a by-election shall be held to fill that vacancy.

40 Date for holding by-elections, &c.

An election, other than an election under section 38, shall be held on the fourth Saturday following nomination day.

41 Enrolment

A person who is enrolled as an elector, within the meaning of the *Electoral Act*, in relation to a place of residence in a municipality or ward immediately before the close of the roll for an election is entitled to be enrolled for, and to vote at, the election in relation to the municipality or ward.

42 Electors shall vote

No elector shall fail to vote at an election without a valid and sufficient reason for so failing.

Penalty: $100.

43 Roll of electors

The Chief Electoral Officer shall establish, keep and maintain, in the prescribed manner and form, a roll of electors for each municipality.

44 Returning officer

(1) Subject to section 37(1) and subsection (2), for the purposes of an election a municipal council shall, by notice in the *Gazette*, appoint a person to be the returning officer for its municipality.

(2) Where a council, within a time which the Minister thinks is reasonable, fails to appoint a person to be the returning officer the Minister may, by notice in the *Gazette*, appoint a person to be the returning officer for the municipality.

(3) A returning officer shall perform such functions and exercise such powers as are prescribed.

45 Delegations by returning officer

(1) A returning officer may, by instrument in writing, delegate to a person any of the returning officer's powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purpose of this Act, be deemed to have been exercised or performed by the returning officer.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the returning officer.

46 Nomination day

Nomination day, in the case of:

(a) an election under section 38, is the Friday occurring 22 days before the election day specified in that section or, where that Friday is a public holiday, the first day immediately preceding that Friday that is not a public holiday; and

(b) an election, other than an election under section 38, is the first Friday after the expiration of 10 days after the date of the last publication, under the Regulations, of the notice inviting nominations for the election or, where that Friday is a public holiday, the first day immediately preceding that Friday that is not a public holiday.

47 Nomination

(1) A nomination shall be made in the prescribed form and manner, shall be accompanied by the prescribed fee (if any) and shall be lodged with the returning officer before 12 noon on nomination day.

(2) The returning officer shall reject a nomination not made or lodged in accordance with subsection (1).

(3) A fee referred to in subsection (1) shall, as prescribed, be returned or forfeited.

48 Conduct of elections

(1) An election shall be conducted in accordance with this Division and the Regulations.

(2) After an election has been conducted the returning officer shall declare, in the case of:

(a) a general election, the names of the mayor of and aldermen for the municipality; and

(b) a by-election, the name of the person who is to fill the office of a member which became vacant.

49 Adjournment of polling in emergency

(1) If it appears to a returning officer to be necessary or desirable to do so by reason of:

(a) riot or open violence;

(b) fire, storm, tempest or flood or a similar occurrence; or

(c) any other event which, in the opinion of the returning officer, may temporarily prevent or discourage significant numbers of voters from voting on a day set aside for an election,

the returning officer may adjourn polling at an election from day to day to a maximum of 21 days.

(2) The returning officer shall take such steps as are considered necessary and practicable to inform persons entitled to vote of an adjournment under subclause (1).

(3) Where polling at an election is adjourned in accordance with subsection (1), those persons only who, in accordance with this Act, are entitled to vote in that election and who have not already voted, shall be entitled to vote at the adjourned polling.

49A Disputed elections

The Tribunal has jurisdiction to hear and determine a petition under Part VIIA of the *Local Government (Electoral) Regulations* disputing the validity of an election for a member of a municipal council.

Division 4 Meetings of municipal councils

50 First meeting of municipal council

Within 14 days after the declaration of a poll at a general election the clerk or, in the case of the first meeting of a municipal council elected after the municipality is constituted, the Minister, shall summon an ordinary meeting of the council.

51 Ordinary meetings

An ordinary meeting of a municipal council shall be held at least once in each month and at the meeting any business of, or in relation to, the council may be transacted.

52 Special meetings

(1) The mayor or not less than 3 aldermen may direct the clerk to summon a special meeting of a municipal council by serving the clerk with a notice which, subject to section 54(d), sets out the date and time of the special meeting and the business to be transacted.

(2) The clerk, when served with a notice under subsection (1), shall summon a special meeting of the council in accordance with the notice.

(3) Unless all members are present and unanimously agree, the only business that may be transacted at a special meeting is the business set out in the notice under subsection (1).

53 Special meetings of committees

(1) A special meeting of a committee of a municipal council may be called and held in accordance with rules made by the committee, subject to any directions given or restrictions imposed by the council.

(2) Where the members of a standing committee are readily available the chairman of the committee may, without written notice, call a special meeting of that committee to be held forthwith at a place specified by the chairman.

54 Notice of meeting of council

A notice summoning a meeting of a municipal council shall be given to each member and shall:

(a) be in writing signed by the clerk or, in the case of a notice in relation to a first meeting referred to in section 50, by or on behalf of the Minister;

(b) state the date, time and place of the meeting;

(c) in the case of a special meeting of the council or committee, set out the business to be transacted at the meeting; and

(d) give not less than:

(i) 3 days notice of the meeting in the case of an ordinary meeting; or

(ii) 4 hours notice in the case of a special meeting.

55 Conduct of meetings

Subject to this Act, the procedures for the conduct of meetings of a municipal council or committee shall be in accordance with by-laws made by the council in that behalf.

56 Meetings open except as prescribed

Meetings of a municipal council (but not of its committees) shall be open to the public except where a matter prescribed as confidential is being considered or voted on.

57 Minutes

(1) The clerk shall cause minutes to be kept of each meeting of a municipal council or committee.

(2) For the purposes of subsection (1), minutes shall set out:

(a) the proceedings of the meeting;

(b) the names of the members or the members of the committee present and the times they were in attendance at the meeting; and

(c) other prescribed matters.

(3) Before the expiration of 10 working days after a meeting of a municipal council, the clerk shall cause a copy of the unconfirmed minutes of that meeting (together with recommendations or reports referred to in the meeting which are not prescribed as confidential) to be made available for public inspection at the council office.

(4) A person may obtain a copy of the minutes of a meeting of a municipal council, confirmed as referred to in subsection (5), on payment of a fee or, in the case of a copy of the minutes certified by the clerk as a true and correct copy, on payment of a further fee, determined by the council.

(5) Minutes of a meeting of a municipal council or committee shall be submitted for confirmation at the first ordinary meeting of the council or committee, as the case may be, after the meeting to which the minutes relate and, where the minutes are confirmed, with or without amendment, the mayor or chairman of the meeting shall sign the minutes certifying that they have been confirmed.

Part 4 Rates and charges

Division 1 Ratable land

58 Ratable land

(1) Subject to this Act, a municipal council shall rate all land within its municipality for the purpose of raising money to be spent for or in relation to the performance of its functions.

(2) The following land shall not be rated:

(a) Crown land occupied by the Territory (not being land occupied for the purpose of an industrial or commercial undertaking conducted by or on behalf of the Territory) or land owned by the Commonwealth;

(b) a reserve, park, sports ground, playground, garden, cemetery or road, which is a public place;

(c) land that belongs to a religious body and is occupied and used in connection with:

(i) a church or other building used or occupied for public worship;

(ii) a building used or occupied solely as the residence of a minister of religion in connection with any such church or building;

(iii) a building used or occupied for the purpose of religious teaching or training; or

(iv) a building used or occupied solely as the residence of the official head of any religious body in the Territory or in any parish within the Territory;

(d) land used or occupied for the purposes of a public hospital, public benevolent institution or public charity;

(e) land used or occupied solely in connection with a kindergarten, pre-school, school, university or other tertiary educational institution or an institution declared by a council to be a youth centre;

(f) common property in a units plan registered under the *Real Property (Unit Titles) Act*;

(g) land used or occupied solely for the purposes of a public library or public museum; or

(h) land exempted from the payment of rates by reason of another Act.

(3) Notwithstanding subsection (2)(a), a municipal council may, in respect of authorised holdings in its council area, at a meeting held under section 64, declare all or any of the authorised holdings to be ratable land and, for the purposes of section 67(2)(c), each authorised holding is deemed to be a specified part of a municipality notwithstanding the definition of that term in section 3.

(4) A person or a council may, where a dispute arises under subsection (2) as to whether land is a public place, is used for a particular activity or is owned or occupied by a particular person, apply to the Tribunal under section 226 to determine the matter.

Division 2 Rate book

59 Rate book

A municipal council shall cause to be kept a record (the rate book) in which shall be entered:

(a) any prescribed information; and

(b) such other particulars relating to land in its municipality and the ownership of an estate or interest in that land as it thinks fit.

60 Maintenance of rate book

(1) The clerk shall maintain the rate book so that the information contained in it is correct and in accordance with this Act and the Regulations.

(2) For the purposes of subsection (1), the clerk shall:

(a) correct errors in the rate book and keep a record of the corrections;

(b) include in the rate book particulars of land which becomes ratable and the names of the person who is liable to pay any rates or charges on the land and an address for the service of notices relating to those rates and charges; and

(c) amend the rate book particulars of land which has ceased to be ratable.

61 Ratepayer to advise of change of address

A person liable to pay rates and charges shall, within 28 days after any change to the address to which notices relating to those rates and charges may be sent by a council, advise the clerk in writing of that change.

Penalty: $500.

62 Entries relating to urban farm land

(1) Where the owner of ratable land in a municipality considers the land to be urban farm land, the owner may, if the rate book does not state that the land is urban farm land, by notice in writing to the clerk request that the necessary statement be included in the rate book, and the council shall consider the notice and, if satisfied that the rate book should be amended, by resolution, direct the clerk to amend the rate book accordingly.

(2) Where a municipal council considers that ratable land stated in the rate book to be urban farm land has ceased to be such it may, by resolution, direct the clerk to amend the rate book accordingly.

(3) A municipal council or a person authorised by resolution of the council may, by notice in writing, require a person who is the owner or occupier of land:

(a) stated in the rate book to be urban farm land; or

(b) which is the subject of a notice under subsection (1),

to furnish to the council or the authorised person, before the expiration of 28 days after the date of the notice, such information in the possession or under the control of the person, or to which the person has access, as is requested by the notice.

(4) A person who, without lawful excuse, fails, before the expiration of 28 days after the date of a notice under subsection (3), to furnish the information requested in the notice is guilty of an offence.

Penalty: $500.

63 Appeals relating to entry in rate book

(1) A person whose name is entered in the rate book as owner or occupier of the whole or part of ratable land may appeal against the entry on the ground that:

(a) there is an error in or omission from the entry;

(b) the person is not the owner or occupier so indicated; or

(c) the land is not ratable land or it is urban farm land.

(2) A person whose name is omitted from the rate book may appeal against the omission on the ground that the person is the owner or occupier of the whole or part of land which is ratable.

(3) An appeal under this section shall be instituted by serving a notice, in the prescribed form, on the clerk.

(4) On being served with a notice under subsection (3), the clerk shall:

(a) advise the appellant of the council meeting at which the appeal will be considered; and

(b) cause the notice to be laid before the council at its next ordinary meeting.

(5) Where a clerk causes a notice under subsection (4)(b) to be laid before a council, the council shall at its next ordinary meeting allow or disallow the appeal and, where it allows the appeal, the clerk shall, as soon as practicable, cause an appropriate alteration to be made in the rate book.

(6) An appellant may appear before, and make submissions to, the council at the meeting referred to in subsection (5).

(7) Where a council disallows an appeal under this section, the clerk shall, as soon as practicable after the meeting at which the appeal was disallowed, notify the appellant in writing of the outcome.

(8) A person to whom a notice is given under subsection (7) may, within 28 days after and including the date on which the notice was received, appeal to the Tribunal under section 235 against the disallowance.

Division 3 Rates and Charges

64 Declaration of rates and charges

(1) A municipal council shall, not less than 10 days after publication of the estimates under section 162(2), and by 31 August of each financial year or such later date as the Minister allows, by resolution at a meeting, declare for that financial year:

(a) the amount which it intends to raise for general purposes by rates; and

(b) whether those rates will be raised by the application of:

(i) a uniform rate (with or without a minimum amount being payable in the application of that rate);

(ii) differential rates (with or without a minimum amount being payable in the application of each of those differential rates);

(iii) a flat rate per parcel; or

(iv) a combination of differential rates (with or without a minimum amount being payable in the application of each of those differential rates) and a flat rate per parcel but not both in respect of any one parcel of land.

(2) A minimum amount declared payable under subsection (1)(b) in the application of a uniform rate or a differential rate may be calculated by reference to the number of residential units on each parcel of land, but as between parcels of land containing the same number of

residential units the minimum amount shall be the same.

(3) Notwithstanding that a council has declared under subsection (1)(b) that general rates will be raised by the application of a flat rate per parcel, the council may, subject to subsection (4), declare a different amount in respect of parcels of land containing more than one residential unit and, where a council does so, the amount shall, for the purposes of this Act, be deemed to be the flat rate per parcel in respect of those parcels of land.

(4) A council shall not declare under subsection (3) a different amount as between parcels of land containing the same number of residential units.

(5) A council, at the meeting referred to in subsection (1), may declare an urban farm land rate for the financial year.

65 Assessed value as basis of valuation

(1) A municipal council may adopt as a method of determining the assessed value of all ratable land in the municipality:

(a) the unimproved capital value;

(b) the improved capital value; or

(c) the annual value,

as it appears in the valuation roll, or a combination of any 2 of those values.

(2) Where a council has, under subsection (1), adopted a method of determining the assessed value of land it shall not, before the expiration of one year after the previous adoption, vary that method or adopt another method unless the Valuer-General has, in writing, advised the council that valuations of the kind used by the council in determining that assessed value will no longer be prepared.

(3) A council shall, at the meeting referred to in section 64(1), adopt an amount calculated from the valuation roll as the total of the assessed value of all ratable land within its municipality.

66 Uniform rate

Where, under section 64(1)(b)(i), a municipal council declares that general rates will be raised by the application of a uniform rate, it shall specify a percentage as the uniform rate and the general rates for each parcel of ratable land shall be calculated by multiplying the assessed value of that parcel by the percentage so specified.

67 Differential rates

(1) Where, under section 64(1)(b)(ii), a municipal council declares that general rates will be raised by the application of differential rates, it shall specify:

(a) the different percentages; and

(b) the conditions (set out in subsection (2)) upon which each percentage shall be applied,

and the general rates for each parcel of ratable land shall be calculated by multiplying the assessed value of that parcel by the percentage which is, by virtue of the specified conditions, applicable to the parcel.

(2) For the purposes of subsection (1), the conditions shall be that a parcel of land is within a specified:

(a) ward;

(b) town, within the meaning of the *Crown Lands Act*;

(c) part of a municipality; or

(d) zone, under the applicable development provisions under the *Planning Act*,

but within such ward, town, part of a municipality or zone the percentage shall be the same.

68 Rates on multi-zoned parcels

(1) This section applies to land which contains 2 or more different zones (under the applicable development provisions under the *Planning Act*).

(2) A municipal council may, in relation to a parcel of land to which this section applies, require a valuation under section 11 of the *Valuation of Land Act* of each part of the parcel comprising a different zone as if that part were a separate parcel.

(3) In levying a rate in respect of a parcel of land to which this section applies, the municipal council may either:

(a) levy the rate under this Part without regard to this section; or

(b) calculate the amount that would otherwise be payable as rates on each part of the parcel for which a valuation was made under subsection (2) as if that part were a separate parcel,

and levy the rate on the whole parcel as the sum of the amounts calculated on each part.

69 Local rate

(1) Subject to this section, a municipal council may, at a meeting referred to in section 64(1) or at any other meeting, by resolution declare a local rate and it may declare that the rate be based on the assessed value of the ratable land within:

(a) a specified part of its municipality for the purpose of:

(i) defraying the expense of or in relation to the performance of a function of the council within that part of its municipality; or

(ii) repaying, with interest, an advance made to, or debt incurred or loan raised by, the council in relation to the performance of a function of the council within that part of its municipality,

where, in the opinion of the council, the performance of that function is, or would be, of special benefit to the ratepayers of that part; or

(b) a part of its municipality which, under section 30(1), has been annexed to the municipality, for the purpose of meeting a debt or liability for which the council has become liable as a consequence of that part being so annexed.

(2) A council may declare that a local rate be determined otherwise than on the assessed value of the ratable land within that part of the municipality in relation to which the local rate is declared.

(3) The resolution by which a local rate is declared shall specify:

(a) the part of the municipality in relation to which the local rate is declared;

(b) the class of owner or occupier on which the local rate is levied;

(c) the number of complete financial years for which the local rate will be payable;

(d) the manner in which the local rate shall be assessed and levied; and

(e) the manner in which an appeal, if made, may be made against an assessment.

(4) The resolution may provide for the payment, by a person on whom a local rate may be levied, of an amount in advance, which shall be accepted in full discharge and satisfaction of any liability to pay the local rate for the period determined in accordance with the resolution, and a payment so made shall relieve the person of any liability to pay the local rate in relation to the period so determined.

70 Public submissions on proposed local rate

(1) Before declaring a local rate other than at a meeting referred to in section 64(1), a council shall notify its intention to do so:

(a) to all affected ratepayers; and

(b) in a newspaper circulating in the municipality,

and the notification shall contain the matters specified in section 69(3) and shall invite affected ratepayers to make submissions to the council in relation to the proposals, in writing, within 14 days after the publication of the notification under paragraph (b).

(2) A council must consider any submission made to it under subsection (1) before deciding to proceed with the proposal, whether with or without amendment.

71 Urban farm land rate

Where, under section 64(5), a municipal council declares an urban farm land rate it shall declare a proportion by which the amount, otherwise payable by the application of a uniform rate, differential rate, or a flat rate per parcel, shall be reduced in relation to those parcels of ratable land at that time shown in the rate book as urban farm land.

72 Minimum rates

If:

(a) under section 64(1)(b), a municipal council declares a minimum amount or amounts payable; and

(b) on the application of a uniform rate or differential rates, as the case may be, to the assessed value of a parcel of land, the rates payable in relation to the parcel of land would, but for this section, be less than the amount declared as the minimum amount payable in relation to that parcel of land,

the amount payable as rates in relation to that parcel of land is the amount of the minimum amount so declared.

73 Special rate

(1) A municipal council may, in addition to any other rates declared at the meeting referred to in section 64(1), declare at that meeting a special rate to be applied to or in relation to a purpose specified in the adopted estimates of the council.

(2) A special rate shall be declared at the same flat amount on each parcel of ratable land in the municipality and, where a parcel contains more than 1 residential unit, on each residential unit contained in the parcel.

(3) A special rate is to be in addition to, and not in substitution for, another rate declared under this part.

74 Charges for services in relation to land

(1) Where, in relation to a function of a municipal council, the council provides or is willing and able to provide a service in relation to land, it may make a charge for the service and, at the meeting under section 64, declare the amount of any charge.

(2) A council may also, under subsection (1), declare the amount of any charges for work lawfully done on land in default of the owner or occupier of the land doing the work.

(3) The amount of a charge under this section need not be limited to recovering the cost of providing the service for which the charge is made.

Division 4 Payment of rates and charges

75 Public notice of rates and charges

Before the expiration of 21 days after the declaration under section 64 of any rates and charges, a municipal council shall give public notice of the rates and charges by publishing details of them in the *Gazette* and in a newspaper circulating in the municipality.

76 Levying rates and charges

(1) A municipal council may levy rates and charges in relation to land by causing a notice to be served on the person liable under section 77 to pay those rates and charges.

(2) A notice under subsection (1) shall contain:

(a) the prescribed information; and

(b) a statement as to whether the rates and charges may be paid on an annual basis or by not more than 4 approximately equal instalments.

(3) In accordance with the relevant entry in the rate book, a notice under subsection (1) may be served:

(a) personally;

(b) by post; or

(c) where the relevant entry does not disclose the name or address of the person liable for payment of the rates or charges, by notice in the *Gazette*.

(4) Where, under section 64, a council has declared more than one rate in a financial year it may levy the rates as a combined rate.

(5) A council shall, whenever possible, levy in the financial year in which they are declared all rates and charges declared under section 64.

77 Persons liable to pay rates and charges

(1) Subject to section 223(2), the owner of land in relation to which a rate or charge is levied is liable for the payment of all such rates and charges.

(2) Where an estate or interest in ratable land is owned jointly or in common by 2 or more persons, those persons are jointly and severally liable for the payment of rates or charges levied in relation to the land.

(3) A person who acquires an estate or interest, other than a tenancy, in ratable land is liable to pay all current rates and charges and any arrears of rates and charges owing in relation to the land at the time of acquisition.

(4) Subsection (3) does not apply where the estate or interest is purchased by a bona fide purchaser for value who, not earlier than 7 days before the date of acquisition, obtained a certificate under section 223 from the clerk to the effect that no rates or charges or a different amount of rates or charges were, at that date, owing.

(5) Where ratable land is held by a person under lease from the Territory, the lessee is liable for rates in relation to that land.

(6) Where there is, on ratable land, a residential unit which is:

(a) the property of the Territory; and

(b) leased by the Territory to a person for residential purposes,

rates payable in relation to that land are payable to the council by the Territory.

(7) Where the Territory pays rates under subsection (6), the amount of the rates paid, or such portion of that amount as is proportionate to the part of the year to which the rate applies during which the person occupies the land, is recoverable by the Territory as a debt due and payable to the Territory by that person.

(8) For the purposes of this section, a residential unit is leased to a person if the land on which the unit is situated is leased or is deemed to be leased to the person by virtue of section 5 of the *Crown Lands Act*.

78 Apportionments

(1) Where land becomes ratable after 1 July in a financial year, the amount of the rate payable, in relation to that land for the financial year to which the rate applies, is proportionate to that part of the financial year remaining after the land becomes ratable, calculated on a daily basis.

(2) Where land ceases to be ratable and the financial year to which a rate applies has not expired, a council shall, where the rate:

(a) has been paid, refund to the person who paid the rate; or

(b) has not been paid, grant a rebate to the person who is liable to pay the rate equal to,

that portion of the rate which is proportionate to that part of the financial year remaining after the land ceased to be ratable, calculated on a daily basis.

(3) Where land is held under lease from the Territory by 2 or more persons separately in any one year, whether with or without an interval between leases, the council may if it thinks fit:

(a) adjust the rate payable in relation to the land between those persons, whether the rate is paid or unpaid, in such manner as it thinks fit;

(b) if the rate is unpaid, recover from each of those persons the proportion of the adjusted rate;

(c) make a refund in accordance with an adjustment; or

(d) write off a proportion of the amount owing in relation to an interval between leases.

79 Liability for one rate only

Where a person has paid a rate or charge levied under this Act in relation to land or, where the land is not part of a municipality, paid, under an instrument of an administrative or legislative character or another Act, a levy (by whatever name called) in relation to that land similar to a rate or charge under this Act, then, except for the purpose of correcting an error, the person is not liable to pay any further rates (other than a local rate), charges or levies in relation to the land in that financial year.

80 When rates and charges due and payable

Rates and charges are due and payable:

(a) where they are to be paid annually, on the expiration of 28 days after the date on which a notice under section 76 in relation to the rates and charges is served on the person liable to pay them; or

(b) where they are to be paid other than annually, on the dates specified in the notice under section 76 as the due dates.

81 Discount for prompt payment

(1) For each financial year a municipal council may, by resolution at the meeting referred to in section 64(1), declare that a monetary discount or other benefit shall be given for the prompt payment of rates and charges at such rate or rates of discount or in such circumstances as are specified in the resolution.

(2) A monetary discount declared under subsection (1) shall be calculated on a monthly basis and shall be rounded up to the nearest dollar.

82 Penalty for late payment

(1) For each financial year a municipal council may, by resolution at the meeting referred to in section 64(1) or, where a local rate is levied, at the meeting at which it is levied, determine penalties for the late payment of rates and charges.

(1A) A penalty determined under subsection (1) shall be a rate of interest per annum calculated on a daily basis on the full amount of rates and charges payable by a person.

(2) Where rates and charges are to be paid annually, a penalty under subsection (1) shall be calculated from the date on which the rates or the charges were due and payable until the date payment in full is made, and the amount of the rates and charges, together with any penalty calculated to that second-mentioned date, shall be rounded down to the nearest dollar.

(3) Where rates and charges are to be paid other than annually and an instalment is not paid on or before the date on which it is due and payable:

(a) all unpaid instalments become due and payable; and

(b) a penalty under subsection (1) on all outstanding instalments shall be calculated from the date on which the missed instalment was due and payable until the date payment in full is made,

and the amount of the outstanding instalments together with any penalty shall be rounded down to the nearest dollar.

(4) Notwithstanding subsection (3), a council may, in determining penalties under subsection (1), determine that where rates and charges are to be paid other than annually and an instalment is not paid on or before the date on which it is due and payable:

(a) the date on which any future instalment is due and payable is not affected; and

(b) a penalty under subsection (1) shall be calculated only on the outstanding instalment from the date on which the missed instalment was due and payable until the date payment in full is made,

and the amount of the instalment together with any penalty shall be rounded down to the nearest dollar.

(5) A municipal council may remit all or a part of the penalty otherwise payable under this section where it is of the opinion that there was a satisfactory reason for the late payment of the rates or charges to which the penalty relates or that the payment of the penalty would cause hardship.

83 Council to pay interest on certain rates refunded

Where the amount of any rates paid to a municipal council is disputed by a ratepayer and the dispute is resolved, wholly or partly, in favour of the ratepayer the council shall refund the amount of any overpayment together with interest on that amount (but not on any penalty paid) calculated on a daily basis from the day the

overpayment was made to the day it was refunded at the rate that the council would have paid for overdraft accommodation from its bankers on the day the overpayment was made.

84 Application of payments

Money paid to a municipal council in respect of rates or charges is, notwithstanding a direction by the person paying the money, to be applied towards payment of those rates and charges in the order in which they became due.

85 Combined rates to be apportioned by council

Money paid to a municipal council in respect of rates which have been levied as a combined rate is to be apportioned by the council between, and credited to, the several accounts of the council in the same proportions that the different rates constituting the combined rate bear to the combined rate.

Division 5 Concessions

86 Waiver or deferment of rates or charges

(1) A ratepayer who:

(a) is suffering financial hardship;

(b) is likely to suffer financial hardship if the full amount of any rates or charges for which the ratepayer is liable is paid; or

(c) provides a home for persons suffering financial hardship or for aged persons,

may apply to the council for relief in relation to the ratepayer's rates or charges and to any penalty imposed on them.

(2) After considering an application under subsection (1) the council may waive or defer the payment of the whole or any part of a rate, charge or penalty to which the application relates in such circumstances, for such period and subject to such conditions as it thinks fit.

(3) A ratepayer is not liable to pay:

(a) any rate, charge or penalty waived under subsection (2); or

(b) until the expiration of the period of deferment, any rate, charge or penalty deferred under that subsection.

(4) Where a council has, under subsection (2), deferred the payment of rates, charges or penalties and:

(a) it is of the opinion that the circumstances of the ratepayer have changed so that the payment of those rates, charges or penalties would no longer result in financial hardship; or

(b) the ratepayer has ceased to own or occupy the ratable land the subject of the deferment,

the council may, by notice to the applicant, require the payment of the whole or a specified part of the rates, charges or penalties on or before a date specified in the notice.

(5) Where, under subsection (4), a council requires a ratepayer to pay rates, charges or penalties previously deferred, it may also require a further payment, being so much as it thinks fit of a penalty under section 79 in respect of the deferred payment of the rates or charges, considered as if the relevant deferment under this section had never been granted and as if the rates or charges had been paid on the date specified in the notice under subsection (4).

87 Financial hardship resulting from valuation, &c., changes

(1) A ratepayer who suffers or is likely to suffer financial hardship:

(a) as a consequence of the declaring and levying of a rate on a valuation having a later base date than any valuation previously used by the council for the declaring and levying of a rate; or

(b) as a consequence of the council applying a different type of rate from that previously applied in relation to the land,

may apply to the council for relief under this section.

(2) The council may waive or defer the payment of the whole or any part of the increase in the amount of the rate payable by the applicant in such circumstances, for such period and subject to such conditions as it thinks fit.

88 Ratepayer may request review

An applicant who is dissatisfied with a municipal council's decision in relation to a matter under section 86 or section 87 may request the council to review its decision and the council, in its discretion, may do so.

89 Concessions relating to public benefit

(1) Where, in the opinion of a municipal council, it is necessary or expedient for the purposes of:

(a) securing the proper development of a part of its municipality; or

(b) preserving buildings or places of historical interest,

the council may waive or defer the payment of the whole or any part of rates or charges relating to the land used for those purposes.

(2) Where an association is incorporated under the *Associations Incorporation Act* for a purpose which, in the opinion of a council, is:

(a) a cultural purpose;

(b) for the promotion of the welfare or health of members of the public;

(c) for the advancement or encouragement of agriculture; or

(d) for the provision of recreation or amusement for members of the public,

the council may waive payment of the whole or any part of the rates levied and charges imposed in relation to the ratable land of the association.

(3) Where a council has, under subsection (1), waived or deferred the payment of rates or charges and the ratepayer has failed to carry out a development in accordance with a previous undertaking to the council, the council may, by notice in writing, require the ratepayer to pay the whole, or a further part, of the rates or charges on or before a date specified in the notice.

(4) Where, under subsection (3), a council requires a ratepayer to pay rates or charges previously waived or deferred, it may require a further payment of so much of the penalty under section 82 in relation to the late payment of the rates or charges as it thinks fit as if the relevant waiver or deferment under this section had never been granted, and the ratepayer shall be liable accordingly.

Division 6 Recovery of unpaid rates or charges

90 Rates and charges a charge on land

(1) Subject to this Act, a rate or a charge made for services provided to land or for work done in relation to land due and unpaid, and all

costs awarded to a municipal council by a court or the Tribunal in proceedings in relation to a rate or charge, are an overriding statutory charge on the land within the meaning of the *Real Property Act*.

(2) If land is subdivided, and a part is sold or let, any unpaid rates or charges may, for the purposes of subsection (1), be apportioned by a council in such manner as it thinks fit, and the purchaser or lessee of the part is liable accordingly.

91 Council may require occupier to pay rent in payment of rates or charges

(1) Where a rate or charge relating to ratable land is due and unpaid, the clerk may serve notice on the ratepayer stating that, after the expiration of 7 days from the date of service of the notice, the clerk may serve a notice on the occupier of the ratable land requiring the occupier to pay to the municipal council any rent then due or becoming due in relation to the occupation until the amount of the rate or charge and any penalty incurred in respect of them is paid in full.

(2) After the expiration of the 7 days referred to in subsection (1), the clerk may serve a notice on the occupier of the relevant ratable land requiring the occupier to pay, to the council, any rent then due or becoming due in relation to the occupation until the amount of the rate or charge and any penalty incurred in respect of them as specified in the notice is paid in full.

(3) A payment made to a council by a person in accordance with a notice served under subsection (2) is a valid discharge by that person of the debt in relation to the rent against another person claiming for that rent.

(4) An occupier served with a notice under subsection (2) who fails to comply with its terms commits an offence.

Penalty: $500.

(5) Where an occupier who has been served with a notice under subsection (2) fails to comply with its terms, the council may recover the amount specified in the notice to be paid, or such amounts as remain unpaid, as a debt due and payable to the council by that occupier.

92 Council may sue for rates or charges

A municipal council may sue a person who is liable for payment of a rate or charge for the recovery of the rate or charge which is due and unpaid at any time within 6 years from and including the date on which it first became due and payable.

93 Proof of declaration of rates and charges

(1) The production of the *Gazette* in which a notice is given under section 75 is conclusive evidence of the rates and charges to which the notice relates having been duly declared by the council.

(2) In proceedings for the recovery of a rate or charge, production of a copy of an entry in the rate book:

(a) certified by the clerk to be a true copy of the entry;

(b) showing an amount to be owing for rates or charges levied on land; and

(c) an affidavit of service under section 76(3),

shall be prima facie evidence that:

(d) the amount is owing to the council; and

(e) this Act has been complied with in relation to the declaration and levying of the rate or charge and the service of the notice of the rate or charge.

94 Sale of land for unpaid rates and charges

(1) Where a rate or charge payable to a municipal council under this or another Act in relation to ratable land has remained unpaid for more than 3 years from the date on which it became payable, the council may apply to the Registrar-General to register its overriding statutory charge on the land and then sell it in accordance with the *Real Property Act*.

(2) An application under subsection (1) is not to be made unless, in the 3 year period, the council either exercised its rights under section 92 to sue the ratepayer or applied to the Tribunal under subsection (3).

(3) Notwithstanding subsection (2), a council which, after reasonable enquiry having regard to the amount of rates and charges unpaid and the estimated value of the land or interest in land on which they are a charge, is unable to locate a person liable for payment of the rate or charge may apply to the Tribunal under section 226(1) for

directions.

(4) Where, under the *Real Property Act*, the registered proprietor of land over which an overriding statutory charge is registered is to be served with a notice containing particulars of the action that the registered proprietor may take in order to avoid the exercise of the power of sale under the charge the notice shall, in relation to an overriding statutory charge under this section, contain, at the least, a statement that:

(a) if, at least 7 working days before the time fixed for the sale, all money that is a charge on the land, together with all costs relating to the registration of the overriding statutory charge or to the sale, are paid to the council; or

(b) if, within that time, an arrangement satisfactory to the council for payment of all such money or costs is entered into by the ratepayer,

the council will not sell the land.

95 Prohibition on certain persons buying other than at auction

(1) This section applies to a municipal council exercising a power of sale under a registered overriding statutory charge, a member, the clerk or an officer or employee of that council or a relative of any of them.

(2) Except in the case of sale by public auction, a person to whom this section applies shall not buy land in the exercise of a power of sale pursuant to an overriding statutory charge for the non-payment of rates or charges.

(3) A sale in contravention of subsection (2) is void.

(4) In subsection (1) ***relative***, in relation to a person, means:

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse; and

(b) the spouse or de facto partner of the person or of a person referred to in paragraph (a).

Part 5 Matters specific to community government

Division 1 Application

96 Application of Part

This Part does not apply to or in relation to land which is within or forms part of a municipality.

Division 2 Constitution of community government councils

97 Contents of community government schemes

(1) Subject to this Part, a community government scheme may make provision for or in relation to:

(a) a description of the community government area to which the scheme applies;

(b) the name of the council;

(c) the composition of the council;

(d) the times at which the council will meet to transact its business, being at least one meeting in each two-monthly period so that at least 6 meetings are held in each financial year;

(e) the procedure for calling meetings of the council;

(f) the procedure to be followed at meetings of the council;

(g) the method of determining the questions arising at meetings of the council;

(h) the eligibility of persons to be members;

(j) the eligibility of persons to vote at elections;

(k) the appointment of officers for the conduct of elections of members;

(m) the frequency of general elections;

(n) the procedure for calling elections and the manner in which elections shall be held;

(p) the removal and replacement of members, whether permanently or temporarily, as a result of their unauthorised absence from council meetings;

(q) the appointment and powers of substitutes to act for members who are absent from a council meeting; and

(r) the functions to be performed by the council and the manner of performance of those functions.

(2) Subject to this Part, a scheme may contain a provision for or in relation to the performance of a function by a community government council relating to:

(a) animal control;

(b) animal impounding;

(c) commercial development;

(d) communications;

(e) community amenities;

(f) education or training;

(g) electricity supply;

(h) garbage collection and disposal;

(j) health;

(k) housing;

(m) community employment;

(n) roads and associated works;

(p) sewerage;

(q) water supply;

(r) welfare;

(s) raising of revenue in accordance with this Part; or

(t) such other matters as are approved by the Minister.

98 Scheme may provide for rates and charges

A scheme may provide, or may authorise the community government council, by resolution, to provide:

(a) that land within the community government area is ratable (but not land which, under section 58(2), is not ratable land);

(b) that the council may declare rates in relation to land within the community government area;

(c) for the liability of a person to pay rates;

(d) for the imposition of charges in relation to a person who resides in or carries on business in the community government area or has an interest in ratable land in the area, whether a service is provided for or in relation to the person, business or land or not;

(e) for the service of notices of rates and charges; and

(f) that the council may exempt land or persons, or a class of land or persons, from all or part of the rates and charges for which they would otherwise have been liable.

99 Model provisions for schemes

(1) The Minister may approve a set of model provisions for schemes and cause notice of the approval to be published in the *Gazette*.

(2) A scheme may adopt by reference the whole or any part of a set of model provisions of which notice of approval has been published under subsection (1).

(3) The repeal of a model scheme approved under subsection (1) does not affect its operation if it had been adopted by a council before repeal.

100 Application for constitution of community government council

(1) At least 10 residents of an area may apply to the Minister for the Minister to request the Administrator to establish a community government council for the area.

(2) An application shall be in writing signed by each applicant.

101 Explanation of application

(1) After receiving an application under section 100, the Minister shall:

(a) inform the residents of the area to which the application relates of the receipt of the application; and

(b) fix a date, time and place for a meeting with those residents and advise them of that date, time and place.

(2) At a meeting under subsection (1)(b), the Minister, or the Minister's nominee, shall:

(a) explain to the residents present the purpose of the application made under section 100 and the functions which a community government council may perform; and

(b) endeavour to ascertain the opinion of those residents on the proposal to establish a community government council for the area or a part of it, and the functions which may be performed by the council, if established.

(3) The applicants under section 100 may, having regard to the opinions expressed at the meeting convened under this section, vary their application as they think fit but not so as to extend the area to which the application relates.

(4) The applicants may, by notice in writing served on the Minister, withdraw an application at any time before the approval under section 105 of a draft scheme.

102 Preparation of draft community government scheme

After a meeting held under section 101(2), the Minister may prepare a draft scheme.

103 Exhibition of draft scheme

(1) The Minister may direct that a draft scheme be exhibited at such places, for such periods and in such manner as are specified in the direction.

(2) The Minister shall cause notice of any exhibition of a draft scheme under subsection (1) to be published in:

(a) the *Gazette*; and

(b) either:

(i) a newspaper circulating in the area to which the draft scheme relates; or

(ii) where, in the opinion of the Minister, notice published in such a newspaper would not be sufficient notice of the exhibition of the draft scheme, any other publication circulating in that area which the Minister considers would be sufficient notice of the exhibition of the draft scheme.

(3) A notice under subsection (2) shall invite submissions from the public in relation to the draft scheme within the period specified in the notice.

104 Consultation

The Minister or a person authorised for that purpose by the Minister shall, after a draft scheme has been exhibited under section 103, consult with the residents of the community government area, or the area or areas which are proposed to be constituted as a community government area to which the draft scheme relates, in relation to the contents of that scheme and to any submissions made under section 103(3).

105 Approval of scheme

(1) The Administrator may:

(a) approve;

(b) subject to subsection (4), amend and approve as amended; or

(c) reject,

a draft scheme.

(2) The Administrator must not approve a draft scheme unless satisfied, on the advice of the Minister, that:

(a) where it provides for a description of the community government area, a substantial majority of the residents of the area to which the scheme relates is in favour of the community government area;

(b) where it provides for:

(i) the composition of the council;

(ii) the procedure for calling elections and the manner in which elections shall be held;

(iii) the eligibility of persons to be members;

(iv) the eligibility of persons to vote at elections;

(v) the removal and replacement of members as a result of their unauthorised absence from the council meetings; or

(vi) the appointment and powers of substitutes to act for members who are absent from a council meeting,

a substantial majority of the residents of the area to which the scheme relates is in favour of the proposals contained in the scheme in relation to that matter; and

(c) where it provides for the carrying out of a function by the council:

(i) a substantial majority of the residents of the area to which the scheme relates is in favour of the council performing the function; and

(ii) the council or proposed council is or is expected to be capable of effectively performing the function.

(3) Where the area to which a draft scheme relates consists of 2 or more non-contiguous areas, the reference in subsection (2)(a), (b) and (c)(i) to a substantial majority of the residents shall be read as a reference to a substantial majority of the residents in each non-contiguous area.

(4) If, under subsection (1)(b), a draft scheme is amended in relation to a matter referred to in subsection (2) the Minister or a person authorised by the Minister shall consult with residents as provided by section 104 about the amendments before the amended draft scheme is approved by the Administrator.

106 Notice of approval of scheme

(1) Where a draft scheme is approved under section 105(1)(a) or (b), the Minister shall cause to be published in the *Gazette*:

(a) notice of the approval;

(b) where the scheme makes provision in relation to the community government area – a description of the area; and

(c) where the scheme makes provision for the alteration of the community government area by:

(i) the addition of land from another council area to the community government area; or

(ii) severance of land from the community government area and its addition to another council area,

a notice apportioning, settling and adjusting all property, writs, liabilities (including a liability arising under or from a loan or overdraft) and all other matters requiring adjustment as a consequence of the alteration of those boundaries.

(2) Subject to section 108(2), a council to which a notice under subsection (1)(c) applies is deemed:

(a) to acquire or be divested of property or rights; and

(b) to be subject to or excused from liabilities (including a duty, fee or other charge in relation to property transferred to or vested in the council), in accordance with the terms of the notice.

(3) The Minister shall also cause notice of approval and details of the scheme to be published in either:

(a) a newspaper circulating in the area to which the approved scheme applies; or

(b) where in the opinion of the Minister, notice published in such a newspaper would not be sufficient notice of the approval and details of the scheme, any other publication circulating in that area which the Minister considers would be sufficient notice of the approval and details of the scheme.

107 Replacement or amendment of schemes

(1) A community government council or no fewer than 10 electors of a community government area may apply in writing to the Minister to prepare a replacement scheme or an amendment to a scheme.

(2) Sections 101(4), and 102 to 106 inclusive, with the necessary changes, shall apply to a replacement scheme or an amendment to a scheme under subsection (1) as if the replacement or amendment were a draft scheme and the references in section 105 to the Administrator were references to the Minister.

(3) If, pursuant to section 108(5), the Legislative Assembly disallows a replacement or amendment mentioned in subsection (2) the scheme purported to be replaced or amended remains of full force and effect.

108 Approved scheme to be law of the territory

(1) A scheme has effect as a law of the Territory on and from the day on which notice of the approval of the scheme is published under section 106(1)(a) in the *Gazette* or, if a later date is specified in the scheme, that later date.

(2) A scheme shall not be expressed to take effect, or be in terms so that but for this section it would take effect, from a date before the date on which notice of the approval of the scheme was published under section 106(1)(a) in a case where, if it so took effect:

(a) the rights of a person (other than the Territory or a statutory corporation) existing at the date the notice was published would be affected in a manner prejudicial to that person; or

(b) liabilities would be imposed on a person (other than the Territory or a statutory corporation) in relation to a thing done or omitted to be done before that date,

and a provision in a scheme which does not comply with this subsection is void.

(3) A scheme shall, within 6 sitting days of the Legislative Assembly after the date on which notice of its approval was given under section 106(1)(a), be tabled in the Assembly.

(4) A scheme which is not tabled in the Assembly as required by subsection (3) is void.

(5) Where the Legislative Assembly passes a resolution, notice of which has been given within 12 sitting days after a scheme has been tabled, disallowing the scheme or any provision of it, the disallowance has the same effect as a repeal of the scheme or provision.

Division 3 Community government council elections

109 First general election

After a draft scheme is approved under section 105(1), the Minister may request the Chief Electoral Officer to conduct, in accordance with this Act and the scheme, the election of members of the first community government council for that area.

110 First members may be appointed

(1) If, within 2 years before a scheme is approved, the residents of an area which, in the Minister's opinion, is the same or similar to the community government area specified in a draft scheme, have elected a number of persons to carry out functions of a similar kind to the functions which the community government council may, under that scheme, perform, the Minister may, if satisfied that a substantial majority of residents of the area approve:

(a) appoint those elected persons to be the members of the council; or

(b) where there are more elected persons than there are positions for council members as presented by the scheme, appoint a sufficient number of such of the elected persons as the Minister determines to be the members of the council.

(2) An appointment under subsection (1) shall be notified in the *Gazette* and shall take effect from the date of that notification or, where there is a later date specified in the notification, the later date.

111 General elections

A general election shall be held by 31 December of:

(a) in the case of a community government council which consists of members appointed under section 110, the second year after the appointment of those members; or

(b) in all other cases, the year provided in the relevant scheme being a year no later than the fourth year after the general election immediately before that election.

112 By-elections

It shall not be necessary to hold a by-election to fill a vacancy in the membership of a community government council where the vacancy arises later than 6 months before the last day upon which a general election is required to be held under section 111.

113 Electors shall vote

No elector shall fail to vote at an election without a valid and sufficient reason for so failing.

Penalty: $100.

114 Clerk to notify Minister of election results

Subject to the provisions of a scheme, the clerk shall, as soon as practicable after an election, notify the Minister of the results.

114A Disputed elections

Where the validity of an election for a member of a community government council is disputed:

(a) Part VIIA of the *Local Government (Electoral) Regulations*, with the necessary changes, applies in relation to the dispute; and

(b) the Tribunal has jurisdiction to hear and determine a petition under Part VIIA of the *Local Government (Electoral) Regulations* as applied by paragraph (a) disputing the validity of the election.

Part 6 Powers and functions of councils

Division 1 Powers

115 Powers of councils

Subject to this Act, a council:

(a) has the power to do all things necessary or convenient to be done for, in connection with or incidental to; and

(b) may do anything which is not otherwise unlawful for,

the purpose of performing its functions.

116 Council may carry out work for other persons

(1) A council may:

(a) at the request of a person, carry out work for, or provide goods or services of any nature to or on behalf of, the person and may charge the person for doing so;

(b) carry out, on behalf of a person, work required under this Act to be carried out by the person and charge and recover from that person the expense of so doing, or such proportion of that expense as it thinks fit; and

(c) let or hire out its machinery and appliances.

(2) A charge under subsection (1) need not be fixed by reference to the cost to the council.

117 Contracts

(1) Subject to this section, a council may enter into contracts for the purposes, and in the course, of carrying out its functions.

(2) A contract which, if made between private persons:

(a) is required by law to be in writing and under seal, or to be proved by writing under seal, may be made by the council in writing and under its common seal;

(b) is required by law to be in writing signed by or on behalf of the party to be charged, or to be proved by writing so signed, may be made in writing:

(i) under the common seal of the council; or

(ii) signed by the presiding member of the council and the clerk, or by 2 or more members, acting by direction and on behalf of the council; or

(c) would be valid although not reduced to writing or could be proved without writing, may be made:

(i) in writing under the common seal of the council;

(ii) in writing signed by the presiding member of the council and the clerk, or by 2 or more members, acting by direction and on behalf of the council; or

(iii) orally by the presiding member of the council or the clerk, acting by direction and on behalf of the council,

and may be varied or discharged in the same manner.

118 Council may compound

A council may compound with a person:

(a) who has entered into a contract with the council;

(b) by whom an action or proceeding has been brought or is threatened to be brought; or

(c) against whom an action or proceeding has been brought or is contemplated by the council,

for an amount of money or other consideration, as the council thinks proper.

119 Members and officers, &c., of council may enter land, &c., for certain purposes

(1) The members, authorised persons and officers or employees of a council may, at all reasonable hours between sunrise and sunset, enter any land or building within its area for the purpose of making an inspection or for carrying out any work required or authorised to be done under this Act.

(2) Except with the consent of a person who is in actual occupation of land or a building, the authority conferred under this section is not exercisable in respect of land or a building which is in actual occupation unless at least 24 hours notice in writing is given by the clerk to the occupant.

Division 2 Functions

120 Councils charged with peace, order and good government of area

A council, in the performance of its functions, is charged with the peace, order and good government of its council area and has the control and management of that good government.

121 Functions of municipal councils

(1) A municipal council has the functions given to it by or under this or another Act.

(2) In relation to the functions of local government specified in Schedule 2, the Administrator shall, as soon as practicable after a municipality is constituted under section 29, by notice in the *Gazette*, declare that the council of the municipality has:

(a) only those functions of local government specified in the notice; or

(b) all the functions of local government other than those specified in the notice,

and, subject to subsection (3), the council has those functions accordingly.

(3) A function of local government referred to in subsection (2) may be subject to such conditions, if any, as the Administrator thinks fit and specifies in the notice under that subsection.

(4) A notice under subsection (2) may, by notice in the *Gazette*, be amended, extended or repealed by the Minister.

122 Functions of community government councils

(1) A community government council has the functions given to it by or under this or another Act or its scheme.

(2) A community government council, in the exercise of its powers and the performance of its functions under this Act, is subject to any provision to the contrary in its scheme.

(3) A community government council may, for the purpose of performing its functions, raise revenue:

(a) by charging for work done and for services, facilities, amenities and utilities provided; and

(b) where rates are not levied on residential units, by imposing, in accordance with the Regulations, a charge on persons ordinarily resident in the council area who have attained 18 years of age, whether the council provides a service to the person or not and whether the person uses a service provided or not.

(4) Where, under section 98, a scheme or a council by resolution provides for rates and charges, the rates or charges may be declared by the council:

(a) where they relate to a service provided by the council, to apply to a person whether the person uses the service provided or not;

(b) to apply in relation to a period that commenced before the date on which the rate or charge is declared; and

(c) to apply at different rates or amounts for different persons or classes of persons.

(5) Where rates or charges are declared under subsection (4), the provisions of this Act under Part 4 relating to the levying and collection of rates and charges shall, with any necessary changes, apply to and in relation to the rates and charges declared to the extent that they are capable of doing so.

123 Performance of function, &c., on behalf of Territory

The Territory may enter into an arrangement with a council for the performance or exercise within its council area by the council, on behalf of the Territory, of a function or power under a law of the Territory, not being a function or power imposed or granted under this Act or a by-law of the council, and the council may perform that function or exercise that power within the council area as if the

function or power was imposed or given by this Act.

124 Function performed outside council area

Where a council proposes to perform a function outside its council area (including the exercise of a power for the purposes of performing a function), it may apply to the Minister for consent, and if the Minister is satisfied that:

(a) the proposed performance is not detrimental to the council area or Territory; and

(b) in the case of the proposed performance within another council area, the council of the other area has consented to the performance,

the Minister may consent to the proposed performance, and the council may perform that function accordingly.

125 Members, &c., to act only in relation to functions of council

The members and officers or employees of a council shall exercise their powers and perform their functions only in relation to the powers and functions which their council has by or under this or another Act or a scheme.

126 Council shall act as trustees of cemetery

(1) A public cemetery situated within the boundaries of a council area is vested in the council.

(2) A council in which a public cemetery is vested has, in addition to the power to make by-laws under this Act, the powers and authorities of a Board of Trustees appointed under the *Cemeteries Act*.

127 Council's powers under *Places of Public Entertainment Act*

In the application of the *Places of Public Entertainment Act* within a council area, a reference to the Minister shall be read as a reference to the council of that area.

128 Minister may extend animal control, &c., powers

(1) The Minister may, by notice in the *Gazette*, declare a person or body who or which, in the Minister's opinion, has in any part of the Territory responsibility for, or performs or is capable of performing, relevant functions of a local government nature to be a person to whom or body to which this section applies in relation to a specified area of the Territory not being a council area.

(2) On a person or body being declared under subsection (1), that person or body has the functions of a municipal council in relation to Animal Control and Animal Impounding in the specified area of the Territory and, in relation to those functions, has the same by-law making and enforcement powers (and this Act, with the necessary changes, applies to and in relation to the person or body for that purpose and any by-laws so made) as a municipal council has in relation to its municipality.

Division 3 Council property

129 Property

(1) A council may:

(a) purchase or otherwise acquire real or personal property for the public benefit of its council area and for the purpose of performing its functions;

(b) accept a gift, conveyance or assignment of real or personal property for a charitable or public purpose and hold that property on trust, or for a purpose, declared by the donor;

(c) accept a gift, conveyance or assignment of real or personal property absolutely without any limitations as to trusts or otherwise; and

(d) accept a gift, conveyance or assignment of real or personal property subject to conditions, other than conditions relating to religious worship.

(2) A council may lease, manage and improve real or personal property acquired by, held in trust for or by, or placed under the care, control or management of, the council, but:

(a) where property is held in trust by the council or is placed under its care, control or management for a purpose, it shall be dealt with in a manner consistent with the trust or purpose; and

(b) the council shall not grant a lease of that property for a term exceeding 50 years.

(3) A council may sell or exchange real or personal property acquired by it except where the sale or exchange is inconsistent with a trust under, or a purpose for which the property was acquired.

(4) Notwithstanding subsection (3), a council shall not, without the prior consent in writing of the Minister, sell or exchange real or personal

property acquired by it by grant or gift by the Territory or with the assistance of a monetary grant or subsidy from the Territory specifically for the purposes of the acquisition.

(5) A consent under subsection (4) may be given:

(a) whether or not the sale or exchange to which it relates is inconsistent with a trust under, or a purpose for which the property was acquired by a council; and

(b) subject to such conditions as the Minister thinks fit, including a condition that, where the property is sold or exchanged within 15 years after its acquisition the council will remit to the Territory such amount as the Minister may specify, being an amount of no more than 50% of any net proceeds received from the sale or exchange.

(6) In subsection (4) ***personal property*** does not include an item of personalty having a total value at the time of its sale or exchange of not more than $20,000 or such other amount as the Minister may prescribe by notice in the *Gazette*.

(7) Where there is a reserve within a council area, the Minister may, by notice in the *Gazette*, appoint the council of the area to act as the trustee of that reserve.

(8) A council has, in respect of a reserve for which it is appointed to act as trustee under subsection (7), all the powers, authorities and duties of trustees appointed under section 79 of the *Crown Lands Act*.

(9) Subject to the Regulations and to the approval of the Minister, a council may, for a term not exceeding 50 years, grant a sublease of the whole or a part of a reserve in its council area which has been leased to it.

(10) Subject to the conditions by which a reserve is placed under the care, control or management of a council, the council may deal with such a reserve as if it were the owner of it.

(11) In this section, unless the contrary intention appears, ***reserve*** means a reserve under section 76 of the *Crown Lands Act*.

130 Compulsory acquisition of property

(1) A council may, in respect of land within its council area, apply in the prescribed manner to the Minister administering the *Lands Acquisition Act* to compulsorily acquire the land specified in the application.

(2) Where the Minister administering the *Lands Acquisition Act* acquires land in pursuance of an application by a council under subsection (1), the council shall reimburse the Territory for all costs, including any compensation, paid by the Territory under that Act for or in relation to the acquisition.

Division 4 Roads

131 Control of roads

(1) Notwithstanding any other Act, but subject to this section:

(a) roads vested in a municipal council under section 64 of the *Planning Act*;

(b) roads in respect of which a municipal council accepts or has accepted responsibility for the care, control and management; and

(c) roads within the meaning of paragraph (a)(v) of the definition of ***road*** in section 3,

are, by virtue of this subsection, under the care, control and management of the council and, in respect of roads referred to in paragraph (b), vested in that council.

(2) The Minister may, by notice in the *Gazette*, declare that all or specified roads in a community government area are vested in and are under the care, control and management of the council of the area and, in like manner, the Minister may revoke or amend the notice at any time.

(3) Notwithstanding any other Act, but subject to this section, with effect on and from the publication of a notice under subsection (2) and while the notice is in force, all roads or the roads specified in the notice, as the case may be, are vested in and are under the care, control and management of the community government council specified in the notice.

(4) The Minister may, by notice in the *Gazette*, after consulting with a municipal council or with the community government council of a community government area in respect of which a notice under subsection (2) is in force, declare that a road within the municipality or the community government area is vested in and is under the care, control and management of the Territory.

(5) Notwithstanding a declaration under subsection (4) relating to a road within a municipality or community government area, a by-law made by the municipal council or community government council

relating to the use of roads by persons, with or without a motor vehicle within the meaning of the *Motor Vehicles Act*, applies to and in relation to the road and all persons using it.

(6) A municipal council or community government council may, subject to the Regulations and notwithstanding any right of way that may be registered over the land, open a road on any land within its municipality or community government area:

(a) of which it is the registered proprietor; or

(b) which is acquired in pursuance of an application under section 130 for the purpose of a road.

(7) A municipal council or a community government council may, subject to subsection (8) and the Regulations, temporarily or permanently close a road, or part of a road, which is under the care, control and management of the council.

(8) A municipal council or a community government council shall not permanently close a road or part of a road under subsection (7):

(a) unless it has given written notice to the Minister of its intention to close the road, and the Minister and the Minister responsible for the *Control of Roads Act* (other than Part IV of that Act) consent to the road being closed; or

(b) if the road is the only road access to a parcel of land (whether or not that parcel of land is held in common ownership with another parcel of land which has separate road access).

(9) A municipal council or a community government council may, subject to the Regulations, construct or cause to be constructed a temporary road whilst a road or part of a road which is under the care, control and management of the council is being constructed or repaired.

132 Things growing or erected on, or affixed to, roads

(1) All things growing or erected on or affixed to a road within a municipality or a community government area in respect of which a notice under section 131(2) is in force are the property of, and are under the care, control and management of, the relevant council except for such things as are under the care, control and management of the Commonwealth or Territory or a statutory authority of the Commonwealth or Territory, or are used in connection with a trading undertaking or public utility conducted or maintained by the Commonwealth, Territory or such statutory authority.

(2) Notwithstanding section 131(5) and subsection (1) of this section, a municipal council or community government council shall not erect or affix a sign or post on or near, or mark, a road vested in the Territory, which sign, post or mark relates to the movement of traffic, whether vehicular or pedestrian, without an approval under subsection (3).

(3) For the purpose of subsection (2), the Minister responsible for the administration of the *Traffic Act*, or a person authorised by that Minister to give approvals under this subsection, may approve of a council erecting or affixing a sign or post on or near, or marking, a road vested in the Territory.

133 Fee simple in permanently closed roads

Where a municipal council or community government council permanently closes a road under section 131 and the land on which the road was situated is vested in the Territory, that land, by virtue of this section and with effect on and from the date the road is closed, vests in fee simple in the council.

Division 5 Committees

134 Standing committees

(1) A council may:

(a) establish one or more standing committees of its members for the conduct of council business;

(b) appoint members to, and remove members from, a standing committee; and

(c) subject to subsection (6), delegate such of its powers and functions under this or another Act as it thinks fit to the members constituting a standing committee.

(2) The presiding member shall, by virtue of his or her office, be a member of each standing committee of the council.

(3) At the first meeting of a standing committee the members present shall appoint one of their number to be its chairman, but where the chairman so appointed is not present at a meeting the members present shall appoint another of their number to be the acting chairman.

(4) Subject to subsection (5), meetings of a standing committee shall be held at such times as may be determined by the committee.

(5) The chairman of a standing committee may direct the clerk to summon a meeting of the committee at any time there is committee business to transact and the clerk shall summon that meeting accordingly.

(6) A council shall not delegate to a standing committee the power to declare a rate or to fix a charge or the power to:

(a) borrow money;

(b) enter into contracts; or

(c) incur expenditure,

for an amount or amounts exceeding that or those previously determined by the council.

(7) A decision of a standing committee, other than a decision in relation to a matter delegated by the council to the committee, shall have no effect until approved by the council.

(8) A standing committee may appoint a sub-committee of its members to exercise the powers and discharge the duties of the committee.

135 Management committees

(1) A council may establish a management committee and may appoint such members, officers or employees and other persons as it thinks fit, for the purpose of exercising a power or performing a function of the council.

(2) A council shall appoint a person to be the chairman of a management committee.

(3) Subject to any directions given or restrictions imposed by the council, the provisions of section 134 (other than subsections (1)(a) and (b), (2), (3), (7) and (8)) shall apply in relation to the procedures of a management committee as if it were a standing committee under that section.

136 Advisory committees

(1) A council may establish an advisory committee and may appoint such members, officers or employees and other persons as it thinks fit, for the purpose of advising the council on the exercise of a power or the performance of a function of the council.

(2) A council shall appoint a person to be the chairman of an advisory committee.

(3) Subject to any directions given or restrictions imposed by the council, the provisions of section 134 (other than subsections (1)(a) and (b), (2), (3) and (8)), shall apply in relation to the procedures of an advisory committee as if it were a standing committee under that section.

Division 6 Meetings of electors

137 Meetings of electors

(1) A council may call a meeting of electors for its council area or a ward to consider a matter in relation to, or the management of, the council, council area or ward.

(2) Where a council receives a request signed by not less than 10% of the electors of the council area or a ward, it shall fix a day, being not earlier than 14 days or later than 28 days after receipt of the request, on which a meeting of electors shall be held.

(3) The clerk shall, in either:

(a) a newspaper circulating in the council area; or

(b) where, in the opinion of the clerk, notice published in such a newspaper would not give sufficient notice, any other publication circulating in that area which the clerk considers would give sufficient notice,

give notice of a meeting under subsection (2) by specifying the date (being not earlier than 7 clear days after the date on which the newspaper or other publication was published), time and place in the council area where the meeting will be held and the purpose for which it has been requested.

138 Chairman of meeting of electors

The chairman of meetings of electors shall be the presiding member of the council, or that member's deputy, or in the absence of both, a member appointed by the council.

139 Voting at meeting of electors

(1) An elector for a council area or ward at a meeting under this section shall be entitled to one vote on each motion put to the meeting, and voting shall be by show of hands.

(2) The decision of the chairman as to whether a person is an elector for the council area or ward is final.

140 Proceedings at meeting of electors

Subject to section 139, the procedure to be followed at a meeting of electors shall be as prescribed or, in the absence of a prescribed procedure, as the chairman thinks fit.

141 Council to consider resolutions

A council shall, not later than the next ordinary meeting after a meeting of electors, consider each resolution passed at the meeting of electors but is not bound by the resolutions.

Division 7 Officers and employees of councils

142 Clerk

(1) A council shall appoint a person who:

(a) has attained the age of 18 years; and

(b) holds prescribed qualifications or whose appointment is approved by the Minister,

to be the clerk of the council.

(2) The clerk is the chief executive officer of the council and is responsible to it for:

(a) the control and direction of officers and employees of the council;

(b) giving effect to this and all other Acts in relation to duties imposed on the council;

(c) implementing the council's policy and decisions; and

(d) the carrying out of such other functions as are imposed on the clerk by the council.

(3) Where a council has appointed a clerk it may appoint a person who is qualified or is approved by the Minister under subsection (1) to be appointed as a clerk, to be the deputy clerk of the council.

(4) In the event of illness or absence of the clerk from duty, or while there is a vacancy in the office of clerk, the deputy clerk shall be the acting clerk and may exercise the powers and shall perform the functions of the clerk.

(5) Where there is no deputy clerk or a deputy clerk is not available to be the acting clerk during the period of an illness or during which the clerk is absent from duty or the office is vacant, the council shall appoint a person to be the acting clerk for that period.

143 Other officers or employees

(1) A council may appoint such persons as officers or employees of the council as it thinks necessary for the exercise of its powers or performance of its functions by or under this or another Act.

(2) A person appointed under subsection (1) may hold more than one office in the service of the council.

144 Delegations by council to officers, &c.

(1) A council may, by instrument in writing, delegate to an officer or employee, whether by name or by reference to an office, designation or position, any of its powers and functions by or under this or another Act, other than this power of delegation or the power to:

(a) levy, make or fix rates, valuations, charges, fees, fares, dues or rents;

(b) borrow money;

(c) approve an expenditure of money on the works, services or operations of the council not set out in a budget approved by the council;

(d) determine allowances;

(e) make an application, under this Act, to the Administrator or Minister; or

(f) do other prescribed things.

(2) A power or function delegated under this section by a council, when exercised or performed by the delegate, shall for the purpose of this Act be deemed to have been exercised or performed by the council.

(3) A delegation under this section does not prevent the exercise of a power or performance of a function by the council.

(4) The clerk shall cause a register of delegations under this section to be opened and maintained.

145 Interests of officers and employees

(1) An officer or employee of a council who has an interest in a matter in relation to which he or she is required or authorised to act or exercise a delegated authority in the course of their employment:

(a) shall disclose the interest to the council; and

(b) shall not, unless the council otherwise determines, act or exercise the authority in relation to that matter.

(2) In determining whether an officer or employee has an interest for the purposes of subsection (1), section 20(2) and (3), with the necessary changes, apply.

(3) An officer or employee shall not make improper use of information acquired by virtue of his or her position as an officer or employee, or make improper use of that position, which might lead to gaining, directly or indirectly, an advantage for himself, herself or for another person or cause detriment to the council.

(4) A person who contravenes or fails to comply with subsection (1) or (3) is guilty of an offence.

Penalty: $10,000.

(5) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that he or she was unaware of his or her interest in the matter.

(6) A finding of guilt for an offence against subsection (4) shall not prejudice other remedies available to the council in relation to the matter out of which the finding of guilt arose.

146 Fidelity insurance

A council shall, in relation to an officer or employee having the custody or control of money or other property of the council, take out and maintain a contract of insurance for the fidelity of that officer or employee in relation to that money or other property.

147 Portability of long service leave

(1) Where an officer or employee leaves the service of one council and, within the period of 3 months after leaving without taking up other paid employment during that period, enters the service of another council, any entitlement to long service leave that has accrued with the first council shall accompany and be available to the officer or employee following that entry to the service of the second council.

(2) Any amount in the Long Service Leave Provision (as established under section 168) of a council relating to an officer or employee shall, as soon as practicable after the officer or employee has entered the service of another council, be transferred to the Long Service Leave Provision of that other council.

(3) Any amount transferred under subsection (2) which is no longer required for the purpose for which it was transferred shall be refunded to the council which transferred it which, if the refund consists partly of an amount originally transferred under this section to the Long Service Leave Provision of that council, shall refund that amount to the council that originally transferred it.

148 Suspension or dismissal of officers or employees

Subject to the terms of a contract with, or an award relevant to, an officer or employee, the council may suspend or dismiss the officer or employee.

Division 8 Administration

149 Access to information

(1) Any person is entitled, when a council office is open to the public, to inspect the current version of the following documents free of charge at the office:

(a) annual financial statement and annual report;

(b) auditor's report;

(c) the council's policy concerning the payment of expenses incurred by, and the provision of facilities to, members;

(d) rate book;

(e) register of interests;

(f) agendas for council meetings (but not any associated recommendations or reports); and

(g) in the case of a municipal council, the minutes and material specified in section 57(3), and, in the case of a community government council, the record of its proceedings together with any recommendations and reports referred to in the record which are not prescribed as confidential.

(2) A person is also entitled to inspect free of charge:

(a) a document that was replaced by a current document referred to in subsection (1); and

(b) if a document referred to in subsection (1) is produced annually – the corresponding document produced for the previous year.

(3) The council shall provide a copy of a document (either free of charge or on payment of a fee determined by the council) upon the request of any person.

(4) This section does not prevent the council from allowing the inspection free of charge of any other of its documents.

(5) Any person may, on payment of a fee determined by the council, obtain a copy of or an extract from a document, certified by the clerk, or an officer or employee authorised in writing by the clerk, to be a true copy.

150 Referendum or survey by council

A council may, for its information and guidance on a matter under this or any other Act, cause the matter to be referred to its electors by referendum or by a survey of opinion to be taken from electors, in such manner as the council thinks fit.

151 Fees payable under other Acts, &c.

Where:

(a) it is provided by a law of the Territory that a function or power under that law may be performed or exercised by a council; or

(b) the Territory enters into an arrangement for the council to perform or exercise such a function or power within its council area,

all fees payable by a person under that law in respect of the performance of that function or exercise of that power are payable to the council and may be recovered by the council as a debt due and payable to it.

152 Advice and proposals

A council may, whether or not the Minister or some other person holding office under an Act has so requested, advise the Minister or that person upon a matter relating to that control, management, government of, or welfare of the persons in, the council area and

may, in relation to the advice, prepare and send to the Minister or that person proposals for the implementation or amendment of a law of the Territory relating to the affairs of the council or its area.

Division 9 Financial administration

153 Financial accounts

(1) A council shall establish and keep, or cause to be kept, in the prescribed manner, accounts of its income, expenditure, assets and liabilities.

(2) This Act applies to the accounts of a council in relation to a reserve under section 76 of the *Crown Lands Act*, a cemetery within the meaning of the *Cemeteries Act*, or other land vested in the council.

154 Income

The income of a council comprises all money received or receivable by it, including fees and commissions paid to it as an agent and money received by it for and on behalf of another person or organisation or for and on behalf of an Agency.

155 Expenditure

A council may expend money for a purpose authorised by or under this or another Act and in accordance with its adopted estimates.

156 Allocation of income and expenditure

A council shall allocate its income and expenditure to the respective functions to which the income or expenditure relates.

157 Council funds

A council shall establish or cause to be established:

(a) a general fund; and

(b) a trust fund.

158 General fund

The income of a council relating to its general fund consists of all money and property received or receivable by it other than money required to be held in the trust fund.

159 Trust fund

(1) The trust fund of a council shall consist of the trust accounts established under this or another Act or as accounts forming part of the trust fund.

(2) A council may:

(a) open a trust account to form part of the trust fund and specify the purpose for which the account is opened; or

(b) close a trust account, not being a trust account authorised or required by or under this or another Act to be opened or kept.

(3) A council shall credit to each account of a trust fund:

(a) money granted by the Territory to the council on the condition that it shall be used for a specified purpose;

(b) money, which may include money received from a local rate or special rate, received by the council to be used for a specified purpose;

(c) money, and money received as income from property, held by the council by way of deposit or in trust for a person; and

(d) money given or bequeathed, and money received as income from property assigned, conveyed, bequeathed or devised to the council in trust for a charitable or public purpose.

160 Expenditure from trust fund

(1) No person shall withdraw money from an account of the trust fund except for the purpose for which the account is established or for another purpose authorised by or under this or another Act.

(2) Subject to this or another Act, where a council is satisfied at any time that there is available in a trust account a credit balance in excess of the amount reasonably required for the purposes of the account, it may direct that the whole or a part of that excess be transferred from the trust account to the general fund.

161 Bank account

(1) Except as otherwise provided by or under this or another Act, a council's money shall be kept, as prescribed, at the Territory Insurance Office or a bank, building society or credit union.

(2) A person shall not, except with the authority of the council, open an account with Territory Insurance Office or a bank, building society or credit union for the deposit or withdrawal of the council's money.

162 Estimates

(1) A clerk shall, before the declaration of a rate or charge under this Act in respect of a financial year, cause to be prepared and submitted to the council estimates of income and expenditure for that financial year.

(2) Subject to such variation as it thinks fit, estimates under subsection (1) shall be adopted by resolution of the council by 31 July of each financial year, or such later date as the Minister allows, and published as prescribed.

(3) Adopted estimates may, by resolution, be amended by the council from time to time.

163 Council should not budget for deficit

In adopting estimates a council shall ensure that, as far as practicable, the estimated expenditure does not exceed the estimated income.

164 Statements of income and expenditure

At the prescribed times in each year, a clerk shall cause to be prepared and submitted to the council a statement comparing the actual income and expenditure of the council with the estimated income and expenditure.

165 Annual financial statement and annual report

A council shall cause to be prepared, in the prescribed manner, an annual financial statement relating to the income, expenditure, assets and liabilities of the council and an annual report relating to the operations of the council during the preceding financial year.

166 Investment of surplus money

Where a council has money surplus to its immediate requirements, it may, as it thinks fit, invest that money in prescribed securities or investments.

167 Reserves or provisions

A council may expend income of the council by providing financial reserve or provision accounts for a purpose authorised by or under this Act.

168 Long service leave provision

A council shall, unless otherwise approved by the Minister, for the purpose of complying with the requirements of the *Long Service Leave Act* applicable to it, establish and maintain a provision account, to be known as the "Long Service Leave Provision", so that the amount in that account is, on 30 June of each year, not less than the amount that is necessary to comply with those requirements as on that date.

169 Loan repayment reserve

(1) Where the principal and interest on a loan to a council are not repayable by periodic instalments of principal and interest during the term of the loan, the council shall establish and maintain a reserve account for the repayment of the loan.

(2) Where a council has, under subsection (1), established and maintained a loan repayment reserve account and, after the loan has been repaid a credit balance remains in the reserve account, the council shall transfer that balance to the general fund in relation to which the reserve account was established and maintained.

170 Borrowings and overdraft

(1) For the purpose of performing a function under this or another Act, a council may borrow money on the security of its income.

(2) A council shall not borrow money under subsection (1) without first obtaining the written consent of the Minister.

(3) Subject to subsection (4), for the purposes of its temporary accommodation a council may obtain advances from a bank, building society or credit union, by overdraft, on the security of its income.

(4) A council shall not obtain an advance under subsection (3) where the total amount of the overdraft exceeds one-half of its income.

(5) For the purposes of this section, the auditor for a council shall certify, in the prescribed form, the overdraft limit for the council.

171 Use of loan money restricted

(1) Where a council raises money by borrowing, the money from the loan shall not be used except:

(a) for a purpose for which the loan was raised;

(b) where the council, in anticipation of raising a loan for a specific purpose, used money from its income – to recoup its income to repay the principal amount of the loan;

(c) where the Minister has, under subsection (2), approved the use of the money for a purpose other than for the purpose for which it was borrowed – for that other purpose in accordance with the Minister's approval.

(2) The Minister may, in writing, approve the use of loan money for a purpose other than for the purpose for which the money was borrowed.

172 Renewal loan

Notwithstanding section 170(1), a council may raise a renewal loan for the purpose of repaying the balance outstanding on an existing loan.

173 Sale of assets purchased from loan

Where a loan was raised by a council to obtain an asset and the loan has not been repaid when the asset is sold, the council shall first apply the proceeds of the sale to the repayment of the loan.

174 Council may issue debentures, &c., as security

(1) A council may, in the prescribed form, issue debentures or grant mortgages for the purpose of securing the repayment of the principal and interest of money borrowed under this Act.

(2) A debenture issued or a mortgage granted under subsection (1) by a council:

(a) shall be under the common seal of the council; and

(b) shall, subject to subsection (3) and the Corporations Law, have priority as against other debentures, bonds or mortgages according to its date of execution.

(3) Debentures under subsection (1), by which a particular loan is raised, rank equally with each other.

175 Territory grants and subsidies

(1) The Minister may withhold from a council money payable by way of a subsidy or grant by the Territory until satisfied that the council has:

(a) discharged a duty imposed on it by or under this or another Act; or

(b) fulfilled conditions imposed on it by the Minister in relation to a previous subsidy or grant.

(2) Where the Minister is satisfied that an amount of money paid by the Territory to a council by way of a subsidy or grant is not able to be accounted for or has not been applied to its intended purpose, the Minister may, in addition to any action he or she takes under subsection (1), by written notice served on the council charge the council with the re-payment of an amount of money (being not more than the first-mentioned amount of money) which, if not repaid to the Territory within 6 months after the date of the notice or such other period as determined by the Minister, shall be a debt due and payable by the council to the Territory.

176 Unclaimed deposit or trust money or property

Where a council holds money or property by way of a deposit or in trust for a person, it shall pay the money or transfer the property to or on behalf of the person in accordance with any directions or the terms of the trust but, if money has remained in the trust account for more than 10 years, the council may, in pursuance of section 44 of the *Trustee Act*, pay the money into the Supreme Court.

Division 10 Auditor and audits

177 Auditors

(1) A council shall, in November in each alternate year, appoint an auditor and determine the auditor's fee.

(2) A council's auditor may be:

(a) the Auditor-General;

(b) an individual who is a registered company auditor;

(c) a partnership whose members or employees include a registered company auditor; or

(d) a corporation whose employees include a registered company auditor.

(3) If the council's auditor is a partnership, any member or employee of the partnership may act as the council's auditor as long as he or she is a registered company auditor.

(4) If the council's auditor is a corporation, any employee of the corporation may act as the council's auditor as long as he or she is a registered company auditor.

(5) A council's auditor, if otherwise qualified, is eligible for re-appointment.

(6) In this section, ***registered company auditor*** has the same meaning as it has in the Corporations Law.

178 Persons disqualified as auditors

(1) A person may not be appointed as a council's auditor:

(a) in the case of an individual, if he or she is a disqualified person;

(b) in the case of a partnership, if any member or employee of the partnership is a disqualified person; or

(c) in the case of a corporation, if the corporation or any employee of the corporation is a disqualified person.

(2) In this section, ***disqualified person*** means a person:

(a) who is a member or an officer or employee of the council;

(b) who is in debt to the council otherwise than for rates or charges owed by the person as a ratepayer;

(c) who has a contractual arrangement with the council that (if the person were the council's auditor) might reasonably be seen to give rise to a conflict between the person's duties as an auditor and the person's interests under the arrangement; or

(d) holds an office of profit under, or at the disposal of, the council other than as auditor.

(3) A person appointed as a council's auditor is disqualified from continuing to hold that office if the person:

(a) becomes a disqualified person;

(b) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and*

Related Services Act, he or she has become incapable of performing his or duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment;

(c) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(d) is found guilty of a crime or is sentenced to a term of imprisonment for not less than 12 months for an offence against a law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth; or

(e) fails to comply with a prescribed requirement.

179 Vacancy

(1) At the first meeting of the council after the clerk has become aware that the council's auditor:

(a) is disqualified under section 178(3) from continuing to hold office;

(b) has resigned by notice in writing addressed to the council; or

(c) has died,

the clerk shall inform the council of that fact, and the council shall declare the office of auditor to be then vacant.

(2) The office of auditor also becomes vacant when the term for which the auditor was appointed expires.

(3) A council shall appoint another auditor within 28 days after the date of a vacancy occurring in that office.

(4) A person appointed to fill an office declared vacant under subsection (1) holds office for the remainder of the term for which the auditor, in whose stead the person is appointed, was appointed.

180 Minister may appoint auditor in certain circumstances

(1) Where a council fails or is unable to appoint an auditor in accordance with this Act the Minister may, by notice in the *Gazette*, appoint the auditor.

(2) An auditor appointed under this section shall:

(a) subject to this Act, hold office for the period specified in the notice; and

(b) be paid by the council such fees and allowances as are fixed by the Minister.

181 Powers and duties of auditor

(1) An auditor:

(a) shall, at least once in each financial year, and at such other times as are, in the auditor's opinion, necessary to satisfy any prescribed requirements, audit the accounts and records of the council and report to the council in relation to each audit;

(b) shall certify, in the prescribed form, the amount which the council may borrow by way of overdraft under section 170; and

(c) may, at the request of the council, perform additional audits, as specified in the request.

(2) When exercising the functions conferred on a council's auditor by this Part, a council's auditor is entitled at all reasonable times to full and free access to the council's accounting records and other records necessary in order to carry out the auditor's functions and may direct a member, the clerk, or any other officer or employee of the council:

(a) to produce to the auditor any document relating to those records that is in that person's custody or under that person's control;

(b) to grant to the auditor such authorities as may be necessary to enable the auditor to gain access to any document relating to those records that is in the custody or control of the Territory Insurance Office or any bank, building society, credit union or other person; or

(c) to answer any question,

being a document or question that, in the opinion of the auditor, is relevant to the carrying out of the auditor's functions.

Penalty: $2,000.

(3) An auditor may make copies of or take extracts from any document to which the auditor gains access under this section.

(4) Where an auditor is satisfied that:

(a) there has been a breach or non-observance of this Act or the Regulations; and

(b) the circumstances are such that, in the auditor's opinion, the matter has not been or will not be adequately dealt with by comment in a report on the accounts or by bringing the matter to the notice of the council,

the auditor shall, as soon as practicable, in writing, report the matter to the Minister and provide a copy of the report to the council.

(5) Where an auditor reports a matter to the Minister under subsection (4), the auditor may recommend in the report action to be taken by the council to remedy the breach or non-observance concerned.

(6) Where a council receives a copy of a report to the Minister from an auditor under subsection (4):

(a) the clerk shall ensure that the report is laid before the council at the ordinary meeting of the council next occurring after receipt of the report;

(b) the council shall, as soon as practicable, advise the Minister and the auditor of the action it proposes to take to remedy the breach or non-observance, including the means it proposes to implement the recommendations of the auditor (if any) made in the report; and

(c) the council shall, not later than 2 months after the meeting referred to in paragraph (a), commence taking appropriate remedial action in respect of the matter the subject of the report, including the carrying out of the recommendations (if any) made by the auditor in the report.

(7) Where the Minister is, on reasonable grounds, not satisfied with the action taken by a council to remedy a breach or non-observance the subject of a report made by an auditor, including the progress made by the council in so doing, the Minister may, by notice served on the council, direct the council to take such remedial action as the Minister considers appropriate, and specifies in the direction, within the period specified in the direction.

(8) Each member of a council which fails to comply with a direction of the Minister under subsection (7) is guilty of an offence.

Penalty: $5,000.

(9) It is a defence to a prosecution for an offence against subsection (8) if the member did not intend that the offence be committed and took all reasonable steps to endeavour to have the council comply with the direction of the Minister.

Division 11 Minister may require compliance

181A Minister may require compliance

(1) Notwithstanding any other provision under this Act, where the Minister suspects on reasonable grounds that:

(a) a council has failed to comply with a provision under this Act; or

(b) there is an irregularity in the affairs of a council,

the Minister may, by notice served on the council, direct the council to take the action specified in the notice, within the period specified in the notice, for the purpose of complying with the provision under the Act or remedying the irregularity.

(2) Where a notice is served on a council under subsection (1), the council:

(a) may, within the period specified in the notice for the purpose of making submissions, make submissions to the Minister in respect of the matter the subject of the notice; or

(b) shall comply with the direction in the notice.

(3) Where submissions are made to the Minister under subsection (2)(a), the Minister shall, having considered the submissions, decide whether or not he or she continues to require the council to take action (and if so what action) for the purpose of complying with the provision contravened or remedying the irregularity and serve a further notice on the council advising the council of his or her decision and, if relevant, directing the council to take action as specified in that notice, within the period specified in that notice.

(4) The council shall comply with a notice served on it under subsection (3).

(5) Each member of a council which fails to comply with a notice served on it under this section is guilty of an offence.

Penalty: $5,000.

(6) It is a defence to a prosecution for an offence against subsection (5) if the member did not intend that the offence be committed and took all reasonable steps to endeavour to have the council comply with the direction of the Minister.

Part 7 Regulatory

Division 1 By-laws

182 Power to make by-laws

(1) A council may make by-laws, not inconsistent with this Act, the Regulations, another Act or, subject to subsection (2), regulations other than regulations under this Act, for or in relation to the performance of a function vested in it and which may be made to apply to the whole, or separately to a part or parts of, its council area.

(2) A community government council may also make by-laws:

(a) for or in relation to the sale, purchase, possession, presence and consumption of liquor within the meaning of the *Liquor Act*, but only after it has advised the Liquor Commission of its intention to make the by-laws and their proposed contents; and

(b) for or in relation to the sale, purchase, possession, display, hire, presence and use of firearms or other offensive weapons, but only after it has advised the Commissioner of Police of its intention to make the by-laws and their proposed contents.

183 Proposed by-laws inconsistent with regulation under other Act

(1) Where a council proposes to make by-laws which are inconsistent with a regulation, other than a regulation under this Act:

(a) the council may apply to the Minister to suspend the application of the regulation within the council area; and

(b) after consultation with the Minister responsible for the administration of the Act under which the regulation is made, the Minister may, by notice in the *Gazette*, suspend the application of that regulation within the council area.

(2) Where, under subsection (1)(b), the Minister suspends the application of a regulation:

(a) the council may, under section 182(1), make by-laws notwithstanding that those by-laws are inconsistent with that regulation; and

(b) the suspension comes into operation immediately before the by-laws take effect and the regulation does not apply to or in relation to the council area, the council or persons within the council area to the extent of the terms of the suspension.

184 Making by-laws

(1) By-laws made under this Part may be expressed to bind the Crown in right of the Territory, but no such by-laws shall bind the Crown before the expiration of 12 sitting days of the Legislative Assembly after they have been laid before the Assembly in accordance with section 63(3)(c) of the *Interpretation Act* and, if no later date for the commencement of the By-laws is provided for in the By-laws, they shall bind the Crown on the day immediately following that expiration as if, for the purposes of section 63(3)(b) of the *Interpretation Act*, that date was expressly provided for in the By-laws as the date of commencement.

(2) Where By-laws (***Amending By-laws***) propose, with or without other amendments, the amending of other By-laws (***Principal By-laws***) so that the Principal By-laws as amended purport in whole or in part to bind the Crown in right of the Territory, subsection (1) applies to those Amending By-laws as if they were themselves expressed to bind the Crown in right of the Territory and:

(a) a copy of the Principal By-laws shall also be laid before the Assembly with the amending By-laws as if section 63(3)(c) of the *Interpretation Act* so required; and

(b) the Principal By-laws as amended by the amending By-laws shall bind the Crown in right of the Territory, according to their tenor, on the commencement of the relevant provision of the Amending By-laws.

(3) Subject to subsection (4), by-laws shall be made by a council at a meeting at which not less than two-thirds of the members then in office are present, by resolution carried by a majority of the members then in office.

(4) By-laws shall not be made by a council unless the council has obtained from the person occupying the Public Sector designation "Parliamentary Counsel", or a person authorised by that person, a certification that the proposed By-laws when made will, in the

opinion of the person giving the certificate, be within the powers of the council to so make them.

(5) The common seal of a council shall be affixed to by-laws made by it.

185 Model provisions for by-laws

(1) The Minister may approve a set of model provisions for by-laws and cause notice of the approval to be published in the *Gazette*.

(2) A by-law may adopt by reference the whole or any part of a set of model provisions of which notice of approval has been published under subsection (1).

(3) The repeal of a model by-law approved under subsection (1) does not affect its operation if it had been adopted by a council before repeal.

185A Court may order destruction of animal

(1) The Local Court may, on the application of an authorised person, order the seizure or destruction of an animal in circumstances provided for in a by-law of a kind referred to in section 186.

(2) Where a by-law creates an offence which relates to an animal, the Court of Summary Jurisdiction may order the destruction of that animal in addition to or instead of the penalty prescribed for the failure to comply with or the contravention of the by-law.

186 By-laws relating to animal control

Without limiting the generality of section 182(1), the power of a council to make by-laws in relation to the performance of a function specified, for a municipal council, as Animal Control or Animal Impounding in Schedule 2 and, for a community government council as a similar function in the community government scheme, extends to the making of by-laws providing for:

(a) the seizure of an apparently diseased, injured, savage, destructive, stray or unregistered animal or an animal at large; and

(b) the destruction of a diseased, injured, savage, destructive, unclaimed, unregistered or unwanted animal,

by or under the authority of an authorised person.

186A Registration of non-resident dogs

(1) Notwithstanding sections 182 and 186, a council shall not make a by-law requiring the registration of a dog that is not usually kept within its council area, and a by-law relating to the registration of dogs, expressed in general terms, shall be construed accordingly.

(2) For the purposes of subsection (1), a dog shall be taken to be usually kept within a council area if it has been usually kept within the council area for a period of not less than 3 months.

187 By-laws relating to fees, &c., licences, &c.

By-laws may prescribe or provide that a council may by resolution regulate or determine:

(a) charges, dues, fares, fees and rents in relation to a property, undertaking, service, matter or thing; and

(b) the purposes for which and the conditions on which a council will grant permits, licences, authorities and registrations or perform or supply a service, product or commodity or an item of information.

188 By-laws relating to works

(1) By-laws may:

(a) require work to be executed or a thing to be done by a person to whom the by-laws apply in or of such materials, within such periods, or in such manner as is directed by the council, an officer or employee of the council or any other person referred to in the by-laws;

(b) require work to be executed only by qualified or licensed persons; and

(c) provide that the council may carry out work required by or under this Act to be executed, on default by the person required to execute the work.

(2) Without limiting the generality of subsection (1), the power to direct the manner of execution of work shall include the power to require the person carrying out the work to pay to the council, or enter into a bond for payment to the council of, such amount as it thinks fit to provide security against costs which it may incur as a result of the execution of the work.

189 By-laws may provide for matters of evidence and burden of proof

By-laws may prescribe as to matters that shall be received in evidence and as to the burden of proof in relation to offences against the By-laws.

190 By-laws may provide for prohibition, &c.

By-laws may provide for matters of prohibition, restraint or regulation, either absolutely or in relation to classes, grades, situations, distances or other acts, matters or things to be laid down or referred to in general terms, and whether or not a right of approval, disapproval or inspection is vested in a council, an authorised person or an officer or employee of the council.

191 By-laws may provide for enforcement

By-laws may authorise officers or employees of a council or persons appointed by a council for the purpose or, without derogating from their general power, members of the Police Force, to arrest or remove persons offending against a by-law.

192 By-laws may create regulatory offences

(1) By-laws may designate an offence against the by-laws to be a regulatory offence.

(2) It is a defence to a prosecution for a regulatory offence under subsection (1) if the defendant proves, on the balance of probabilities, that:

(a) any contravention or failure to comply constituting the offence occurred:

(i) in an emergency and was necessary to preserve life or prevent injury or protect property; or

(ii) due to the unforeseen and unsolicited intervening act of another party or to overwhelming natural forces such as lightning, tempest, flood or earthquake; or

(b) the defendant did not intend to commit the offence, and that:

(i) where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or

(ii) where it is alleged that anything prohibited was done, the defendant took all reasonable steps to ensure that it was not done.

193 Penalties

(1) By-laws may prescribe penalties, not exceeding $3,000 or imprisonment for 6 months, for a failure to comply with, or a contravention of, the By-laws and, in addition, may prescribe a penalty, not exceeding $100, for each day during which the failure to comply or contravention continues.

(2) Where no penalty is expressly prescribed in the By-laws for a failure to comply with, or a contravention of, the By-laws, a court of competent jurisdiction may impose a penalty not exceeding $2,000 or imprisonment for 3 months in relation to the failure or contravention.

194 Infringement offences and notices

(1) In this section ***fixed penalty*** means the specified sum referred to in subsection (2) payable in lieu of the penalty which may otherwise be imposed for an offence against a by-law.

(2) Subject to this section, by-laws may provide that a person who is alleged to have infringed those by-laws and on whom a notice of infringement has been served may pay to the council, as an alternative to prosecution, a specified sum, in lieu of the penalty by which an infringement of those by-laws is otherwise punishable.

(3) By-laws which provide for the imposition of a fixed penalty shall specify:

(a) the amount of the fixed penalty;

(b) subject to subsection (4), the form of an infringement notice;

(c) the person or persons who may issue an infringement notice;

(d) the person to whom payment of the fixed penalty may be made; and

(e) the period within which the fixed penalty shall be paid in order to avoid prosecution.

(4) An infringement notice shall indicate:

(a) the name of the alleged offender;

(b) in general terms the nature of the offence alleged to have been committed;

(c) the date, time and place of the alleged offence;

(d) the amount of the fixed penalty;

(e) the period within which, and the place where, the fixed penalty may be paid; and

(f) that the alleged offender may, if he or she so wishes, be dealt with by a court of competent jurisdiction.

195 By-laws in relation to offences concerning motor vehicles

(1) Where by-laws create an offence concerning a motor vehicle, the by-laws may provide that, in relation to the offence:

(a) the owner of a vehicle shall be deemed to have committed the offence;

(b) a notice of infringement issued may, notwithstanding section 194(4)(a), be addressed to the person who is the owner of the vehicle or is apparently in charge of it by the person's name or, if the name is not known when the notice of infringement is being made out, by the person's designation as owner of the vehicle or person apparently in charge of it, as the case may be, identifying the vehicle by its number plate or, where there is no number plate, by other sufficient description; and

(c) evidence that:

(i) the name and address of a person were shown painted on or affixed to the outside of a vehicle; or

(ii) the name and address of a person purporting to be the name and address of the registered owner of a vehicle were shown in any manner in or upon that vehicle,

is evidence that the person whose name and address were so shown was at the time they were shown the owner of that vehicle.

(2) By-laws under subsection (1) may also provide that the owner of a vehicle shall not be deemed to have committed an offence if the owner was not in control of the vehicle at the time the offence was committed and:

(a) not later than 14 days after the day on which an infringement notice is served in relation to the offence the owner furnished to the clerk a statutory declaration in which are stated facts which prove to the satisfaction of the clerk:

(i) that some other person was in control of the vehicle at the time when the offence was committed and that the name and address of residence of that other person are as set out in the statutory declaration;

(ii) that the vehicle was sold before the offence was committed and that the sale was made on the date specified in the statutory declaration to a person whose name and address are as set out in the statutory declaration and, if the sale was made through an agent, that the name and address of the agent are set out in the statutory declaration; or

(iii) that at the time when the offence was committed the owner was unable to exercise any control over the vehicle because it had been stolen or was being used unlawfully without consent; or

(b) the owner satisfies the court hearing a charge for the offence as to the truth of the matters stated in the statutory declaration under paragraph (a).

196 Inconsistency between by-law and trust

A by-law which is inconsistent with the trusts on, or the purposes for, which land or other property is held by a council, to the extent of that inconsistency, does not apply to or in relation to that land or other property.

197 Regulations under other Act to prevail over existing by-laws

Subject to an express provision to the contrary in those regulations, where regulations are made under an Act, other than this Act, and they are inconsistent with a by-law previously made under this Act, the by-law to the extent of that inconsistency is of no force or effect.

198 Applicability of By-laws

(1) A council may, at a meeting of which not less than 14 days notice has been given, by resolution carried by not less than a majority of the members then in office, determine that the application of specified By-laws be limited:

(a) by suspending the By-laws in their entirety for such period; or

(b) by ceasing to apply the By-laws to such part or parts of the council area or such classes of persons or such situation,

as is specified in the resolution, and the By-laws shall be suspended or cease to apply accordingly but for no longer than 12 months.

(2) A council shall cause a copy of a resolution made under subsection (2) to be published in the *Gazette* as soon as practicable, but not later than 28 days, after the resolution is passed.

199 Offences under by-law and another law of Territory

Where an act or omission of a person within a council area constitutes an offence against a by-law and also constitutes an offence against the Regulations or another Act or regulation under another Act, that person may be prosecuted and found guilty under either the by-law or the Regulations or that other Act or regulation.

200 Proof of by-laws

The production of:

(a) a copy of a by-law of a council purporting to be certified as a true copy of the by-law signed by the clerk; and

(b) the *Gazette* in which notice by the Minister of the making of the by-law is published,

is conclusive evidence of the by-law having been made and the contents of the by-law.

201 By-laws to be made available to public

(1) A council shall cause printed copies of all by-laws made by it to be kept at its office where they may be inspected by members of the public during the business hours of the council.

(2) Copies of the by-laws referred to in subsection (1) shall be made available by the council for purchase by members of the public at a reasonable cost.

Division 2 Regulations

202 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular for prescribing the practice and procedure to be followed in relation to the conduct of the financial and business affairs, and other operations and activities, of a council, and prescribing penalties not exceeding $3,000 or imprisonment for 6 months, or both, for offences against the Regulations.

203 Council may enter into agreement to administer regulations

(1) Where a council has power to make by-laws in relation to any matter or thing already the subject of regulations made under another Act, the council may enter into an agreement with the Minister who has been allotted the administration of the provisions of the Act under which the regulations were made to administer all or part of the regulations in its council area.

(2) An agreement under subsection (1):

(a) shall be in writing and shall specify the regulations proposed to be administered;

(b) shall be in force for such period not exceeding 3 years as may be specified in the agreement, but may be renewed;

(c) may make provision for the payment of costs and expenses, the use and allocation of resources (including resources of the Territory), the sharing of responsibilities between the council and an Agency, the collection of fees, the enforcement of the regulations and such other matters as the council and the Minister think fit; and

(d) shall have effect according to its tenor.

Division 3 Authorised persons

204 Appointment of authorised persons

(1) For the purpose of enforcing this Act, the Regulations or By-laws, or another Act, regulation or by-law the enforcement of which is vested in a council, the council may appoint a person, not being a member, to be an authorised person.

(2) An appointment under subsection (1) shall be notified in the *Gazette*.

(3) The clerk shall issue to each authorised person appointed under subsection (1) an identity card containing a photograph and the signature of the authorised person verified by the clerk.

(4) An authorised person shall, on demand, produce the identity card issued under subsection (3) before, under section 205, requiring a person's name and address or proof of the persons identity, or entering any land or building.

(5) The failure of an authorised person to produce the identity card as required by subsection (4) does not invalidate an action taken or thing done in pursuance of the authorised person's powers under this section.

205 Powers of authorised persons

(1) Where an authorised person reasonably suspects that a person has committed an offence against this Act, the Regulations, By-laws or another Act, regulation or by-law the authorised person is empowered to enforce, the authorised person may:

(a) require the person to provide his or her name and address; and/or

(b) require the person to produce proof of his or her identity.

(2) An authorised person may, with the consent of the occupier or, in the absence of the occupier, the owner of any land not open to or used by the public (***private land***) or in pursuance of a warrant issued by a Justice under section 206, enter onto private land where the person has reasonable grounds to believe:

(a) an offence has been, is being or is about to be committed against an Act, regulation or by-law the person is empowered to enforce; and

(b) that there is on the land evidence relating to that offence,

to seize anything found on the land that is such evidence.

(3) An authorised person may, with the consent of the occupier or, in the absence of the occupier, the owner of any land not open to or used by the public (***private land***) or, in pursuance of a warrant issued by a Justice under section 206, enter onto private land:

(a) where the person has reasonable grounds to believe that there is on the land an animal that, in contravention of the by-laws the person is empowered to enforce, is unregistered to seize the animal; or

(b) to perform a function or exercise a power imposed on or given to the person by or under this or any other Act.

(4) A person who:

(a) after being required to do so under subsection (1), refuses to give his or her name and address;

(b) after being required to do so under subsection (1), refuses to provide proof of his or her identity;

(c) obstructs or hinders an authorised person in the execution of his or her duty; or

(d) falsely represents himself or herself to be an authorised person,

is guilty of an offence.

Penalty: $1,000.

(5) A person shall be deemed to have complied with subsection (1)(b), where the person:

(a) has a reasonable excuse for not producing proof of his or her identity at the time when required to do so under that subsection; and

(b) within 2 working days of being required, produces proof of his or her identity at the office of the council.

205A Additional powers of authorised persons in relation to animals in an emergency

(1) Where, in the opinion of an authorised person, it is necessary to do so in an emergency to:

(a) prevent injury to a person or animal;

(b) protect the health of a person or animal; or

(c) relieve the suffering of an animal,

the authorised person may enter onto any land not open to or used by the public (***private land***), without the consent of the occupier or owner, or a warrant:

(d) to perform a function imposed on or exercise a power given to the person by or under this or any other Act; or

(e) to seize and/or destroy a savage, diseased or injured animal.

(2) Where:

(a) an authorised person has reasonable grounds for believing that, within the preceding 24 hours, a person was attacked and seriously injured by a dog in a public place;

(b) the dog has been positively identified; and

(c) the dog is on private land,

the authorised person may enter onto the private land, without the consent of the occupier or owner, or a warrant, to seize and/or destroy the dog.

205B Assistance of police

An authorised person may, in the exercise of his or her powers or the performance of his or her functions under this Division, call on a member of the Police Force for assistance.

206 Entry warrant

(1) Where it is made to appear to a Justice by application on oath or affirmation by an authorised person:

(a) that there are reasonable grounds to believe there is on private land (within the meaning of section 205(2)) evidence referred to in that subsection and that entry onto that land is required to enable an authorised person to seize that evidence;

(b) that entry onto such land is required to enable an authorised person to seize an animal which, in contravention of the by-laws which the person is empowered to enforce, is unregistered; or

(c) that entry onto such land is required to enable an authorised person to perform a function imposed on or exercise a power given to the person by or under this or any other Act,

the Justice may issue a warrant authorising the applicant or another authorised person, subject to such conditions, if any, as are specified in the warrant and with such assistance as is thought necessary, to enter onto the private land for the purpose for which the warrant was sought.

(2) A warrant under this section ceases to have effect 14 days after the date it is issued.

Division 4 Miscellaneous

207 Proceedings

(1) A council or a person authorised by the council either generally or in a particular case may institute proceedings in the name of the council for:

(a) the recovery of any rates, charges, fees or other money due to the council by or under this or another Act;

(b) the enforcement of any provision of any Act, regulation, by-law or scheme for which the council is responsible;

(c) the recovery of any penalty or surcharge in relation to any offence under any Act, regulation, by-law or scheme the enforcement of which is the responsibility of the council; or

(d) any other purpose specified by the council.

(2) A clerk or person authorised by the council either generally or in a particular case may represent the council in all respects as though he or she was the party concerned in any proceedings in which the council is a party or has an interest.

208 Fines and penalties to be paid to council

Where a fine or monetary penalty (including a penalty in respect of an infringement notice under the *Traffic Act*) is paid or payable as a result of or in lieu of a prosecution by a council for an offence committed or alleged to have been committed in the council area against this or another Act, or a regulation under this or another Act or the By-laws, the fine or monetary penalty shall be recoverable by the council as a debt due and payable to it.

209 Service of summons, &c., on council

A document required or permitted by or under this or another Act to be served on or given to a council may be served or given to the council by being:

(a) handed personally to the clerk or by being left with an officer or employee of the council at the council office; or

(b) posted to it by certified post addressed to the clerk at the council's postal address.

210 Service of notices

Where, under this Act (other than Part 4) a notice, order or other writing is required or permitted to be served on a person, it may be served:

(a) personally on the person;

(b) by delivering it to a person who has apparently attained the age of 16 years, and is apparently residing, is employed at the premises at which the person to be served resides, is employed or carries on business; or

(c) by posting it by certified post addressed to the person at the person's usual or last-known place of residence, employment or business.

211 Continuing effect of notice served on owner or occupier

A notice which is served under this Act on the owner or occupier of land is binding on a person claiming through, under, in trust for or in succession to that owner or occupier, as though the notice had been served on that person.

212 Recovery of damages, &c.

(1) Where a person is found guilty of an offence against this Act, the Regulations or any By-laws, whether a conviction is entered or a penalty imposed or not, a council may recover from that person:

(a) a sum for damage sustained by it through the person's act or default;

(b) the costs and expenses incurred by it in remedying that damage;

(c) the costs and expenses incurred by it in the execution of work required to be done by the person and not done; or

(d) the value of anything wasted, misused or unlawfully consumed, diverted or taken by the person.

(2) A penalty may be recovered notwithstanding that a council has not exercised any other right of recovery.

(3) A prosecution or finding of guilt for an offence under this Act does not affect a right of action of a person to recover any damage sustained by the person.

213 Documents kept in electronic form

If a person records or stores any matters by means of a mechanical, electronic or other device, a duty imposed by or under this Act to produce or make available documents containing those matters shall be construed as a duty to produce or make the matters available in written form in the English language or to provide a document containing a clear reproduction in writing in the English language of the matters.

214 Proof of service of notices, &c.

In proceedings under, or arising out of, this Act, a declaration made under the *Oaths Act* by a person who has served a notice, which states the manner, place, time and date of service, shall be prima facie evidence of the service of the notice.

215 Proof of minutes

Minutes of a meeting of a council or committee, or a document purporting to be a true copy of, or extract from, the minutes signed by the clerk, shall be received in a court, the Tribunal or by a person acting judicially, as evidence of the matters stated in those minutes, or that copy or extract, without further proof of those matters.

216 Proof of certain matters not required

In proceedings under this Act instituted by, under the direction of, on behalf of or for the benefit of, a council, proof shall not be required, until evidence is given to the contrary, of:

(a) the constitution of its municipality or community government area;

(b) the constitution of the council as the council for the municipality or community government area;

(c) the election of the members;

(d) the extent or the boundaries of the municipality or community government area;

(e) the extent or the boundaries of a ward;

(f) the fact that a particular place is within the council area;

(g) the appointment of the clerk or of another officer or employee of the council;

(h) the particular or general appointment of the clerk, or another officer or employee of the council, as the proper person to do an act, or for a purpose under this Act;

(j) the authority under which an officer or employee of the council initiates a prosecution;

(k) the presence of a quorum of the council at the passing of a resolution or the making of an order by the council;

(m) the fact that a defendant is, or at a relevant time was:

(i) the owner or occupier of land; or

(ii) the owner, or in possession or charge, of a thing or animal; or

(n) the signature of the clerk.

217 Proof of public road, &c.

In any prosecution or other legal proceedings under this Act, instituted by or under the direction, or on behalf of, or for the benefit of a council, in relation to an offence on a public road or footpath or in relation to an impounding, it shall not be necessary to prove the proclamation or dedication of the road or footpath, nor its alignment or measurements, but it shall be sufficient evidence of the fact that the place in which the offence was committed or from which the animal was impounded is a public road or footpath if it is proved that the place is a thoroughfare in the nature of a road or footpath and is open to, and is used by, the public.

218 Proof that person owner, &c.

In any proceedings under this Act, a certificate signed by the Registrar-General, that a person is an owner or lessee of a particular piece of land, is prima facie evidence that the person is the owner or lessee, as the case may be, of the land.

219 Averments as to official traffic signs

(1) In this section, ***official traffic sign*** means:

(a) a traffic sign within the meaning of the *Traffic Act*; or

(b) a notice, sign or device marked, placed or erected on or at the side of a road, or near a road, in a council area, by authority of that council, for the purpose of regulating traffic or guiding, directing or warning persons in charge of motor vehicles.

(2) In any prosecution for a contravention of, or failure to comply with, a by-law, an averment of the prosecutor contained in the complaint that:

(a) a notice, sign or other device is, or on a specified date was, an official traffic sign;

(b) a space is, or on a specified date was, a parking space;

(c) a device is, or on a specified date was, a parking meter installed in relation to a parking space by authority of a council; or

(d) a parking voucher was not displayed on or in a vehicle, in such a manner as to comply with the requirements of the by-law,

is evidence of the matter averred.

(3) An averment shall not be evidence for the purposes of this section unless a statement of the matter contained in the averment has been served on the defendant in the same manner as the process requiring the defendant's attendance before the court.

(4) Upon the hearing of proceedings in relation to a contravention, or failure to comply with, a by-law, the court may, if the amendments can be made without hardship or injustice to the defendant, allow such amendments to an averment as appear to it to be desirable or necessary to enable the real question in dispute to be determined.

(5) Where the court considers a defendant has been misled by the form of an averment, it may refuse to allow any or all of the amendments, adjourn the hearing of the case for such period as it thinks fit and make such order as to the costs of the adjournment as it thinks proper.

(6) In a prosecution for an offence in which it is alleged that a parking voucher was not at the relevant time displayed on or in a vehicle in such a manner as to comply with the requirements of the By-laws, it

is a defence for the defendant to establish that a parking voucher had been displayed on or in the vehicle in accordance with the By-laws notwithstanding that the offence may have been declared a regulatory offence.

Part 8 Miscellaneous

220 Occupier may carry out required work in certain circumstances

(1) Where an owner of land within a council area fails to carry out work which is required to be carried out by or under this Act in connection with that land or with a building or other erection on that land, a person who is the occupier of that land, building or erection may, subject to the approval of the council, cause the work to be done.

(2) A person who causes work to be done in pursuance of this section may recover the cost of so doing from the owner or deduct that cost from any rent from time to time becoming due from the person to the owner.

221 Rights of owner regarding entry to carry out required work where land, &c., is occupied

(1) Where an owner of land within a council area is required, by or under this Act, to carry out work in connection with that land or with a building or other erection on that land, the owner may serve written notice personally or by post on the occupier of the land, building or erection, as the case may be, stating particulars of the work required to be done and requiring entry with or without vehicles, machinery, workmen and others for the purpose of carrying out that work.

(2) Where an occupier, at the expiration of 7 days from and including the day upon which a notice is served under this section, prevents the owner from entering in the manner specified in that notice, a justice of the peace may make an order in writing requiring the occupier to permit the owner to enter with or without vehicles, machinery, workmen and others for the purpose of carrying out the work specified in the order.

(3) A person, upon whom an order made under subsection (2) is served, shall not prevent the owner or other persons specified in that order from entering upon the land in the manner specified in the order or from carrying out the work specified in the order.

Penalty: $100 and $50 for every day during which the offence continues.

(4) During such time as an occupier fails to comply with the requirements of an order made under subsection (2), the owner is excused from liability under this Act for failing to carry out the work.

222 Notice of change of ownership of land

(1) A person who disposes of or acquires an estate or interest in land (other than an easement) in a council area shall, within 28 days from and including the date when the estate or interest was disposed of or acquired, give notice in writing to the council of:

(a) the nature, description and address of the estate or interest; and

(b) the name and address of the person to whom the estate or interest was disposed of or from whom it was acquired, as the case may be.

Penalty: $500.

(2) This section does not apply to the granting or discharge of a mortgage or encumbrance or the granting or acceptance of a tenancy.

(3) Subsection (1) does not apply in a council area where the Registrar-General has entered into an agreement with the council under section 274 of the *Real Property Act* to provide the particulars required by subsection (1)(a) and (b) to be given.

223 Certificate of liabilities, notices, orders, &c.

(1) A person, being:

(a) an owner, occupier or mortgagee of land or a person authorised in writing by any of them;

(b) a purchaser or person who proposes to purchase the land; or

(c) a prospective mortgagee,

may apply to a council for a certificate stating:

(d) the details of any rates, charges or other amounts due and payable to the council in relation to the land or that no rates, charges or other amounts are then due or payable; and

(e) the details of any notices or orders issued by the council for work to be carried out in relation to the land, by or under this or another Act, and of the amounts that may be recovered by the council from the owner or occupier of the land for work

done, or that no notices or orders are subsisting,

as the applicant requires.

(2) A certificate under subsection (1) is, for all purposes, conclusive evidence in favour of a bona fide mortgagee or purchaser for value of the information stated in it as at the date of the certificate and for the 7 days immediately after that date.

(3) For the purposes of this section, rates, charges or amounts of money are to be taken as due and payable, notwithstanding that the requisite period after service of a notice by or under this or another Act in relation to them has not expired.

Part 9 Local Government Association

224 Incorporation of Local Government Association of the Northern Territory

(1) The Local Government Association of the Northern Territory is constituted by that name as a body corporate.

(2) The Association:

(a) has perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold and dispose of real property and personal property; and

(d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Association affixed to a document and shall, unless the contrary is proved, presume that it was duly affixed.

(4) The first members of the Association shall be the members of the Local Government Association of the Northern Territory Inc as at the commencement of this section.

(5) The constitution of the Association is the constitution of the Local Government Association of the Northern Territory Inc as in force immediately before the commencement of this section.

(6) All property held immediately before the commencement of this section by a person, in trust or otherwise, for or on behalf of the Northern Territory Local Government Association, the Northern

Territory Community Government Association and, notwithstanding anything to the contrary in the *Associations Incorporation Act*, the Local Government Association of the Northern Territory Inc is, subject to any charge or liability affecting the property, vested in the Association.

Part 10 Local Government Tribunal

225 Local Government Tribunal

(1) There shall continue to be a Tribunal to be known as the Local Government Tribunal.

(2) Each magistrate is a member of the Tribunal.

(3) The Chief Magistrate appointed under the *Magistrates Act* is a member and the President of the Tribunal.

(4) Subject to the directions of the President, the powers of the Tribunal may be exercised by any one member.

226 Powers of Tribunal

(1) The Tribunal has jurisdiction to hear and determine an application made, or a matter referred, to it under:

(a) section 14 (which relates to the qualification of a member to hold office);

(b) section 22(4) (which relates to a member with an interest voting on a matter);

(c) section 58(4) (which relates to certain non-ratable land);

(d) section 63 (which relates to a rate book appeal);

(e) section 94 (which relates to directions before selling land);

(f) section 246 (which relates to the imposition of a surcharge); or

(g) other provisions of this Act, the Regulations or another Act if it is given jurisdiction (which may be an exclusive jurisdiction) by those provisions to do so.

(2) The Tribunal may, in writing under the hand of a member, summon a person to attend before it, at a time and place specified in the summons, and then and there to give evidence and to produce such documents in the person's custody or control as are specified in the summons.

(3) A summons under subsection (2) may be served on the person to whom it is addressed:

(a) personally; or

(b) by delivering it to a person who has apparently attained the age of 16 years and is apparently residing or employed at the premises at which the person to be served resides or carries on business.

(4) The Tribunal has power to do all things necessary or convenient for the performance of its functions and, for the purpose of enforcement, has the powers of the Local Court.

227 Registrar of Tribunal

(1) Each Registrar of the Local Court is a Registrar of the Tribunal and that Registrar's office is a registry of the Tribunal.

(2) The Registrar of the Local Court at Darwin is the Principal Registrar of the Tribunal.

(3) The Registrar situated nearest to a place where the Tribunal sits shall act as secretary to the Tribunal for the purpose of that sitting.

(4) Each Registrar shall keep and maintain a register, in a form approved by the President, in which the Registrar shall cause to be entered particulars of applications or matters referred to that registry.

(5) Each Registrar, other than the Principal Registrar, shall, as soon as practicable, forward to the Principal Registrar a copy of each entry made in the register kept and maintained under subsection (4).

(6) The Principal Registrar shall keep and maintain a register, in a form approved by the President, in which the Principal Registrar shall cause to be entered particulars of all applications and matters referred to each registry, compiled from:

(a) entries made in the register kept and maintained under subsection (4); and

(b) copies of entries forwarded under subsection (5).

228 Certificate relating to orders

Where the Tribunal determines a matter or makes an order under this Act, the Registrar in whose registry the application or matter was instituted shall, on application by or on behalf of a party to the proceeding and on payment of such fee (if any) as may be fixed by

the President issue to or for that person a certificate, in a form approved by the President, of the order and make a minute or memorandum of the issue in the register.

229 Sittings of Tribunal

(1) The Tribunal may sit at such times as are necessary to conduct its business.

(2) A member of the Tribunal may sit and perform the functions and exercise the powers of the Tribunal notwithstanding that another member of the Tribunal is at that time sitting and performing those functions and exercising those powers in respect of another matter.

230 Tribunal not bound by strict legal procedure

(1) At the hearing of an application or matter:

(a) the Tribunal is not bound to follow strict legal procedure or to observe the rules of law governing the admission of evidence, but may inform itself on any matter in such manner as it thinks fit; and

(b) the Tribunal shall act without regard to technicalities or legal form.

231 Representation of parties

At the hearing of an application or matter by the Tribunal, a party may appear personally or may be represented by a legal practitioner or by another person authorised in writing by the party.

232 Persons summoned to attend

A person served with a summons to attend at a sitting of the Tribunal shall not, after a reasonable amount for expenses of attendance has been paid or tendered, without reasonable excuse, fail to attend the Tribunal or fail to produce any documents in the person's custody or control that are specified in the summons.

Penalty: $500.

233 Witness to give sworn evidence

(1) Subject to subsection (2), a person appearing as a witness before the Tribunal shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put by the Tribunal.

Penalty: $500.

(2) A person appearing as a witness before the Tribunal shall not be required to answer a question tending to self-incrimination.

234 Tribunal may order costs

(1) The Tribunal may make such orders as to costs in an application or matter before it as it thinks fit.

(2) Where a Tribunal makes an order as to costs and the costs are to be taxed by a Registrar, the costs to be applied shall be in accordance with the prescribed scale.

(3) Costs awarded by the Tribunal shall be a debt due and payable by the person ordered to pay them to the person in whose favour they are awarded.

235 Appeal against council decision

(1) An appeal under section 63(8) against the decision of a council shall be made within 28 days after the day on which notice of the decision of the council, together with written reasons for the decision, was served on the applicant, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances, extend the time in which the application to appeal may be made.

(2) The Tribunal may:

(a) confirm the decision appealed against;

(b) substitute, or make in addition, any decision that should, in the opinion of the Tribunal, have been made in the first instance.

(3) The Tribunal may, instead of determining an appeal under subsection (2), direct the council to reconsider, either generally or in respect of specified matters, the whole or any specified part of the matter to which the appeal relates.

(4) In giving a direction under subsection (3) the Tribunal shall:

(a) advise the council of its reasons for doing so; and

(b) give to the council such directions as it thinks fit as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(5) The council shall, in reconsidering a matter referred back to it, have regard to the Tribunal's reasons for giving a direction under subsection (3) and to the actual directions under subsection (4).

(6) Where a matter has been heard and determined by the Tribunal, it may order the relevant clerk to make an alteration to the rate book as a consequence of the determination of the Tribunal.

236 Application under section 94 for directions

After considering an application for directions under section 94 the Tribunal may direct:

(a) that the council need take no further action and shall be deemed to have exercised its rights under section 92 for the purposes of section 94(2);

(b) that the council make further enquiries or that the council give public notice of its intention to act under section 94, in a form approved by the Tribunal, in a newspaper or by displaying a notice on the land, and that after taking the appropriate action the council, on a date to be fixed by the Tribunal, shall be deemed to have exercised its rights under section 92 for the purposes of section 94(2); or

(c) that the council take such other action as the Tribunal thinks appropriate.

237 Appeal against surcharge

(1) An appeal under section 246 against the making of a surcharge shall be made in writing to the Tribunal setting out the grounds for the appeal and accompanied by a copy of the notice given under section 245(1).

(2) The Tribunal may, after hearing an appeal under this section, confirm, increase, reduce or annul the surcharge.

238 Obligation to pay rate or charge not suspended

Subject to a determination made by the Tribunal, the obligation to pay and the right to recover a rate or charge is not suspended by an application to the Tribunal, but where an amount has been paid to a council by an appellant, which the Tribunal subsequently determines not to have been properly payable, the council shall, as soon as practicable, refund that amount to the appellant together with interest calculated under section 83.

239 Rules and procedures

(1) For the purpose of facilitating the exercising of the jurisdiction conferred on the Tribunal by this Act, the Regulations or another Act, the President may make such rules:

(a) regulating the practice and procedures of the Tribunal;

(b) regulating the enforcement of a decision of the Tribunal; and

(c) regulating and prescribing all matters and things incidental or relating to any such practise or procedure or enforcement,

as the President considers necessary or convenient for the conduct of the business of the Tribunal.

(2) The Rules may impose or confer on a Registrar functions and powers in relation to the Tribunal and proceedings before the Tribunal and a Registrar shall perform those functions and may exercise those powers accordingly.

(3) Subject to this Act, the practice and procedures of the Tribunal in relation to a proceeding within its jurisdiction are in its own discretion.

240 Appeal to Supreme Court

(1) A party to a proceeding before the Tribunal aggrieved by a decision of the Tribunal may appeal against that decision, on a question of law only, to the Supreme Court in accordance with the rules of that Court.

(2) An appeal under subsection (1) shall be instituted within 28 days after the day the decision complained of was made.

Part 11 Inspectors and inspections

241 Appointment of inspectors of local government

The Minister may, by notice in the *Gazette*, appoint such persons as the Minister thinks fit to be inspectors of local government.

242 Functions of inspectors

An inspector:

(a) may inspect the documents of a council and the organisation and management of the council's activities;

(b) shall, where dishonesty, an irregularity or breach of a law in force in the Territory (including the By-laws of a council) has been observed during an inspection, report the matter to the Minister and the council;

(ba) may institute proceedings in the name of a council in respect of a matter reported to the Minister and the council;

(c) may report on such other matters as are presented or, in the inspector's opinion, call for special notice; and

(d) shall inquire into and report on matters which the Minister requires to be investigated.

243 Powers of inspectors

(1) For the purpose of exercising his or her functions, an inspector may direct a person to do any one or more of the following:

(a) appear personally before the inspector at a time and place specified in the direction;

(b) give evidence (including evidence on oath or affirmation);

(c) produce to the inspector any document that is in that person's custody or under that person's control;

(d) grant to the inspector such authorities as may be necessary to enable the inspector to gain access to any document that is in the custody or control of the Territory Insurance Office or any bank, building society, credit union or other person.

Penalty: $2,000.

(2) For the purposes of this section, an inspector may administer an oath or affirmation.

(3) An inspector may take copies of or extracts from any document to which the inspector gains access under this section.

(4) For the purpose of exercising his or her functions referred to in section 242(b), where an inspector observes an irregularity during an inspection, he or she may recommend in the report on the matter action to be taken by the council concerned to remedy the irregularity, including the:

(a) engagement for a specified period of a suitably qualified and experienced person to manage the financial affairs, or the operations generally, of the council; or

(b) specification of practices the council could adopt to improve its management (including financial management and recruitment of staff).

(5) For the purpose of exercising his or her function referred to in section 242(ba), an inspector shall be taken to be a person authorised by the council referred to in section 207.

(6) For the purpose of exercising his or her function referred to in section 242(c), an inspector may make a report to any person or body from whom a council has received a payment of money where, in the opinion of the inspector, the money has not been acquitted in accordance with arrangements made between the council and the person or body.

243A Compliance with report

(1) Where an inspector has observed a matter of dishonesty, an irregularity or a breach of a law in force in the Territory during an inspection and has reported the matter to the Minister and the council concerned, the clerk shall ensure that the report of the matter is laid before the council at the first meeting of the council next occurring after receipt of the report.

(2) The council shall:

(a) as soon as practicable, advise the Minister of the remedial action it proposes to take in respect of the matter the subject of the report, including the means it proposes to implement the recommendations of the inspector (if any) made in the report; and

(b) not later than 2 months after the meeting of the council referred to in subsection (1), commence taking appropriate remedial action in respect of the matter the subject of the report, including the carrying out of the recommendations (if any) made by the inspector in the report.

(3) Where the Minister is, on reasonable grounds, not satisfied with the action taken by a council to remedy a matter the subject of a report made by an inspector, including the progress made by the council in so doing, the Minister may, by notice served on the council, direct the council to take such remedial action as the Minister considers appropriate, and specifies in the direction, within the period specified in the direction.

(4) Each member of a council which fails to comply with a direction under subsection (3) is guilty of an offence.

Penalty: $5,000.

(5) It is a defence to a prosecution for an offence against subsection (4) if the member did not intend that the offence be committed and took all reasonable steps to endeavour to have the council comply with this section.

244 Procedure where inspector considers expenditure, &c., should be disallowed

If satisfied that:

(a) an expenditure, transfer or entry in the accounting records of a council has been incurred or made in contravention of a law in force in the Territory (including the By-laws of the council);

(b) a deficiency or loss has been incurred by the negligence or misconduct of a member, officer or employee of the council; or

(c) money which ought to have been brought into account has not been brought into account,

an inspector shall call on the person:

(d) by whom the expenditure, transfer or entry was made or caused to be made;

(e) by whose negligence or misconduct the inspector believes the deficiency or loss has been incurred; or

(f) who has failed to bring into account money which ought to have been brought into account,

to show cause why the inspector should not surcharge that person.

245 Inspector to make surcharge in certain circumstances

(1) Where a person, who has been called on to show cause under section 244, does not satisfy the inspector within a period specified by the inspector that a surcharge should not be made, the inspector shall cause a surcharge to be made against that person by giving notice, in the prescribed form and manner, of the amount of the surcharge.

(2) A surcharge shall not exceed the amount of the expenditure, transfer, entry, deficiency or loss or the amount which has not been brought into account, as the case may be, to which the surcharge relates.

246 Person surcharged may appeal to Tribunal

A person given notice under section 245(1) may, within 28 days after and including the date on which the notice is received, appeal to the Tribunal under section 237 against the imposition or the amount of the surcharge.

247 Surcharge a debt due to council

The amount of a surcharge becomes payable to the council as a debt when the time within which an appeal may be made against the surcharge expires or, if such an appeal is made and the surcharge is not annulled, when that appeal is finally determined.

248 Council may appropriate certain money, &c., in satisfaction of surcharge

(1) Where a surcharge becomes payable to a council and the council holds money or property of the person who owes the surcharge, the council may:

(a) appropriate so much of that money as is necessary to satisfy the amount of the surcharge; and

(b) retain the property as security for the payment of the surcharge.

(2) A portion of a surcharge not satisfied under subsection (1) remains a debt payable to the council.

(3) Where, under subsection (1)(b), a council retains property as security for payment of a surcharge and 6 months have expired since the surcharge was imposed, the council may sell the property and deduct from the proceeds of the sale any costs and expenses incurred by it in relation to the sale as well as other amounts due and payable to the council.

(4) No action shall lie against a council by a person in relation to the council's actions under this section (including a person claiming through the person upon whom the surcharge was imposed in relation to the sale of property under subsection (3)).

(5) A council shall pay the balance (if any) of the proceeds of a sale under this section to the person on whom the surcharge was imposed.

249 Member owing surcharge

Where a surcharge, or part of a surcharge, owing to a council by a member remains unpaid:

(a) on the day after the last day on which the member could have applied to the Tribunal against the imposition of the surcharge; or

(b) on the day after the day on which, after an application, the Tribunal hands down its determination but does not annul the surcharge,

the member is disqualified from carrying out any duties of office as a member until either the amount owing has been paid or the member is disqualified from holding office under section 9(1)(g), whichever occurs sooner.

Part 12 Inquiries

250 Minister may establish inquiry

(1) The Minister may appoint a person as a Commissioner to conduct an inquiry into or in relation to the affairs of a council or a matter which may be referred under this Act to a Commissioner and to report, in writing, to the Minister accordingly.

(2) The Minister shall, on the appointment of a Commissioner under subsection (1), give notice to the relevant council of the appointment and the reasons for, and the subject of, the inquiry.

251 Protection of Commissioner

A Commissioner has, in exercising powers or performing functions under this Act, the same protection and immunity as a Judge of the Supreme Court.

252 Not bound by rules of evidence

A Commissioner shall, in such manner as the Commissioner thinks fit, make a thorough investigation of the matter in relation to which the inquiry is being held, without regard to legal forms and technicalities and shall not be bound by the rules of evidence.

253 Submissions

A Commissioner must provide adequate opportunity for a council or any other person affected by an inquiry to make submissions relating to the subject matter of the inquiry.

254 Access to documents, &c.

(1) A Commissioner, or a person authorised in that behalf by a Commissioner, shall at all times have full and free access to all buildings, places, goods and documents for the purposes of an inquiry, and may make extracts from or copies of those documents.

(2) A person authorised under subsection (1) shall not communicate any information acquired in the performance of a function under this section to a person other than the Commissioner or a person to whom the person is authorised by the Commissioner to communicate it.

Penalty: $2,000.

(3) A Commissioner shall not, except in the exercise of a power or the performance of a function under this Act, communicate information acquired in the exercise of those powers or performance of those functions.

Penalty: $2,000.

(4) A person shall not obstruct or hinder a Commissioner, or a person authorised under subsection (1), in the exercise of a power or performance of a function under this section.

Penalty: $1,000.

255 Power to summons

(1) A Commissioner may, by writing under his or her hand, summon a person to attend at a time and place mentioned in the summons and then and there to give evidence and to produce any documents in the custody or control of the person which are required by the summons to be produced.

(2) A summons under this section shall be served personally or by leaving it at the usual place of residence or business of the person to whom it is addressed.

(3) A person served with a summons who fails, without reasonable excuse, to attend or to produce a document as required by the summons is guilty of an offence.

Penalty: $2,000.

(4) It is a defence to a prosecution for an offence against subsection (3) for failing without reasonable excuse to produce a document, if the defendant proves that the document was not relevant to the inquiry.

256 Witnesses may be represented by counsel

A person summoned to attend before a Commissioner may, with the approval of the Commissioner, be represented by a legal practitioner or agent, who may examine witnesses and address the Commissioner on behalf of the person.

257 Examination upon oath or affirmation

A Commissioner may administer an oath or affirmation to a witness, whether the witness has been summoned or appears without being summoned, and may examine the witness on oath or affirmation.

258 Refusal to swear or give evidence

A person appearing as a witness before a Commissioner who refuses to be sworn or to make an affirmation or to answer a question relevant to the inquiry put by the Commissioner, is guilty of an offence.

Penalty: $2,000.

259 Protection and liability of witnesses

(1) A person appearing as a witness before a Commissioner shall have the same protection and shall, in addition to the penalties provided by or under this Act, be subject to the same liabilities in a civil or criminal proceeding as a witness in a matter before the Supreme Court.

(2) A statement or disclosure made by a witness to a Commissioner shall not, except in proceedings for an offence against this Act, the Regulations or By-laws of a council, be admissible in evidence against that person in any civil or criminal proceedings.

260 Inquiry may be held in private

A Commissioner may hold the whole or any part of the proceedings on an inquiry under this Act in private if the Commissioner considers that it is desirable, in the public interest, to do so.

261 Publication of reports of proceedings

(1) No action or proceeding, civil or criminal, shall lie against a person for publishing in good faith for the information of the public:

(a) a copy of, a fair extract from or a fair abstract of a report made by a Commissioner; or

(b) a fair and accurate report of the proceedings before a Commissioner, not being proceedings held in private.

(2) For the purposes of subsection (1), a publication shall be deemed to be made in good faith for the information of the public where the person by whom it is made is not actuated in making it by ill-will to a person defamed by the publication or by any other improper motive.

262 Minister may redirect inquiry

Where the Minister is satisfied that a report made by a Commissioner:

(a) was made as a result of an inquiry conducted contrary to law;

(b) indicates that the opinion of the Commissioner was unjust, oppressive, improperly discriminatory or unreasonable (whether because it has been made for an improper purpose, is based on irrelevant considerations or otherwise);

(c) is based, wholly or partly, on a mistake of law or fact; or

(d) is, for any other reason, incorrect,

the Minister may direct the Commissioner to reconsider the matter.

263 Outcome of inquiry

(1) After a report into or in relation to the affairs of a council has been received by the Minister from the Commissioner and the Minister is of the opinion that:

(a) the matter should be referred to the council;

(b) action should and could be taken to rectify, mitigate or alter the effects of the council's action or omission which was the cause of the inquiry;

(c) the council's action which was the cause of the inquiry was a common practice which should be abandoned or varied;

(d) a by-law in accordance with which, or on the basis of which, an action was taken should be reconsidered;

(e) reasons should be given for the action of the council; or

(f) other steps should be taken,

the Minister shall report that opinion and the reasons for it to the council, and may make such recommendations as is thought fit.

(2) The Minister, in making a recommendation to a council under subsection (1), may also request the council to notify the Minister, within a specified period, of the steps that have been or are proposed to be taken to give effect to the recommendation or, if no steps have been or are proposed to be taken, the reasons why no steps have been or are proposed to be taken.

Part 13 Dismissal of members of councils

264 Dismissal of members of council

(1) Where, in the opinion of the Minister, a council has failed:

(a) to provide for the good government of its council area in relation to the functions vested in it;

(b) to perform a function which it is required to perform under this or another Act;

(c) to exercise a power which it may exercise under this or another Act; or

(d) to comply with a law in force in the Territory including, in the case of a community government council, its scheme,

the Minister:

(e) may recommend to the Administrator that all the members of the council be suspended; and

(f) shall, within 28 days after the members are suspended, appoint a Commissioner under section 250 to inquire into and investigate the affairs of the council which caused the Minister to form the opinion.

(2) The Minister shall, within 28 days after receiving the report of the Commissioner on the matter, recommend to the Administrator that all members of the council be dismissed or that the suspended members be reinstated.

(3) After the Minister has made a recommendation under subsection (1)(e) or (2), the Administrator shall, by notice in the *Gazette*:

(a) in the case of a recommendation under subsection (1)(e) – suspend all the members from office;

(b) in the case of a recommendation under subsection (2):

(i) dismiss all the members and declare all offices vacant; or

(ii) reinstate the suspended members to their respective offices; and

(c) in a case referred to in paragraph (a) or (b)(i) or in the case of a dismissal under subsection (6)(a) of members – appoint a person to be the manager of the council.

(4) Where, under subsection (3), a person is appointed as the manager of a council:

(a) for the purposes of this Act, the manager shall constitute the council and, subject to the conditions, if any, of appointment, perform the functions and exercise the powers of the council;

(b) the appointment shall not be invalid by reason of a defect in or in relation to the appointment; and

(c) any remuneration and other terms and conditions of appointment shall be fixed by the Minister and paid for out of the income of the council.

(5) Where, under subsection (3), the members of a council are dismissed, the Minister shall, within 5 sitting days of the Legislative Assembly after the day of the dismissal, table a report in the Assembly setting out the circumstances giving rise to the dismissal.

(6) Before the expiration of 12 months after the suspension or dismissal under subsection (3) of members:

(a) the Administrator may reinstate any suspended members to their respective offices or dismiss them; and

(b) in the case of members dismissed under subsection (3)(b) or under paragraph (a) – the Minister shall (subject, in the case of a community government council, to section 265) fix a date for the holding of a general election to fill the vacancies created by the dismissal.

(7) An election under subsection (6)(b) shall be held in accordance with the procedures for a by-election.

(8) Where, under subsection (6)(b), an election is held:

(a) the manager shall cease to hold office on; and

(b) the clerk shall summon a meeting of the council within 14 days after,

the declaration of the poll at that election.

(9) Where, under subsection (6)(a), the Administrator reinstates the members to their respective offices, the manager appointed under subsection (3)(c) shall cease to hold office on the date on which the members are so reinstated.

(10) All actions taken and things done by a manager appointed under subsection (3)(c) shall be deemed to have been taken or done by the council for which the person was appointed manager.

265 Community government scheme may be repealed

(1) Where the members of a community government council have been dismissed pursuant to section 264, the Minister or a person authorised by the Minister for the purpose shall, before a date for an election is fixed under section 264(6)(b), consult with the residents of the community government area concerned to determine whether a majority of them are in favour of an election being held, and the Minister shall not fix a date for an election unless satisfied that the majority of residents are in favour of it being held.

(2) Where the Minister is not satisfied as required by subsection (1), the Administrator, by notice in the *Gazette*, shall repeal the community government scheme for the community government area in respect of which the members of the council were dismissed and shall, where necessary or expedient, provide for:

(a) a date on which the manager shall cease to hold office;

(b) the dissolution of the body corporate of the community government council;

(c) the disposition of any property; and

(d) any other matter or thing to give effect to the repeal.

Part 13A Personal liability

265A Restriction of liability

(1) No action or proceeding, civil or criminal, shall lie against the Minister, the Chief Executive Officer as defined in the *Public Sector Employment and Management Act*, an employee as defined in the *Public Sector Employment and Management Act* or an inspector of

local government (while the person holds, or after he or she has ceased to hold, the relevant office or position) for or in relation to an act or thing done in good faith and with reasonable care by the person, or under his or her direction, in the exercise or performance, or purported exercise or performance, of his or her powers, functions or duties under this Act.

(2) This section does not apply where a professional disciplinary action is brought against a person referred to in subsection (1), or where an action or other proceeding, civil or criminal, is brought against that person by a person who is or was a client of the first-mentioned person (in his or her capacity as client or former client).

265B Confidentiality of information

(1) Subject to subsection (2), a person shall not, directly or indirectly, except in the exercise or performance of his or her powers, functions or duties under this Act, (while he or she is holding or after he or she has ceased to hold the relevant office or position) make a record of, disclose or communicate to any person, or make use of information acquired by him or her in the exercise or performance of his or her powers, functions or duties under this Act.

Penalty: $2,000.

(2) This section does not apply where a person:

(a) is required to produce a document that has come into his or her possession, or under his or her control, in a court;

(b) is required to disclose or communicate a matter or thing that has come to his or her notice, or is within his or her knowledge, to a court; or

(c) discloses information or records for or in connection with the administration of this Act, as required or permitted by another Act or for such purposes or to such persons as the Minister directs.

265C Destruction, &c., of records

(1) A person shall not, except in the exercise or performance of his or her powers, functions or duties under this Act, conceal, destroy or remove a document that has come into his or her possession, or under his or her control, in the exercise or performance of his or her powers, functions or duties under this Act.

Penalty: $2,000.

(2) This section does not apply where the Minister approves in writing the destruction of a document.

Part 14 Repeal, savings and transitional

266 Repeal

The Acts specified in Schedule 1 are repealed.

267 Savings

(1) Without limiting the generality of section 12 of the *Interpretation Act*, all titles, appointments, delegations, authorisations, permissions, permits, licences, rights, privileges, obligations and liabilities made, given, granted, acquired, accrued or incurred under the Acts repealed by section 266, and all matters in process under those repealed Acts immediately before the commencement of this Act, shall continue as if made, given, granted, acquired, accrued, incurred, commenced or in process under the relevant corresponding provisions of this Act and those provisions, with the necessary changes, shall be construed accordingly.

(2) Notwithstanding the repeals effected by section 266, all schemes, regulations, by-laws and other instruments of a legislative or administrative character in force immediately before the commencement of this Act shall continue in force, and may be revoked or amended, as if made under the relevant corresponding provisions of this Act and, with the necessary changes, those provisions, and, those schemes, regulations, by-laws and other instruments, shall be construed accordingly.

(3) The *Local Government (Darwin Parking Local Rates) Regulations* as in force as at the commencement of this Act shall continue to exist as regulations under this Act.

268 Transitional

A council which operated a trading fund (within the meaning of the Acts repealed by section 266) as at the commencement of this Act shall, before the start of the financial year next after the commencement, disburse the trading fund to its general fund or, as it considers appropriate, trust fund.

Schedule 1 Acts Repealed

section 266

Act	Number and year
Local Government Act 1985	No. 35, 1985
Local Government Amendment Act 1986	No. 21, 1986
Local Government Amendment Act 1988	No. 54, 1988
Local Government Amendment Act 1991	No. 45, 1991
Local Government Amendment Act (No. 2) 1991	No. 46, 1991
Local Government Amendment Act 1992	No. 2, 1992
Local Government Amendment Act (No. 2) 1992	No. 40, 1992
Local Government Amendment Act (No. 3) 1992	No. 63, 1992

Schedule 2

section 121(2)

Functions of Municipal Councils

General Public Services

1. Fire Protection
2. Local Emergency Services
3. Animal Control
4. Animal Impounding
5. Control of Public Places
6. Control of Signs, Hoardings and Advertising
7. Street Lighting
8. Parking – off street
9. Parking – on street
10. Aerodromes
11. Tourism
12. Caravan Parks
13. Building Regulation
14. Markets
15. Saleyards
16. Environmental Control (including Flammable or Noxious Plants and Materials, Unsightly or Abandoned Chattels and Unkempt Properties)
17. Zoos
18. Public Entertainment
19. Municipal Administration
20. Public Transport
21. Commercial Undertakings

22. Identification of Properties

Health Services

23. Infants and Mothers

24. Preventative Services

25. Health Inspection

26. Ambulance

Social Services

27. Child Care

28. Aged and Disabled Persons

29. Community and Social Development

Housing and Community Services

30. Cemeteries

31. Community Housing (including Council Houses)

32. Aged and Disabled Persons Homes

33. Stormwater Drainage

34. Foreshore Protection

35. Land Development Schemes

36. Public Conveniences

37. Sanitation and Garbage

38. Litter Control

39. Street Cleaning

40. Town Planning

Recreation and Related Cultural Services

41. Halls and Public Buildings

42. Swimming Pools (including Private Swimming Pools and Ponds)

43. Sport and Recreation

44. Parks, Gardens, Reserves and Cycle Tracks

45. Libraries and Museums

46. Arts and Cultural Development

47. National Estate

Roadworks – Construction or Maintenance

48. Roads – sealed

49. Roads – unsealed

50. Bridges

51. Kerb and Water Table

52. Footways and Cycle Tracks

53. Traffic Control

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Local Government Act 1993* (Act No. 83, 1993)**
Assent date 31 December 1993
Commenced 1 June 1994 (*Gaz* S35, 20 May 1994)

***Local Government Amendment Act 1995* (Act No. 35, 1995)**
Assent date 12 September 1995
Commenced 7 August 1996 (s 2, s 2 *Northern Territory Electoral Act 1995* (Act No. 37, 1995) and *Gaz* G32, 7 August 1996, p 3)

***Local Government Amendment Act (No. 2) 1995* (Act No. 36, 1995)**
Assent date 12 September 1995
Commenced 9 February 1996 (*Gaz* S3, 9 February 1996)

***Local Government Amendment Act (No. 3) 1995* (Act No. 57, 1995)**
Assent date 28 December 1995
Commenced 9 February 1996 (*Gaz* S3, 9 February 1996)

***Sentencing (Consequential Amendments) Act 1996* (Act No. 17, 1996)**
Assent date 19 April 1996
Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

***Statute Law Revision Act 1996* (Act No. 42, 1996)**
Assent date 17 September 1996
Commenced 17 September 1996

***Financial Institutions (Miscellaneous Amendments) Act 1997* (Act No. 23, 1997)**
Assent date 2 June 1997
Commenced 2 June 1997

***Territory Insurance Office (Miscellaneous Amendments) Act 1998* (Act No. 37, 1998)**
Assent date 27 May 1998
Commenced 27 May 1998

***Mental Health and Related Services (Consequential Amendments) Act 1999* (Act No. 11, 1999)**

Assent date	25 March 1999
Commenced	1 February 2000 (s 2, s 2 *Mental Health and Related Service Act 1998* (Act No. 63, 1998) and *Gaz* G3, 26 January 2000, p 2)

***Planning (Consequential Amendments) Act 1999* (Act No. 56, 1999)**

Assent date	14 December 1999
Commenced	12 April 2000 (s 2, s 2 *Planning Act 1999* (Act No. 55, 1999) and *Gaz* S15, 12 April 1999)

***Local Government Amendment Act 2000* (Act No. 4, 2000)**

Assent date	14 March 2000
Commenced	14 March 2000

3 LIST OF AMENDMENTS

s 3	amd No. 36, 1995, ss 4 and 20; No. 42, 1996, s 4
s 9	amd No. 42, 1996, s 4; No. 11, 1999, s 4
s 11	amd No. 42, 1996, s 4
s 13	rep No. 35, 1995, s 3
s 22	amd No. 17, 1996, s 6
s 26	amd No. 36, 1995, s 5
s 49A	ins No. 4, 2000, s 2
s 64	amd No. 36, 1995, s 6
s 82	amd No. 36, 1995, ss 7 and 20
s 97	amd No. 42, 1996, s 4
s 98	amd No. 36, 1995, s 20
s 103	amd No. 36, 1995, s 8
s 105	amd No. 36, 1995, s 20
s 106	amd No. 36, 1995, s 9
s 108	amd No. 36, 1995, s 20
s 114A	ins No. 4, 2000, s 3
s 131	amd No. 36, 1995, s 20
s 137	amd No. 36, 1995, s 10
s 140	amd No. 36, 1995, s 20
s 142	amd No. 36, 1995, s 20
s 145	amd No. 17, 1996, s 6
s 154	amd No. 36, 1995, s 11
s 161	amd No. 23, 1997, s 6; No. 37, 1998, s 4
s 162	amd No. 36, 1995, s 12
s 170	amd No. 23, 1997, s 6; No. 37, 1998, s 4
s 175	amd No. 36, 1995, s 13
s 178	amd No. 17, 1996, s 6; No. 11, 1999, s 4
s 181	amd No. 36, 1995, s 14; No. 23, 1997, s 6; No. 37, 1998, s 4
pt 6	
div 11 hdg	ins No. 36, 1995, s 15
s 181A	ins No. 36, 1995, s 15
s 185A	ins No. 57, 1995, s 4
s 186	amd No. 57, 1995, s 5
s 186A	ins No. 57, 1995, s 6
s 194	amd No. 36, 1995, s 20
s 198	amd No. 42, 1996, s 4
s 199	amd No. 17, 1996, s 6

s 204	amd No. 57, 1995, s 7
s 205	sub No. 57, 1995, s 8
	amd No. 42, 1996, s 4
ss 205A – 205B	ins No. 57, 1995, s 8
s 206	sub No. 57, 1995, s 8
s 212	amd No. 17, 1996, s 6
s 235	amd No. 36, 1995, s 20
s 242	amd No. 36, 1995, s 16
s 243	amd No. 36, 1995, s 17; No. 23, 1997, s 6; No. 37, 1998, s 4
s 243A	ins No. 36, 1995, s 18
pt 13A hdg	ins No. 36, 1995, s 19
ss 265A – 265C	ins No. 36, 1995, s 19