NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT ACT

As in force at 8 November 2013

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 8 November 2013

LOCAL GOVERNMENT ACT

An Act to provide for, and regulate, local government

PREAMBLE:

1. Local government is a distinct and essential sphere of government.

2. The system of local government:

   (a) needs to be flexible and adaptable to the diverse interests and needs of the many communities within the Territory; and

   (b) needs to be comprehensive, democratic, responsive to community needs and accountable both to local communities and the public generally.

3. The rights and interests of Indigenous traditional owners, as enshrined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth), must also be recognised and the delivery of local government services must be in harmony with those laws.

4. This Act therefore seeks to provide a legislative framework:

   (a) to establish a democratic and effective system of local government that recognises the diversity of communities in the Territory; and

   (b) to confer on councils wide powers to act for the advancement, and in the best interests, of their local communities; and

   (c) to enable councils to play a broad role in promoting the social, economic, environmental, and cultural well-being of their local communities; and

   (d) to impose high standards of ethical conduct on council members; and

   (e) to require of councils high standards of governance, service delivery, asset management and financial accountability; and

(f) to require councils to promote and assist constructive participation by their local communities in achieving effective local government for their areas.

Chapter 1 Preliminary

Part 1.1 Short title and commencement

1 Short title

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

2 Commencement

(1) This Act (except section 257) commences on 1 July 2008.

(2) Section 257 commences on the date of assent to this Act.

Part 1.2 Interpretation

3 Definitions

In this Act:

Aboriginal community living area means:

(a) an area granted as an Aboriginal community living area under Part 8 of the *Pastoral Land Act* (or the corresponding previous legislative provisions); or

(b) an area that the Minister designates by *Gazette* notice as an Aboriginal community living area.

Aboriginal community living area association means an incorporated association in which an Aboriginal community living area is vested.

Agency, see section 5.

allotment, see section 147.

annual value, of land, see section 8A of the *Valuation of Land Act.*

area, of a council, means the local government area for which the council is constituted.

associate, see section 4.

Australian auditing standards means the auditing standards in force under section 336 of the Corporations Act 2001.

authorised audit company, see section 9 of the Corporations Act 2001.

authorised deposit account means:

(a) an account with an ADI; or

(b) an account with the Territory Insurance Office.

business day means any day except a Saturday, Sunday or public holiday.

by-election means a by-election mentioned in section 86.

CEO, of a council, means the council's chief executive officer and includes an acting CEO.

Chair, of a meeting of a council, local authority, local board or council committee, see sections 61 and 64.

close family relationship means:

(a) the relationship between spouses or de facto partners; or

(b) the relationship between a person and:

(i) the person's child or remoter lineal descendant; or

(ii) the child or a remoter lineal descendant of the person's spouse or de facto partner; or

(c) the relationship between a person and:

(i) the person's parent or remoter lineal ascendant; or

(ii) the parent or a remoter lineal ascendant of the person's spouse or de facto partner; or

(d) the relationship between brothers, sisters or brother and sister.

commission of inquiry means a commission of inquiry appointed by the Minister under Chapter 16.

conclusion, of an election – an election concludes at the declaration of poll, or if there is no poll, on declaration that the candidates for election are elected.

council, for an area, means the council constituted for that area under section 7(b).

Crown land means land of the Territory that has not been alienated by grant in fee simple.

elector, for an area or ward means an elector for the Legislative Assembly who is enrolled in respect of a place of residence situated within the area or ward (as the case requires).

general election means:

(a) a general election mentioned in section 84; or

(b) a periodic general election mentioned in section 85.

improved capital value, of land, see section 8 of the *Valuation of Land Act*.

land includes:

(a) for land held under a pastoral lease or other lease from the Crown – the leasehold interest; and

(b) for land held under a lease from a Land Trust – the leasehold interest; and

(c) for land within an Aboriginal community living area that is held under a lease – the leasehold interest; and

(d) for land held under a mining tenement – the interest in or in respect of land conferred by the tenement; and

(e) for land held under lease from the council – the leasehold interest.

Land Council means an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

land registration authority means:

(a) for all land except a mining tenement – the Registrar-General; or

(b) for a mining tenement – the authority responsible for administering the appropriate statutory register.

Land Trust means an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

LGANT means the Local Government Association of the Northern Territory.

local government council, see section 7(b).

local government subsidiary, see section 27.

local resident, in relation to a council, means a person who is resident in the council's area.

member means (according to context) a member of a council, a local authority, a local board, or a council committee.

minerals includes extractive minerals (i.e. sand, gravel, rocks or soil).

mining tenement means a statutory lease or authority authorising the commercial production of minerals, petroleum or natural gas from land (but if some further statutory authorisation or approval is necessary for the commercial production of minerals, petroleum or natural gas from the land, such a lease or authority is not to be considered a mining tenement unless the further statutory authorisation or approval exists).

occupier, of land, means a person who is, either jointly or alone, in possession of the land to the substantial exclusion of others.

owner, of land, means:

(a) the holder of an estate of fee simple in the land; or

(b) if the land is held from the Territory or a Land Trust under a pastoral or other lease – the lessee; or

(c) if the land is within an Aboriginal community living area and is held under lease – the lessee; or

(d) if the land is subject to a mining tenement – the holder of the tenement.

private company means a proprietary company with fewer than 25 members.

publish includes publish or broadcast by radio, television, Internet, telephone or other means.

ratepayer means a person who pays, or is liable to pay, rates or a charge imposed on land under Chapter 11.

reserve, see section 76 of the *Crown Lands Act*.

road includes a road reserve.

special resolution means a resolution supported by the votes of at least three-quarters of the total number of members of the council.

Tribunal means the Local Government Tribunal (See Part 18.2).

unimproved capital value, of land, see section 9 of the *Valuation of Land Act.*

urban farm land means land classified by a council as urban farm land (see section 143).

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

zone means a zone constituted under the *Planning Act.*

4 Associates

A person is an associate of another if:

(a) they are in a close family relationship; or

(b) they are in partnership; or

(c) one is a company and the other is a director or manager of the company; or

(d) they are related companies; or

(e) one is a private company and the other is a shareholder in the company; or

(f) a chain of relationships can be traced between them under one or more of the above paragraphs.

Part 1.3 Agency

5 Agency

(1) The Agency is the department or departmental unit to which responsibility for administering this Act is allocated by an Administrative Arrangements Order.

(2) The Agency acts under this Act through its Chief Executive Officer or a delegate of its Chief Executive Officer.

(3) It follows that, where this Act confers a particular power on, or assigns a particular power or function to, the Agency, the power or function is to be exercised or performed by the Chief Executive Officer or some other person to whom the Chief Executive Officer has delegated the power or function.

(4) A reference in this section to the Chief Executive Officer of an Agency is a reference to the person responsible for administering the Agency (whether or not that person is officially designated as the Agency's Chief Executive Officer).

Part 1.4 Act to bind Territory etc.

6 Act to bind the Territory and other jurisdictions

This Act binds:

(a) the Territory and its instrumentalities; and

(b) all other jurisdictions and their instrumentalities.

Chapter 2 System of local government

Part 2.1 Local government areas

7 Local government system

Under the system of local government established by this Act:

(a) the Territory is divided into local government areas having regard to:

(i) geography and natural configuration; and

(ii) the nature and density of population; and

(iii) the viability, and appropriateness, of each area as a separate unit of local government administration; and

(b) a council (the ***local government council***) is constituted for each area to be responsible for the government and management of the area at the local level.

8 Municipalities, regions and shires

Local government areas are classified as municipalities, regions or shires according to their geographical size, the density of their population and their degree of urbanisation.

Part 2.2 Constitutive powers

9 Power to establish local government etc.

(1) The Administrator may, by *Gazette* notice, exercise any one or more of the following powers:

(a) constitute a part of the Territory as a local government area or abolish a local government area;

(b) determine whether a local government area is a municipality, a region or a shire;

(ba) change a municipality into a shire, or a shire into a municipality;

(bb) change a municipality into a region or a region into a municipality;

(bc) change a region into a shire, or a shire into a region;

(c) assign a name to a local government area or change the name of a local government area;

(d) assign a name to the council for a local government area or change the name of the council for a local government area;

(e) define or change the boundaries of a local government area;

(f) create or abolish wards;

(g) define or change the boundaries of a ward or wards;

(h) assign a name to, or alter the name of, a ward;

(i) determine or change the number of members to be elected for a particular area or a ward within a particular area;

(j) correct an error or omission in an earlier notice under this section.

(2) The Minister may also, by *Gazette* notice, exercise any of the powers conferred by subsection (1) except the power to constitute or abolish a local government area.

(2A) If a *Gazette* notice under subsection (1) or (2) changes the name of a local government area, or of a local government council, any reference to the area or council is to be read as a reference to the area or council as changed by the notice.

(3) A local government area may consist of 2 or more non-contiguous sections.

10 Consequential adjustment of rights and liabilities

(1) The Minister may, by *Gazette* notice, make any disposition of property or rights and liabilities that may be desirable in consequence of the constitution or abolition of a local government area or a change to the boundaries of a local government area.

(2) The Registrar-General must, on application for registration of a disposition of an interest in land made by the Minister under subsection (1), make appropriate entries in the land register.

Part 2.3 Role, functions and objectives of councils

11 Principal role of council

The role of a council is:

(a) to act as a representative, informed and responsible decision-maker in the interests of its constituency; and

(b) to develop a strong and cohesive social life for its residents and allocate resources in a fair, socially inclusive, and sustainable way; and

(c) to provide and coordinate public facilities and services; and

(d) to encourage and develop initiatives for improving quality of life; and

(e) to represent the interests of its area to the wider community; and

(f) to exercise and perform the powers and functions of local government assigned to the council under this Act and other Acts.

12 Functions of a council

(1) The functions of a council include the following:

(a) to plan for the future requirements of its area for local government services;

(b) to provide services and facilities for the benefit of its area, its residents and visitors;

(c) to provide for the interests and well-being of individuals and groups within the council area;

(d) to carry out measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;

(e) to manage and develop council facilities and services in its area in a sustainable way;

(f) to manage and develop for the benefit of its area all the resources available to the council;

(g) other functions assigned to the council under this or any other Act.

(2) The functions of a council may (if the council chooses to perform them) include the following:

(a) to promote its area as a location for appropriate industries or commerce or as an attractive tourist destination;

(b) to establish or support organisations or programs that benefit the council area.

13 Objectives of a council

A council has the following objectives:

(a) to provide open, responsive and accountable government at the local level;

(b) to be responsive to the needs, interests and aspirations of individuals and groups within its area;

(c) to cooperate with Territory and national governments in the delivery of services for the benefit of its area;

(d) to seek to ensure a proper emphasis on environmentally sustainable development within its area and a proper balance between economic, social, environmental and cultural considerations;

(e) to place a high value on the importance of service to the council's constituency;

(f) to seek to ensure that council resources are used fairly, effectively and efficiently;

(g) to seek to provide services, facilities and programs that are appropriate to the needs of its area and to ensure equitable access to its services, facilities and programs;

(h) generally to act at all times in the best interests of the community as a whole.

14 Operations outside area

(1) A council may provide services outside its own area but cannot exercise its regulatory powers outside its own area except:

(a) by mutual agreement with the council in whose area the powers are to be exercised; or

(b) if the powers are to be exercised outside council areas – with the Minister's consent.

(2) However, a council may exercise regulatory and other powers outside its own area without the agreement of another council or the Minister's consent (as the case requires), if the occasion for exercising the powers arises from circumstances occurring in the council's area.

Example

A dangerous dog attacks a child in the area of council A and becomes liable to seizure and destruction under the by-laws of that council. The dog is removed to the area of council B. In this case, council A may (without the agreement of council B) have the dog seized and destroyed in the area of council B.

Chapter 3 Planning at the local level

Part 3.2 Municipal, regional or shire plans

22 Municipal, regional or shire plan

(1) Each council must have a plan for its area.

(2) The plan for a municipal council is called the ***municipal plan***, for a regional council, the ***regional plan***, and for a shire council, the ***shire plan***.

(3) A council's municipal, regional or shire plan:

(a) must be accessible on the council's website; and

(b) must be available for inspection at the council's public office; and

(c) must be available for purchase at a fee fixed by the council from the council's public office.

23 Contents of municipal, regional or shire plan

(1) A municipal, regional or shire plan:

(a) must contain:

(i) a service delivery plan for the period to which the municipal, regional or shire plan relates; and

(ii) the council's budget; and

(b) must contain, or incorporate by reference:

(i) any long-term, community or strategic plan adopted by the council or a local authority or local board and relevant to the period to which the municipal, regional or shire plan relates; and

(ii) the council's long-term financial plan; and

(c) must contain, or incorporate by reference, the council's most recent assessment of:

(i) the adequacy of constitutional arrangements presently in force for the council under this Act and, in particular, whether they provide the most effective possible representation for the area; and

(ii) the opportunities and challenges for local government service delivery in the council's area; and

(iii) possible changes to the administrative and regulatory framework for delivering local government services in the council's area over the period to which the plan relates; and

(iv) whether possibilities exist for improving local government service delivery by cooperation with other councils, or with government agencies or other organisations; and

(d) must define indicators for judging the standard of its performance.

(2) A council must make or revise an assessment of the matters mentioned in subsection (1)(c) at least once in the council's term and, until the council makes or revises the assessment, the municipal, regional or shire plan is to include the assessment (if any) made during the previous term of the council.

(3) A municipal, regional or shire plan incorporates a plan or assessment by reference if it refers to the plan or assessment and includes a link or reference to a webpage on which the plan or assessment is accessible.

24 Annual review of municipal, regional or shire plan

(1) A council must adopt its municipal, regional or shire plan (or revisions to its municipal, regional or shire plan) between 1 April and 31 July in each year and forward a copy of the plan (or the revised plan) to the Agency by the latter date.

(2) Before the council adopts its municipal, regional or shire plan (or revisions to its municipal, regional or shire plan) for a particular year, the council must:

(a) prepare a draft of the plan (incorporating any proposed revisions); and

(b) make the draft plan accessible on the council's website and make copies available for public inspection at the council's public offices; and

(c) publish a notice on its website and in a newspaper circulating generally in the area inviting written submissions on the draft plan within a period (at least 21 days) from the date of the notice; and

(d) consider the submissions made in response to the invitation and make any revisions to the draft the council considers appropriate in the light of the submissions.

(3) Although the council's budget forms part of its municipal, regional or shire plan, this section does not apply to the adoption of the budget or of amendments to it.

(4) The adoption of a budget, or of amendments to it, operates to amend the municipal, regional or shire plan so that it conforms with the most recent text of the council's budget.

24A Core services

The Minister may, by *Gazette* notice, advise one or more regional councils or shire councils as to the services that, in the Minister's view, are services that the regional council or councils or shire council or councils should, as a priority, provide and the regional council or councils or shire council or councils must consider such a list when adopting and renewing their plan.

Chapter 4 Council and its members

Part 4.1 Council as a body corporate

Division 1 Corporate nature, capacity and powers of council

25 Council to be body corporate etc.

(1) A council is a body corporate.

(2) A council has the name assigned to it by or under this Act.

(3) A council has full legal capacity to acquire or incur any rights, powers, obligations and liabilities that may attach to a body corporate.

(4) A council has the functions and powers conferred by this Act.

26 How council acts in its corporate capacity

(1) A council acts:

(a) through local authorities, local boards or council committees, officers, staff and agents to whom the council has delegated powers or authorised to act on its behalf; or

(b) through officers or other persons authorised by this Act (or a by-law) to act on the council's behalf; or

(c) under its common seal.

Note

It follows that a contract will be made by a council under its common seal or by an officer or other agent of the council with authority to act on its behalf.

(2) The affixing of the common seal to a document:

(a) must be authorised or ratified by resolution of the council; and

(b) must be attested by the signatures of the CEO and at least one member of the council.

Division 2 Formation of local government subsidiary

27 Local government subsidiary

(1) If the Minister approves, a council or 2 or more councils acting together (the ***constituent council or councils***) may form a body corporate (a ***local government subsidiary***) to carry out functions related to local government on behalf of the constituent council or councils.

(2) The local government subsidiary and the constituent council or councils must comply with any conditions of the Minister's approval.

(3) LGANT may exercise the powers of a council under this section to form a local government subsidiary, or to participate with a council or 2 or more councils in the formation of a local government subsidiary and, if it does so, a reference in this Division to a council or a constituent council extends to LGANT.

28 Corporate identity and functions of local government subsidiary

(1) A local government subsidiary comes into existence as a body corporate on a date fixed by the Minister by *Gazette* notice.

(2) A local government subsidiary:

(a) has the name assigned in its constitution; and

(b) has the powers and functions conferred or assigned by its constitution.

(3) A local government subsidiary acts:

(a) through officers or agents appointed for the purpose; or

(b) under its common seal.

(4) The common seal of a local government subsidiary may only be affixed to a document as authorised by its constitution.

29 Constitution of local government subsidiary

(1) The constitution of a local government subsidiary must be as approved by the Minister.

(2) The constitution may provide that liabilities of the local government subsidiary are guaranteed by the constituent council or councils.

(3) The constituent council or councils may, with the Minister's approval, vary the constitution of the local government subsidiary.

(4) The approved constitution must be accessible on the Agency's website and on the website of any constituent council.

30 Reporting obligations

(1) A constituent council is responsible for ensuring that proper accounts are kept of the local government subsidiary's financial affairs.

(2) A constituent council's annual report is to contain, or to incorporate by reference, a report on the local government subsidiary's activities for the relevant financial year including financial statements for the relevant financial year.

31 Abolition of local government subsidiary

(1) The Minister may, by *Gazette* notice, abolish a local government subsidiary.

(2) On abolition of a local government subsidiary, its property, rights and liabilities are transferred to, and vest in, the constituent council or councils in accordance with the constitution of the local government subsidiary.

Division 3 Delegation

32 Delegation

(1) A council may delegate powers and functions.

(2) A delegation may be made to:

(a) a local authority; or

(aa) a local board; or

(b) a council committee; or

(c) a local government subsidiary; or

(d) the CEO.

(3) However:

(a) the power to impose rates cannot be delegated; and

(b) if power to incur financial liabilities is delegated the council must fix reasonable limits on the delegate's authority; and

(c) a delegation cannot duplicate or derogate from the CEO's functions (including delegated functions).

Part 4.2 Council members

Division 1 Composition of council

33 Composition of council

A council consists of the members elected or appointed to the council from time to time under this Act.

34 Vacancy etc. in office of member

The validity of a decision or act of a council is unaffected by:

(a) a vacancy in the office of a member; or

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

(c) the fact that a person has acted in the office of a member while disqualified from office.

Division 2 Role of members

35 Role of members

(1) The role of a member of a council is:

(a) to represent the interests of all residents and ratepayers of the council area; and

(b) to provide leadership and guidance; and

(c) to facilitate communication between the members of the council's constituency and the council; and

(d) to participate in the deliberations of the council and its community activities; and

(e) to ensure, as far as practicable, that the council acts honestly, efficiently and appropriately in carrying out its statutory responsibilities.

(2) However, a member of the council has no power to direct or control staff, or to interfere with the management of staff.

(3) A member of the council has a duty to act, at all times, in what the member genuinely believes to be the best interests of the council's constituency.

Division 3 Terms and conditions of membership

36 Eligibility for membership

A person is, unless disqualified, eligible for election or appointment as a member of a council if enrolled as an elector in respect of a place of residence within the council's area.

37 Disqualification

(1) A person is disqualified from office as a member of a council if the person:

(a) holds a judicial office (other than justice of the peace); or

(b) is bankrupt or subject to a composition or arrangement with creditors under the *Bankruptcy Act 1966* (Cth); or

(c) has been sentenced to a term of imprisonment (which has not expired) of one year or more; or

(d) is an employee of the council; or

(e) is indebted to the council for rates or surcharge and fails to discharge the debt within 6 months after the debt becomes due and payable; or

(f) is certified mentally unfit to carry out the functions of a member.

(2) However, an employee of a council is not disqualified from office as a member of some other council.

Example

An administration officer who lives in Alice Springs and works for the Central Desert Shire Council is not disqualified by that employment from office as a member of the Alice Springs Town Council.

(3) A person is certified mentally unfit to carry out the functions of a member if 2 medical practitioners have certified that the person is mentally unfit, and likely to remain unfit for the remainder of the person's term of office, to carry out the functions of a member.

38 Basic term of office

(1) A council member is elected or appointed for a term of office ending at the conclusion of the next general election following the member's election or appointment.

(2) If a member continues to be eligible for membership, the member is eligible for re-election for a successive term or terms.

39 Casual vacancies

(1) A person ceases to hold office as a member of a council if the person:

(a) dies; or

(b) is disqualified from office as a member of the council; or

(c) ceases to be enrolled as an elector in respect of a place of residence within the area; or

(d) is absent, without permission of the council, from 2 consecutive ordinary meetings of the council; or

(e) resigns by written notice of resignation given to the CEO; or

(f) is removed from office by the Minister under Part 7.5.

(2) If a member ceases to hold office under subsection (1)(b) or (c), the former member must inform the CEO as soon as practicable of the casual vacancy in the former member's office, and of the reason for it.

Maximum penalty: 100 penalty units.

(2A) An offence against subsection (2) is an offence of strict liability.

(3) If a member gives a written notice of resignation to the CEO, the resignation:

(a) cannot be withdrawn; and

(b) takes effect on the date the notice is given to the CEO or on a date (not more than 14 days later) specified in the notice.

(4) On receipt of a written notice of resignation, the CEO must immediately notify the council.

(5) The following rules govern the filling of casual vacancies:

(a) if a casual vacancy occurs within 12 months or less before the next general election, the council may (in accordance with its policy) co-opt a person to fill the vacancy until the next general election;

(b) if a casual vacancy occurs more than 12 months before the next general election, a by-election is to be held to fill the vacancy.

(6) However, if:

(a) a member resigns in order to stand as a candidate for election to the Legislative Assembly or the Commonwealth House of Representatives or the Senate; and

(b) the resignation takes effect not more than 28 days before the close of nominations for the relevant election; and

(c) the former member is not elected, and applies to the CEO to be reinstated as a member of the council within 7 days after the result of the election is known;

the former member is reinstated as a member of the council.

(7) A member reinstated to office under subsection (6) is not entitled to remuneration or allowances for the period between resignation and reinstatement.

40 Determination of eligibility for office

If there is reason to doubt that a member or a candidate for election as a member of a council is eligible to hold the office, the Tribunal may, on application by the CEO, the Electoral Commissioner or a local resident, determine the question.

41 Immunity from liability

(1) No civil or criminal liability lies against a member of a council for an honest act or omission done or made in the performance, or the purported performance, of the member's official functions.

(2) A civil liability that would, but for subsection (1) lie against a member of a council lies instead against the council.

Part 4.3 Principal member of Council

42 Mayor or President

(1) The principal member of a municipal council is to have the title *Mayor*.

(2) However:

(a) in the case of the Darwin City Council, the principal member is to have the title *Lord Mayor*; and

(b) in the case of the Litchfield Council, the principal member is to have, at the election of the council, the title *President* or *Mayor*.

(3) The principal member of a regional council or a shire council is to have, at the election of the council, the title *President* or *Mayor*.

43 Role of principal member (and deputy or acting principal member)

(1) The role of the principal member of a council is:

(a) to chair meetings of the council; and

(b) to speak on behalf of the council as the council's principal representative; and

(c) to carry out the civic and ceremonial functions of the principal member.

(2) The role of the deputy principal member of a council is to carry out any of the principal member's functions when the principal member:

(a) delegates the functions to the deputy; or

(b) is absent from official duties because of illness or for some other pressing reason; or

(c) is on leave.

(3) If the principal member is absent from official duties on leave or for some other reason, and there is no deputy principal member or the deputy is not available to act in the principal member's position, the council may, by resolution, appoint some other member of the council to act in the principal member's position for a specified period or until the principal member resumes official duties.

44 Election or appointment of principal member

(1) The principal member of a council is:

(a) in the case of a municipal council – to be elected to the office; or

(b) in the case of a regional council or a shire council – to be appointed or elected to the office.

(2) A regional council or a shire council is taken to have chosen appointment as the basis of filling the office until the council changes the basis of filling the office under subsection (3).

(3) A regional council or a shire council may, by special resolution, change the basis of filling the office.

(4) However, a change to the basis of filling the office:

(a) may only be made once during a council's term; and

(b) must be made at least 3 months, but not more than 9 months, before the end of that term.

(5) If a change is made to the basis of filling the office, the change does not take effect until the next general election (but it takes effect for the purposes of that election).

(6) If a shire is changed into a region or a region is changed into a shire, by *Gazette* notice under section 9, the basis of filling the office of the principal member remains the same as it was before the change, until changed under this section.

(7) If a shire or a region is changed into a municipality, by *Gazette* notice under section 9, and the principal member was appointed under this section:

(a) the basis of filling the office of the principal member remains the same as it was before the change; and

(b) as of the date of the next general election the basis of filling the office of the principal member of the municipality is governed by subsection (1)(a).

45 Appointment or election of principal member (and deputy)

(1) If appointment is the basis of filling the office of the principal member of a council, the council must, at the first meeting of a council to be held after a general election, appoint one of its members to be the principal member, and another to be deputy principal member, of the council.

(2) If election is the basis of filling the office of the principal member:

(a) the office is to be filled at each general election; and

(b) the council must, at the first meeting of the council to be held after each general election, appoint one of its members to be deputy principal member.

46 Term of office and casual vacancies

(1) The principal member is elected or appointed for a term of office ending at the conclusion of the next general election.

(2) The deputy principal member is appointed for a term of office ending at the conclusion of the next general election or a lesser term fixed by the council when it makes the appointment.

(3) A casual vacancy occurs in the office of the principal member, or deputy principal member, if the person holding the relevant office:

(a) ceases for any reason to be a member of the council; or

(b) resigns from the relevant office by giving written notice of resignation to the CEO.

(4) The council may make any appointment necessary to fill:

(a) a casual vacancy in the office of the principal member; or

(b) if a deputy principal member has been appointed for a term ending before the conclusion of the next general election – a vacancy occurring at the end of the deputy's term.

(5) However:

(a) if a by-election is to be held to replace an elected principal member, the casual vacancy will be filled by the successor elected at the by-election; and

(b) if a person is co-opted to fill a casual vacancy in the office of an elected principal member:

(i) the co-opted member is not (unless appointed by the council to be its principal member) to be the council's principal member; and

(ii) the council may appoint any of its existing members to be its principal member for the remainder of the council's term; and

(c) if the council does not fill a casual vacancy in the office of an elected principal member, it may appoint any of its existing members to be its principal member for the remainder of its term.

Note

This section should be read in conjunction with section 39(5). This provides that if a casual vacancy occurs in the office of any member more than 12 months before the end of the council's term, a by-election is to be held to fill the vacancy; if 12 months or less, the vacancy may be filled by co-option.

Part 4.4 Council office

47 Council office

(1) A council must have a public office (and may have 2 or more public offices).

(2) A public office must be open to the public at reasonable times determined by the council.

(3) If a council has 2 or more public offices, a document to be displayed or available for inspection at the council's public office must be displayed or available for inspection at each of the public offices.

Chapter 5 Local authorities, local boards and council committees

Part 5.1 Local boards

48 Object

The object of this Part is to achieve effective integration and involvement of local communities in the system of local government as it relates to municipalities and shires.

49 Establishment of local boards

(1) A municipal or shire council may establish one or more local boards.

(2) The council may designate a part of its area as the location within which a particular local board is to perform its functions.

(3) The council may abolish a local board.

50 Petition for establishment of local boards

(1) A group of 20 or more residents may lodge a petition with the municipal or shire council seeking the establishment of a local board for a part of the area in which they are resident.

(2) The petition must designate a member of the group as its representative.

(3) On receipt of the petition, the council must consider establishing (but is not obliged to establish) a local board for the relevant part of the area.

(4) In deciding whether to establish a local board as sought in the petition, the council must consider:

(a) the extent of support for the proposal among other residents of the relevant part of the area; and

(b) whether the council's resources are sufficient to support the effective operation of the proposed local board.

51 Constitution of local boards

(1) A local board is to consist of:

(a) the members of the municipal or shire council who are resident within the local board's area or who represent wards within its area; and

(b) such other members of the community or communities within the local board's area as the council thinks fit to appoint as members of the local board; and

(c) any other person whom the council appoints to be a member of the local board.

Note

A member of the council's staff is eligible for appointment as a member of a local board.

(2) The principal member of the council is a member ex officio of a local board and may (but is not obliged to) participate in its meetings.

(3) The members of a local board are not entitled to receive an allowance or other form of remuneration from the council for their work as members of the local board but are entitled to reimbursement of out-of-pocket expenses.

52 Functions of local boards

(1) The functions of a local board are:

(a) to involve local communities more closely in issues related to local government; and

(b) to ensure that local communities are given an opportunity to express their opinions on questions affecting local government; and

(c) to allow local communities a voice in the formulation of policies for the locality as well as policies for the area; and

(d) to take the views of local communities back to the relevant municipal or shire council and act as advocates on their behalf; and

(e) to contribute to the development of the relevant municipal or shire plan.

(2) A local board is subject to control and direction by the council.

53 Procedure

Subject to direction by the council, a local board determines its own procedures.

Part 5.1A Local authorities

53A Object

The object of this Part is to achieve effective integration and involvement of local communities in the system of local government as it relates to regions.

53B Establishment of local authorities

(1) The Minister may, by *Gazette* notice, identify a regional council that must establish and maintain one or more local authorities.

(2) A council identified in a *Gazette* notice mentioned in subsection (1) must establish and maintain the local authority in accordance with any guidelines that the Minister may make.

(3) The Minister may, by *Gazette* notice, abolish a local authority.

53C Constitution of local authority

(1) A local authority is to consist of:

(a) the members of the regional council who represent a ward within which the local authority's area is situated; and

(b) such other members of the community or communities within the local authority's area as the council appoints as members of the local authority.

Note for subsection (1)

A member of the council's staff is eligible for appointment as a member of a local authority.

(2) The principal member of the council is a member ex officio of a local authority and may (but is not obliged to) participate in its meetings.

(3) The council must appoint the members under subsection (1)(b) in accordance with any guidelines that the Minister may make.

53D Functions of local authority

The functions of a local authority are:

(a) to involve local communities more closely in issues related to local government; and

(b) to ensure that local communities are given an opportunity to express their opinions on questions affecting local government; and

(c) to allow local communities a voice in the formulation of policies for the locality as well as policies for the area and the region; and

(d) to take the views of local communities back to the regional council and act as advocates on their behalf; and

(e) to contribute to the development of the relevant regional plan; and

(f) to make recommendations to the council in relation to the council's budget, and to review expenditures by the council, in relation to the part of the council's area within which the local authority performs its functions; and

(g) to perform other functions assigned to the local authority by the Minister, in accordance with any guidelines that the Minister may make.

53E Limits on functions of local authority

(1) A local authority must comply with any guidelines that the Minister may make.

(2) A local authority is subject to control and direction by the council, subject to any guidelines that the Minister may make.

53F Reporting

The local authority and the council must provide each other with reports in accordance with any guidelines that the Minister may make.

Part 5.2 Council committees

54 Council committees

(1) A council may establish council committees.

(2) A council committee consists of the persons appointed by the council to be members of the committee.

(3) The members of a council committee may consist of, or include, persons who are not members of the council.

Note

A member of the council's staff is eligible for appointment as a member of a council committee (even though staff members may be disqualified from membership of the council itself).

(4) The terms and conditions on which a person holds office as a member of a council committee are to be as determined by the council.

(5) The council may abolish a council committee.

55 Nature of committee's functions

(1) A council committee has the functions assigned to the committee by the council.

(2) The assigned functions may be of an executive or advisory nature.

(3) An executive committee carries out, on behalf of the council, functions delegated to it by the council.

56 Control and direction by the council

A council committee is subject to control and direction by the council.

57 Procedure

Subject to any direction by the council, a council committee may determine its own procedures.

Chapter 6 Meetings

Part 6.1 Council meetings

58 Nature and timing of council meetings

(1) A council must hold a meeting of its members (an ***ordinary meeting***) at least once in each successive period of 2 months.

(2) Subject to this Act, a council may deal with business of any kind at an ordinary meeting.

(3) The first ordinary meeting of a council to be held after a general election must be held within 14 days after the conclusion of that general election.

(4) The council may hold a meeting to deal with a particular item of business (a ***special meeting***) whenever circumstances require.

59 Convening of meetings

(1) Meetings of a council are convened by the CEO.

(2) The CEO must convene a special meeting of the council at a specified time and place to deal with specified business if:

(a) the principal member or 3 or more other members request the CEO in writing to convene the meeting; or

(b) the council resolves that the special meeting should be convened.

(3) If the CEO fails to convene a meeting required under this Act, a meeting may be convened by any member of the council.

(4) A notice convening a council meeting:

(a) must be in writing; and

(b) must state the date, time, place and agenda for the meeting; and

(c) must be given to the members:

(i) in the case of an ordinary meeting – at least 3 business days before the date of the meeting; and

(ii) in the case of a special meeting – at least 4 hours before the time appointed for the meeting; and

(d) must be accessible on the council's website a reasonable time before the time appointed for the meeting; and

(e) must be posted on a notice board at the council's public office.

(5) The notice may be given to a member personally, by post, by email, by fax or in any other way pre-arranged by the CEO with the member.

60 Business to be considered at a meeting

An ordinary meeting may deal with business of any kind but a special meeting may deal only with the business for which the special meeting was convened unless all members are present at the special meeting and unanimously agree to deal with other business.

61 Procedure at meeting

(1) The Chair of a meeting of a council will be:

(a) if the principal member is present – the principal member; or

(b) if the principal member is not present but the deputy principal member is present – the deputy principal member; or

(c) if neither the principal member nor the deputy principal member is present but an acting principal member is present – the acting principal member; or

(d) if neither the principal member nor the deputy principal member is present and there is no acting principal member or the acting principal member is not present – a member chosen by the members present at the meeting to chair the meeting.

(2) A quorum at a meeting of a council consists of a majority of the council's members.

(3) If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting is postponed to a time and place to be fixed by the CEO and notified to the members.

(4) A member who is not physically present at a meeting of a council is taken to be present at the meeting if:

(a) the member's attendance at the meeting by means of an audio or audiovisual conferencing system is authorised in accordance with council policy; and

(b) communication is established by means of the conferencing system, at or around the commencement of the meeting, between the member and the members present at the place appointed for the meeting; and

(c) the member has the same or substantially the same opportunity to participate in debate, and to register an opinion, on questions arising for decision as if the member were physically present at the meeting.

(5) Subject to this Act, a decision carried by a majority of the votes of the members present at a meeting of a council is a decision of the council.

(6) Each member present at a meeting has one vote on a question arising for decision at the meeting and, if the council has a policy allowing the Chair to exercise a casting vote, the Chair may exercise, in the event of an equality of votes, a second or casting vote.

(7) A policy to allow the Chair to exercise a casting vote:

(a) may only be established by resolution of the council passed at the first meeting of the council to be held after a general election; and

(b) cannot be altered or revoked during the term of the council; and

(c) lapses at the conclusion of the next general election.

(8) Unless the council decides unanimously to take a vote by secret ballot voting is to be by show of hands.

(9) Subject to this Act, and any by-laws regulating the procedure at a meeting, a council may determine its own procedures.

Part 6.2 Meetings of local authorities, local boards and council committees

62 Timing of meetings of local authorities, local boards, and council committees

(1) Subject to direction by the council, a local board or council committee meets at times determined by the local board or council committee.

(2) Subject to any guidelines that the Minister may make, and to direction by the council, a local authority meets at times determined by the local authority.

63 Convening of meetings

(1) Meetings of a local authority, local board or council committee are convened by the CEO.

(2) The CEO may, at the request of the Chair of a local authority, local board or council committee, convene a meeting of the local authority, local board or committee.

(3) A notice convening a meeting:

(a) must be in writing; and

(b) must state the date, time, place and agenda for the meeting; and

(c) must be given to the members of the local authority, local board or council committee a reasonable time before the time appointed for the meeting; and

(d) must be accessible on the council's website a reasonable time before the time appointed for the meeting; and

(e) must be posted on a notice board at the council's public office.

(4) The notice may be given to a member personally, by post, by email, by fax or in any other way pre-arranged by the CEO with the member.

64 Procedure at meeting

(1) The Chair of a meeting of a local authority, local board or council committee will be:

(a) in the case of a local authority – a member appointed by the local authority as its Chair; or

(aa) in the case of a local board – a member appointed by the board as its Chair; or

(b) in the case of a council committee – a member appointed by the council as Chair of the committee; or

(c) in the case of a local authority, local board or council committee, if the Chair is not present (or no-one currently holds the position of the Chair) – a member chosen by the members present at the meeting to chair the meeting.

(2) A quorum at a meeting of a local authority, local board or council committee consists of a majority of its members.

(3) If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting is postponed to a time and place to be fixed by the CEO and notified to the members.

(4) A member who is not physically present at a meeting is taken to be present at the meeting if:

(a) the member's attendance at the meeting by means of an audio or audiovisual conferencing system is authorised in accordance with council policy; and

(b) communication is established by means of the conferencing system, at or around the commencement of the meeting, between the member and the members present at the place appointed for the meeting; and

(c) the member has the same or substantially the same opportunity to participate in debate, and to register an opinion, on questions arising for decision as if the member were physically present at the meeting.

(5) A decision of a local authority, a local board or a council committee is to be by majority vote of the members present at a meeting.

(6) Subject to this Act, any guidelines that the Minister may make and any direction by the council, a local authority, local board or council committee may determine its own procedures.

Part 6.3 Provisions of general application to meetings of councils, local authorities, local boards, and council committees

65 Meetings to be open to the public

(1) As a general rule, a meeting of a council, local authority, local board or council committee must be open to the public.

(2) However, the public may be excluded while business of a kind classified by the regulations as confidential business is being considered.

66 Postponement of meeting

(1) The CEO may, if it becomes impracticable to proceed with a meeting of a council, local authority, local board or council committee at the appointed time and place, postpone the meeting for up to 21 days.

(2) The CEO must ensure, as far as practicable, that each member receives notice of the postponement and of the time and place to which the meeting has been postponed.

67 Minutes

(1) The CEO must ensure that proper minutes of meetings of the council, local authorities, local boards and council committees are kept.

(2) The minutes must:

(a) set out:

(i) the names of the members present at the meeting; and

(ii) the business transacted at the meeting; and

(iii) any other information required by the regulations; and

(b) include references to any written reports or recommendations considered in the course of the meeting together with information about how to obtain access to the reports or recommendations.

(3) The council, local authority, local board or council committee must, at its next meeting, or next ordinary meeting, confirm the minutes (with or without amendment) as a correct record of the meeting.

(4) A copy of the minutes must, within 10 business days after the date of the meeting to which they relate, be available to the public:

(a) on the council's website; and

(b) at the council's public office.

Note

Confidential matter may be suppressed from the material that is made publicly available under section 201.

(5) A member of the public:

(a) may inspect without fee, at the council's public office, the copy of the minutes made available to the public; and

(b) may, on payment of the appropriate fee fixed by the council, obtain an identical copy of the minutes; and

(c) may, on payment of the appropriate fee fixed by the council, obtain from the CEO a certified copy of, or extract from, the minutes of a meeting.

(6) However, until the council, local authority, local board or council committee has confirmed the minutes as a correct record of the meeting:

(a) the minutes, in the form in which they are made available to the public, must be marked with a warning to the effect that they have not been confirmed as a correct record of the meeting; and

(b) no certified copy of, or extract from, the minutes is to be issued.

Part 6.4 Meetings of electors

68 Calling meeting of electors

(1) A council may call a meeting of the electors for its area or a ward within its area.

(2) A local authority or local board may call a meeting of the electors for its local authority area or local board area.

(3) A meeting of electors is called by giving notice of the time and place of the meeting:

(a) on the council's website; and

(b) by notice displayed at the council's public office; and

(c) by notice published in a newspaper circulating generally in the area.

69 Procedure at meeting

(1) The Chair of a meeting of electors will be a person nominated by the council or the local authority or the local board (as the case requires) to chair the meeting.

(2) The procedure at the meeting will, subject to any direction by the council or the local authority or the local board be as determined by the Chair.

(3) Each elector is entitled to one vote on a question arising for decision at the meeting.

(4) The Chair may conclusively determine the qualification of a person present at the meeting to vote.

(5) A question arising for decision at the meeting will be resolved by majority vote.

70 Effect of resolution passed at meeting of electors

A resolution passed at a meeting of electors does not bind the council.

Chapter 7 Rights and obligations of members

Part 7.1 Allowances and expenses

71 Allowances

(1) A member of a council is entitled to be paid an allowance by the council.

(2) The allowance for a member of a council is to be at a rate fixed by the council (subject to any guidelines that the Minister may make) for the relevant financial year.

(2A) A member of a local authority is to be paid an allowance by the council to the extent that any guidelines that the Minister may make and that apply in the relevant financial year permit such an allowance to be paid.

(2B) The allowance for a member of a local authority is to be fixed by the council in accordance with any guidelines that the Minister may make and that apply in the relevant financial year.

(3) Allowances for each financial year are to be fixed as part of the council's budget for the relevant financial year.

(4) Differential allowances may be fixed for:

(a) the principal member; and

(b) the deputy principal member; and

(ba) the Chair of a local authority; and

(c) other members of the council or local authority.

(5) Allowances are to be paid as determined by the council or by the guidelines but are not to be paid in advance.

72 Expenses

A council member or member of a local authority is (subject to conditions and limitations determined by the council) entitled to payment or reimbursement of reasonable expenses for travel and accommodation necessary for:

(a) attending a meeting of the council, local authority, local board or a council committee; or

(b) attending to business of the council in accordance with a prior resolution of the council.

Part 7.2 Conflict of interest

73 Conflict of interest

(1) A member has a ***conflict of interest*** in a question arising for decision by the council, local board or council local authority, committee if the member or an associate of the member has a personal or financial interest in how the question is decided.

(2) This section does not apply if the interest is:

(a) an interest in a question about the level of allowances or expenses to be set for members; or

(b) an interest that the member or associate shares in common with the general public or a substantial section of the public; or

(c) an interest as an elector or ratepayer that the member or associate shares in common with other electors or ratepayers; or

(d) an interest that the member or an associate has in a non-profit body or association; or

(e) an interest of the member or an associate:

(i) in appointment or nomination for appointment to a body with predominantly charitable objects; or

(ii) in payment or reimbursement of membership fees, or expenses related to membership, in such a body; or

(f) an interest so remote or insignificant that it could not reasonably be regarded as likely to influence a decision.

74 Disclosure of interest

(1) As soon as practicable after a member becomes aware of a conflict of interest in a question that has arisen or is about to arise before the council, local authority, local board or council committee, the member must disclose the personal or financial interest that gives rise to the conflict (the ***relevant interest***):

(a) at a meeting of the council, local authority, local board or council committee; and

(b) to the CEO.

(2) The CEO must record the disclosure in a register of interests kept for the purpose.

(3) A member must not, without the Minister's approval:

(a) be present at a meeting of the council, local authority, local board or council committee while a question in which the member has a conflict of interest is under consideration; or

(b) participate in any decision on the question.

(4) The Minister may approve a member's participation in the consideration of, or a decision on, a question in which the member has a conflict of interest on conditions the Minister thinks appropriate.

(5) A member is guilty of an offence if the member:

(a) fails to disclose an interest as required under subsection (1); or

(b) contravenes subsection (3) or a condition of an approval under subsection (4).

Fault element: Intention.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(6) If the Tribunal finds that a member has participated in the decision of the council, a local authority, a local board or a council committee contrary to this section, the Tribunal may, on application by an elector or ratepayer, declare the decision void.

Part 7.3 Confidential information

75 Improper disclosure of information

(1) A person who discloses confidential information acquired as a member of a council, a local authority, a local board or council committee is guilty of an offence.

Fault elements:

(a) the person makes the disclosure intentionally or recklessly; and

(b) the person knows or ought to know that the information is confidential.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) However, this section does not prevent the disclosure of confidential information:

(a) for the purposes of carrying out functions as a member of the council, local authority, local board or council committee; or

(b) as authorised by the person to whom the duty of confidence is owed; or

(c) to a court or tribunal; or

(d) to a law enforcement agency; or

(e) to an inspector.

76 Improper use of information

(1) A person who makes improper use of information acquired as a member of a council, local authority, local board or council committee is guilty of an offence.

Fault element: Intention.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person makes improper use of information if the person uses it to gain some private benefit, or to inflict harm on another.

Part 7.4 Code of conduct

Division 1 Making or adoption of code of conduct

77 Obligation to have code of conduct

(1) A council must have a code of conduct.

(2) The code of conduct must govern the conduct of members of the council, members of local authorities, members of local boards, and members of council committees.

(3) A council's code of conduct must be accessible on its website.

78 Making or adoption of code of conduct

(1) A council may, by ordinary resolution:

(a) make or adopt a code of conduct; or

(b) amend its code of conduct.

(2) Unless a council has a code of conduct that the council has itself made or adopted, the provisions set out in Schedule 2 constitute the council's code of conduct.

(3) If a code of conduct made or adopted by a council is in any respect less stringent than a provision in Schedule 2, the relevant provision of Schedule 2 applies as a provision of the council's code.

Division 2 Disciplinary proceedings

79 Complaints of breach of code of conduct

(1) A person (the ***complainant***) who believes that a member has committed a breach of a council's code of conduct may lodge a complaint with the Agency:

(a) stating the name of the member alleged to have committed the breach (the ***respondent***); and

(b) giving particulars of the alleged breach.

(2) The complaint:

(a) must be in the approved form; and

(b) must include a statutory declaration verifying the allegations of fact made against the respondent; and

(c) must be made within 6 months after the date of the alleged breach.

(3) The Agency will refer the complaint to a disciplinary committee.

80 Establishment and composition of disciplinary committees

(1) The Minister may establish one or more disciplinary committees.

(2) A disciplinary committee consists of:

(a) a legal practitioner nominated by the Attorney-General; and

(b) a nominee of the Minister; and

(c) a nominee of LGANT.

81 Procedure of disciplinary committee

(1) A disciplinary committee to which a complaint is referred under this Division may summarily reject a complaint if it appears to the committee that:

(a) the complaint would more appropriately form the subject matter of a criminal charge; or

(b) the complaint is frivolous, vexatious or lacking in substance.

(2) If the disciplinary committee decides to proceed to hear the complaint, the committee must give the complainant and the respondent an opportunity to make representations to the committee.

(3) If the disciplinary committee is not satisfied, after hearing the parties, that the alleged breach of the code is established, it must reject the complaint.

(4) If the disciplinary committee is satisfied that the alleged breach of the code is established, it may:

(a) decide to take no disciplinary action; or

(b) administer a reprimand; or

(c) impose a fine (not exceeding 20 penalty units) on the respondent; or

(d) recommend to the Minister that the member be removed from office on disciplinary grounds.

(5) A fine imposed under subsection (4)(c) may be recovered as a debt due to the Territory.

82 Right of appeal

A party to proceedings before a disciplinary committee may appeal to the Tribunal against a decision of the committee in the proceedings.

Part 7.5 Removal from office on disciplinary grounds

83 Removal of member from office

The Minister may remove a member from office if:

(a) a disciplinary committee recommends the member's removal; or

(b) the member is convicted of an offence showing the member to be unfit to remain in office.

Chapter 8 Elections and polls

Part 8.1 General elections

84 Minister's power to call general election

(1) The Minister may call a general election for an area if:

(a) the area is newly constituted; or

(b) 2 or more areas are amalgamated; or

(c) a substantial change is made affecting the electoral representation of the area (such as the division of the area into wards, or some substantial change to the boundaries of the area or to wards within the area); or

(d) a general election fails for any reason.

(2) The general election is called by *Gazette* notice fixing a date for the election.

85 Periodic general elections

(1) Periodic general elections are to be held at intervals of 4 years commencing in March 2012.

(2) A periodic general election is to be held in the month of March on a day determined by the Minister and notified by *Gazette* notice.

(3) If a general election for an area is called by the Minister and is held within 1 year before the date fixed for a periodic general election under this section, no further general election for the area will be held on the later date.

Part 8.2 By-elections

86 By-elections

(1) If a casual vacancy occurs in the membership of a council more than 12 months before the end of the member's term, a by-election is to be held to fill the vacancy.

(2) If the member whose seat has become vacant represented a ward, the by-election is confined to the ward.

(3) A by-election is to be held on a date fixed by the Electoral Commissioner.

(4) The date must fall within 3 months after the Electoral Commissioner receives notice of a casual vacancy in the membership of the council for which the by-election is required.

(5) The by-election (including nomination of candidates and other related processes) is to be conducted as decided by the Electoral Commissioner.

Part 8.3 Electors and electoral rolls

87 Entitlement to vote

A person is entitled to vote at an election, or poll of electors if enrolled as an elector for the area or ward in which the election or poll is to be conducted on the date on which the electoral roll for the election or poll closes.

88 Electoral rolls

(1) The Electoral Commission must prepare a new roll for an area or ward whenever it is necessary to do so in order to allow for the conduct of an election or poll of electors.

(1A) The roll must contain the same information about each elector required of a roll prepared under the *Electoral Act*.

Note for subsection (1A)

See section 11 of the Electoral Act for the information required of a roll prepared under that Act.

(2) If the address of an elector is suppressed from a roll prepared under the *Electoral Act*, it must also be suppressed from the roll prepared for this Act.

(4) An electoral roll closes for an election or a poll of electors on a date determined in accordance with the regulations.

(5) When an electoral roll closes, it must be available for public inspection until the conclusion of the election or poll at the Electoral Commission's public offices.

(6) Access is to be permitted to the electoral roll for the area or ward on the same basis as access to a roll under the *Electoral Act*.

Part 8.4 Conduct of elections

89 Conduct of elections and polls

(1) An election or poll of electors is to be conducted in accordance with the regulations.

(2) If a periodic general election under this Act is to be held on the polling day for the election under the *Constitutional Convention (Election) Act*, the regulations may provide for any of the following:

(a) additional provisions to facilitate the holding of the election under that Act and the periodic general election on that day;

(b) modifications of specified provisions in this Chapter and the regulations to facilitate the holding of both elections on that day;

(c) a matter arising because of the holding of both elections on that day.

90 Voting

(1) Voting is to be compulsory.

(2) Subject to the regulations, an elector may vote:

(a) by returning a postal vote; or

(b) if the Minister approves – by voting electronically in a manner approved by the Minister; or

(c) by attending and voting at a polling place; or

(d) in any other way authorised by regulation.

(3) An elector who fails to vote at an election or poll is guilty of an offence.

Maximum penalty: 1 penalty unit.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a charge of an offence against subsection (3) to prove that the defendant had a reasonable excuse for the non-compliance.

Part 8.5 Electoral disputes

91 Disputing validity of election or poll

(1) The Electoral Commissioner or a person with a proper interest in the result of an election or poll may, by application to the Tribunal, dispute the result of the election or poll.

(2) A person has a proper interest in the result of an election or poll if the person:

(a) was a candidate for election or a prospective candidate whose nomination was rejected; or

(b) is an elector for the relevant area.

(3) An application disputing the result of an election:

(a) must state the grounds on which the applicant seeks relief from the Tribunal; and

(b) must state the nature of the remedy sought by the applicant.

(4) An application must be filed with the Registrar of the Tribunal within 21 days after the conclusion of the election to which it relates.

92 Service of application

(1) An application disputing the result of an election or poll must be served on:

(a) the Electoral Commissioner; and

(b) any member or candidate for election whose position could be affected by the result of the application; and

(c) any person on whom the Tribunal directs service.

(2) A person on whom an application is served is a respondent to the application.

(3) A respondent may, within 7 days after service of the application or a longer period allowed by the Tribunal, file in the Tribunal a reply to the application.

(4) A reply must be served on the applicant and any other respondents.

93 Inquiries by Tribunal

(1) The Tribunal must inquire into the matters raised in an application.

(2) However:

(a) the Tribunal may, if it considers an application frivolous, vexatious, or lacking in substance, dismiss the application without further inquiry; and

(b) the Tribunal cannot inquire into the correctness of an electoral roll.

94 Powers of Tribunal

(1) The Tribunal has the following powers:

(a) the Tribunal may declare the election or poll void and order another election;

(b) the Tribunal may declare a person who should have been declared elected to have been duly elected as a member of the council;

(c) the Tribunal may declare a respondent to the application not to have been duly elected as a member of the council.

(2) The Tribunal is not to disturb the result of an election on the ground of an error affecting the conduct of the election unless satisfied that the error is a material error that is likely to have affected the result of the election.

(3) If, in the course of an inquiry under this Part, the Tribunal finds that a person has committed an offence, the Registrar must, as soon as practicable, report the finding to the Minister.

95 Exclusive method of challenge

The validity or result of an election or poll cannot be challenged except by proceedings under this Part.

Part 8.6 Miscellaneous

96 Minister's powers in relation to election

The Minister may (before or after the expiration of a relevant time limit) extend the time for holding an election, or for taking any step in relation to the holding of an election.

97 Interference with proper conduct of election or poll

(1) A person must not obstruct, or interfere with, the proper conduct of an election or poll.

Fault element: Intention.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person must not, by violence or intimidation, influence the vote of an elector at an election or poll.

Fault element: Intention.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(3) A person must not, in the course of carrying out official functions related to an election or poll, attempt to influence the vote of an elector.

Fault element: Intention.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

98 Secrecy of vote

A person who, in the course of carrying out official functions, or assisting a voter to vote, finds out how a voter voted, must not disclose the vote.

Fault element: Intention.

Maximum penalty: 200 penalty units or imprisonment for 1 year.

99 Offences relating to campaign material

(1) A person must not publish or distribute any campaign material unless:

(a) the material clearly states the name and address of the person authorising the publication or distribution; and

(b) if the material is a printed document – the material includes the name and address of the printer who printed the document; and

(c) if the material is intended to be viewed from 2 sides – the information mentioned in paragraphs (a) and (b) is included on both sides.

Fault element: The person intentionally publishes or distributes the campaign material.

Maximum penalty: 100 penalty units.

(2) A person must not publish or distribute any campaign material that:

(a) is likely to:

(i) mislead an elector; or

(ii) deceive an elector; or

(iii) improperly interfere with an elector casting a vote; or

(b) contains an untrue or incorrect statement.

Fault element: The person intentionally publishes or distributes the campaign material.

Maximum penalty: 100 penalty units.

(3) For this section, ***campaign material*** is an advertisement, document or any other thing that is intended to promote the electoral prospect of a particular candidate or group of candidates for an election.

(4) Without limiting subsection (3), ***campaign material*** includes any of the following:

(a) an electoral advertisement;

(b) a printed document containing an electoral matter (for example, a handbill, pamphlet or how-to-vote card);

(c) a message containing an electoral matter that is sent by telephone or otherwise broadcast by electronic means;

(d) material containing an electoral matter that is published.

(5) The Electoral Commissioner may, in writing, declare a thing mentioned in subsection (3) or (4) is not campaign material.

(6) The Electoral Commissioner may do so only if the Electoral Commissioner is satisfied the declaration is warranted having regard to all of the following:

(a) any information contained in the thing and the way in which the information is presented;

(b) the person for whom the thing is created;

(c) the way in which the thing is intended to be used or distributed;

(d) any other matters as the Commissioner considers appropriate.

(7) For subsection (4), ***electoral matter*** is matter, in printed or electronic form, that is intended or likely to affect voting at an election.

(8) Without limiting subsection (7), matter is taken to be intended or likely to affect voting at an election if it contains an express or implicit reference to or comment on:

(a) the election; or

(b) a candidate for the election; or

(c) the performance of a member, or former member, of a council; or

(d) an issue submitted to, or otherwise before, the electors in relation to the election.

Chapter 9 Council staff

Part 9.1 Council's CEO

100 CEO

(1) A council must have a CEO and may have a Deputy CEO.

(2) If the CEO is absent or unavailable to carry out official duties:

(a) the Deputy CEO, if there is a Deputy who is available to act, acts as CEO; and

(b) if there is no Deputy CEO, or the Deputy is absent or unavailable to act, a person nominated by the CEO to act in that situation acts as CEO.

(3) The CEO must notify the principal member of the council of a nomination made by the CEO under subsection (2)(b).

(4) Appointments to the office of CEO are to be made, as occasion requires, by the council in accordance with the relevant Ministerial guidelines.

101 Role and functions of CEO

The CEO is responsible to the council:

(a) to ensure that the council's policies, plans and lawful decisions are implemented; and

(b) to undertake the day-to-day management of the council's operations (including the management of council staff); and

(c) to provide or obtain for the council the information and advice the council reasonably requires for effectively carrying out its functions; and

(d) to ensure that the council's constituency is kept properly informed about council policies, programs and decisions and to ensure that appropriate and prompt responses are given to specific requests for information; and

(e) to ensure that the council's assets and resources are properly managed and maintained; and

(f) to ensure that proper standards of financial management are maintained and, in particular, proper controls over expenditure; and

(g) to ensure that financial and other records are properly made and maintained; and

(h) to appoint, manage and, where necessary, terminate the appointment of council staff (other than the CEO); and

(i) to carry out other functions delegated to the CEO by the council or assigned to the CEO under this or any other Act.

102 Delegation by CEO

The CEO may delegate (or sub-delegate) a power or function to a person or committee.

Part 9.2 Other staff

103 Other staff of the council

The CEO is responsible for the appointment of staff in accordance with a staffing plan approved by the council.

Part 9.3 Principles and policies

104 Principles of human resource management

A council must ensure that its policies on human resource management give effect to the following principles:

(a) selection processes for appointment or promotion:

(i) must be based on merit; and

(ii) must be fair and equitable;

(b) staff must have reasonable access to training and development and opportunities for advancement and promotion;

(c) staff must be treated fairly and consistently and must not be subjected to arbitrary or capricious decisions;

(d) there must be suitable processes for dealing with employment-related grievances;

(e) working conditions must be safe and healthy;

(f) there must be:

(i) no unlawful discrimination against a member, or potential member of staff on the ground of sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment, age or any other ground; and

(ii) no other form of unreasonable or otherwise unjustifiable discrimination against a member or potential member of staff.

105 Statement of employment policies

(1) The CEO must maintain an up-to-date statement of the council's employment policies.

(2) The statement of employment policies:

(a) must cover:

(i) recruitment; and

(ii) probation and performance assessment; and

(iii) promotion; and

(iv) access to employment-related benefits; and

(v) resolution of employment-related grievances; and

(b) may cover other employment-related subjects.

(3) The statement of employment policies must be consistent with the principles of human resource management.

Part 9.4 Staff obligations

106 Standards to be observed by council staff

The CEO and other members of a council's staff must maintain proper standards of integrity, diligence and concern for the public interest.

107 Conflict of interest

(1) A staff member who has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice:

(a) must disclose the interest:

(i) if the staff member is the CEO – to the council; or

(ii) in any other case – to the CEO; and

(b) must not act in the matter except as authorised by the CEO or the council (as the case requires).

Maximum penalty: 100 penalty units.

(1A) An offence against subsection (1) is an offence of strict liability.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was unaware of the personal or financial interest.

(3) A reference in this section to a staff member extends to:

(a) a person who is not an employee but works for, or provides services to, the council on a contract basis; or

(b) a person who works for the council under an arrangement with a labour hire agency; or

(c) a person (other than a member of the council, a local authority, a local board, or a council committee) acting under powers of the council conferred by delegation.

108 Disclosure of confidential information

(1) A staff member must not disclose confidential information obtained in the course of the staff member's work except as may be required for the staff member's official duties.

Fault elements:

(a) the staff member makes the disclosure intentionally or recklessly; and

(b) the staff member knows or ought to know that the information is confidential.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A staff member must not make improper use of confidential information obtained in the course of the staff member's work.

Fault element: Intention.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(3) A staff member makes improper use of information if the staff member uses it to gain some private benefit, or to inflict harm on another.

(4) A reference in this section to a staff member extends to:

(a) a person who is not an employee but works for, or provides services to, the council on a contract basis; or

(b) a person who works for the council under an arrangement with a labour hire agency; or

(c) a person (other than a member of the council, a local authority, a local board, or a council committee) acting under powers of the council conferred by delegation.

Part 9.5 Rights and immunities of staff

109 Portability of long service leave rights

(1) A person (the ***applicant***), who leaves the employment of one employer to which this section applies (the ***former employer***) and enters the employment of another (the ***later employer***) within 3 months, may, by notice to both employers, elect to transfer accrued and accruing rights to long service leave to the later employment.

(2) The former employer must, on receiving notice under this section:

(a) inform the later employer of the applicant's accrued and accruing rights to long service leave as appear from the former employer's records; and

(b) pay to the later employer the amount of the provision for long service leave in the former employer's accounts.

(3) This section applies to the following employers:

(a) a council for an area within the Territory;

(b) a local government subsidiary formed with the Minister's approval under this Act;

(c) LGANT.

110 Resignation to contest election

(1) If:

(a) a staff member:

(i) resigns in order to stand as a candidate for election to the council, the Legislative Assembly or the Commonwealth House of Representatives or the Senate; and

(ii) gives the CEO written notice at the time of resignation that the staff member claims the benefit of this section; and

(b) the resignation takes effect not more than 28 days before the close of nominations for the relevant election; and

(c) the former staff member is not elected, and applies to the CEO to be reinstated within 7 days after the result of the election is known;

the former staff member must be reinstated to the staff member's former position or an equivalent position.

(2) A staff member reinstated under subsection (1) is to be treated as having been on unpaid leave between the date of resignation and the date of reinstatement.

111 Immunity from personal liability

(1) No civil or criminal liability attaches to a staff member for an honest act or omission in the performance, or purported performance, of official functions under this or another Act.

(2) A civil liability that would, but for this section, attach to a staff member, attaches instead to the council.

Part 9.6 Authorised persons

Division 1 Appointment of authorised persons

112 Appointment of authorised persons

(1) A council may appoint a person (other than a member of the council) as an authorised person.

(2) An appointment may be subject to limitations and conditions specified in the instrument of appointment.

(3) The council may, by notice to the authorised person;

(a) add to, or vary, the limitations and conditions of appointment; or

(b) revoke the appointment.

113 Powers of authorised persons

An authorised person is, subject to limitations and conditions of appointment, authorised to exercise the powers conferred on an authorised person by or under this Act.

114 Identity cards for authorised persons

(1) The council must issue each authorised person with an identity card:

(a) containing the person's name and a photograph of the person; and

(b) stating that the person is an authorised person.

(2) The authorised person must, at the reasonable request of a person, produce the identity card for inspection.

(3) A person must, on ceasing to be an authorised person, return the identity card to the council.

Fault element: This is an offence of strict liability.

Maximum penalty: 20 penalty units.

Division 2 General powers of authorised person

115 Power to require statement of name and address

(1) If an authorised person reasonably suspects a person of having committed an offence against this Act or the council's by-laws, the authorised person may require the person:

(a) to state the person's name and address; and

(b) if the authorised person considers further evidence of identity necessary – to provide further evidence of a specified kind of identity.

(2) A person is guilty of an offence if the person fails to comply with a requirement under this section.

Maximum penalty: 20 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a charge of an offence against subsection (2) to prove that the defendant had a reasonable excuse for the non-compliance.

116 Power to enter land or premises

(1) An authorised person may, with the necessary authority, enter land or premises for an authorised purpose and remain on the land or premises for as long as may be necessary for that purpose.

(2) The necessary authority is:

(a) the consent of the occupier; or

(b) a warrant issued by a Justice; or

(c) in an emergency – the CEO's authorisation.

(3) A Justice may, if satisfied by information verified by oath, that there are reasonable grounds on which an authorised person should be authorised to enter land or premises to carry out an authorised purpose, issue a warrant accordingly.

(4) An ***authorised purpose*** is any one or more of the following:

(a) investigating a suspected offence against this Act or a by-law;

(b) taking necessary action in an emergency:

(i) to protect the health of, or prevent injury to, a person or animal; or

(ii) to relieve the suffering of an animal; or

(iii) to seize or destroy a savage, diseased or injured animal;

(c) destroying a dog that has, within the preceding 24 hours, attacked and injured a person in a public place;

(d) exercising any other power conferred on an authorised person by this Act or a by-law.

117 Assistance of police

An authorised person may call on a member of the Police Force for assistance in the exercise of powers under this Act (or a by-law).

Division 3 Obstruction of authorised person

118 Obstruction

A person is guilty of an offence if the person hinders or obstructs an authorised person in the exercise of powers under this Act (or a by-law).

Fault elements:

(a) an intention to hinder or obstruct; and

(b) knowledge that the person who is hindered or obstructed is acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

Chapter 10 Financial management

Part 10.1 Receipt and expenditure of money

119 Authorised deposit accounts

(1) A council may establish such authorised deposit accounts as may be necessary for proper financial administration.

(2) All money received by a council must be paid into an authorised deposit account, and all expenditure made by a council must be made from an authorised deposit account.

120 Segregation of certain money

(1) Trust money must be kept separate from the general funds of the council but money subject to different trusts may be kept together in a common authorised deposit account (to be designated as a ***trust account***).

(2) If a council receives funds for a particular purpose, the funds may only be used for that purpose unless the provider of the funds authorises use of the funds for some other purpose.

Note

If money is given on trust, this provision is not intended to limit the power of the Supreme Court to vary the terms of trust (See section 181).

Part 10.2 Investment

121 Investment

(1) A council may invest money not immediately required for the purposes of the council.

(2) The Minister may, after consultation with the Treasurer, issue investment guidelines from time to time.

(3) An investment must be consistent with guidelines in force at the time the investment is made.

Part 10.3 Council borrowing

122 Meaning of borrowing

A council ***borrows*** money if the council obtains any form of financial accommodation.

Examples

1 The financial accommodation might take the form of an overdraft or a loan of some other kind.

2 If a council acquires possession of goods under a hire-purchase agreement, a finance lease or an instalment purchase arrangement, the council is taken to borrow money equivalent to the present value of the future consideration to be paid by the council under the agreement, lease or arrangement.

123 Council's power to borrow

A council may borrow money but only with the Minister's approval (to be given only after consultation with the Treasurer).

Exceptions:

1 The Minister's approval is not required for an advance on overdraft if:

(a) the term of the advance does not exceed 2 months; and

(b) the amount of the advance does not exceed 2% of the council's total revenue income for the last financial year for which the council has an audited financial statement.

2 The Minister's approval is not required for a transaction classified as a minor transaction under guidelines issued by the Minister.

124 Security for borrowing

(1) A council may, with the Minister's approval, give security for a borrowing in the nature of a mortgage or charge over property of the council.

(2) The property over which a security is granted may consist of or include (present and future) general revenue of the council.

(3) The Minister will not approve a security over property if, in the Minister's opinion, it is essential that the property be retained in the ownership of the council.

(4) The Minister must consult with the Treasurer before approving a security under this section.

125 Security over general revenue

(1) If a council defaults on an obligation secured on the general revenue of the council, the Supreme Court may, on application by the holder of the security or a trustee for holders of the security:

(a) make one or both of the following orders:

(i) an order requiring the council to appropriate a specified portion of its revenue to the satisfaction of its obligations;

(ii) an order requiring the council to raise a specified amount by way of rates and directing that the amount raised be applied towards satisfaction of the council's obligations; and

(b) give incidental or ancillary directions.

(2) The rights conferred by subsection (1) are in addition to other rights (if any) conferred by the security.

Part 10.4 Long-term financial plans

126 Long-term financial plan

(1) A council must prepare and keep up-to-date a long-term financial plan.

(2) A long-term financial plan must relate to a period of at least 4 financial years.

(3) A long-term financial plan must contain:

(a) a statement of the major initiatives the council proposes to undertake during the period to which the plan relates; and

(b) projections of income and expenditure for each financial year of the period to which the plan relates; and

(c) the council's proposals for the repair, maintenance, management and development of infrastructure for each financial year of the period to which the plan relates.

(5) The council must provide the Agency with a copy of its long-term financial plan by 31 July in the first financial year to which the plan relates.

Part 10.5 Annual budgets

127 Annual budgets

(1) A council must prepare a budget for each financial year.

(2) The budget for a particular financial year must:

(a) outline:

(i) the council's objectives for the relevant financial year; and

(ii) the measures the council proposes to take, during the financial year, towards achieving those objectives; and

(iii) the indicators the council intends to use as a means of assessing its efficiency in achieving its objectives; and

(b) contain estimates of revenue and expenditure for the financial year (differentiating between operating and capital expenditure); and

(c) state the amount to be allocated to the development and maintenance of each class of infrastructure for the financial year; and

(d) state the amount the council proposes to raise by way of rates, and set out the rates structure, for the financial year; and

(e) contain an assessment of the social and economic effects of its rating policies; and

(f) state the allowances for members of the council for the financial year and the amount budgeted to cover payment of those allowances; and

(g) contain any other information required by any guidelines that the Minister may make.

(3) Subject to the regulations, a council must not budget for a deficit.

128 Adoption of budget or amendment

(1) A council must adopt its budget for a particular financial year on or before 31 July in the relevant financial year.

(2) A council may, after adopting its budget for a particular financial year, adopt an amendment to its budget (but once allowances for the members of the council, or of a local authority established by the council, for a particular financial year have been set, they cannot be changed by amendment).

(3) As soon as practicable after adopting its budget, or an amendment to its budget, for a particular financial year, a council must:

(a) publish the budget or the amendment as adopted on the council's website; and

(b) notify the Agency in writing of the adoption of the budget or amendment; and

(c) publish a notice in a newspaper circulating generally in the area informing the public that copies of the budget or amendment may be downloaded from the council's website or obtained from the council's public office.

(4) The council's budget forms part of the council's municipal, regional or shire plan.

Part 10.6 Accounting records

129 Accounting records

(1) A council must keep accounting records that give a true and fair view of:

(a) the council's receipts and payments; and

(b) the council's assets and liabilities.

(2) The records must be kept in accordance with the accounting standards and other requirements stipulated by the regulations.

130 Availability of records for inspection

(1) The accounting records must be available for inspection at any reasonable time by:

(a) the council's auditor; or

(b) an inspector.

(2) Subject to the council's privacy policy, the accounting records must also be available for inspection at any reasonable time by a member of the council.

(3) A council must have a privacy policy protecting members and staff of the council from undue intrusion into their private affairs.

Example

The privacy policy might limit the inspection of payroll records by members of a council.

Part 10.7 Annual financial statement

131 Annual financial statement

(1) A council must prepare a financial statement for each financial year.

(2) The annual financial statement must give a true and fair view of:

(a) the council's revenue and expenditure for the financial year; and

(b) the council's assets and liabilities as at the end of the financial year.

(3) The annual financial statement must conform with the accounting standards and other requirements stipulated in the regulations and any guidelines that the Minister may make.

132 Reference of annual financial statement for audit

The annual financial statement must be prepared, and referred to the council's auditor for audit:

(a) as soon as reasonably practicable after the end of the relevant financial year; and

(b) in any event, in time to ensure that the audited statement will be available no later than 15 November in the calendar year in which the financial year ends.

Part 10.8 Audit

Division 1 Auditor

133 Auditor

(1) A council must have an auditor.

(2) The auditor must be:

(a) the Auditor-General; or

(b) a registered company auditor or an authorised audit company; or

(c) a firm whose members include a registered company auditor.

(3) A person is not eligible to be the auditor if the person:

(a) is a member or a candidate for election as a member of the council; or

(b) holds any other office or position with the council.

(4) The council must, in the instrument of the auditor's appointment:

(a) fix the term of appointment (which must not be less than 2 nor more than 5 years); and

(b) fix the basis of the auditor's remuneration.

(5) The office of auditor becomes vacant if:

(a) the auditor dies; or

(b) the auditor resigns by written notice to the CEO; or

(c) the auditor becomes a candidate for election as a member of the council or accepts some other remunerated office or position with the council; or

(d) the auditor's term of office comes to an end and the auditor is not re-appointed; or

(e) the auditor is removed from office by the council with the Minister's consent.

134 Appointment by the Minister

(1) If a council fails to appoint an auditor, the Minister may make an appointment on behalf of the council.

(2) An auditor appointed under subsection (1) is to be paid fees fixed by the Minister.

Division 2 Audit

135 Annual audit

(1) The auditor must, as soon as practicable after the council's annual financial statement is referred to the auditor for audit:

(a) audit the statement; and

(b) report to the council on the results of the audit and, in particular, on any material irregularity in the council's accounting practices or the management of the council's financial affairs identified in the course of the audit; and

(c) report to the Minister on any evidence found in the course of the audit of a contravention of the law or serious financial irregularity.

(2) The audit is to be carried out in accordance with the Australian auditing standards and requirements stipulated in the regulations.

136 Other audits

The auditor must carry out any other audits of the council's financial affairs that may be required under the regulations.

137 Assistance to be provided to the auditor

(1) The auditor may ask the CEO or another member of the council's staff:

(a) to produce financial records; or

(b) to answer questions relevant to the council's financial affairs.

(2) A person who fails to comply with a request under subsection (1) is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a charge of an offence against subsection (2) to prove that the defendant had a reasonable excuse for the non-compliance.

Part 10.9 Rectification orders

138 Power of Minister to make rectification order

(1) If the Minister is of the opinion that an irregularity has occurred, or is occurring, in the administration of a council's financial affairs, the Minister may, by order (a ***rectification order***) given in writing to the council, require the council to take specified action to correct the irregularity or to guard against the recurrence of irregularities (or both).

(2) A rectification order must fix a date for compliance (the ***compliance date***).

(3) The Minister may, on application by the council, postpone the compliance date from time to time.

139 Non-compliance with order

(1) If a council fails to comply with a rectification order by the compliance date, each member of the council is guilty of an offence.

Maximum penalty: 100 penalty units.

(1A) An offence against subsection (1) is an offence of strict liability.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant acted with reasonable diligence to secure compliance by the council.

Chapter 11 Rates and charges

Part 11.1 Rateability

140 Categorisation of land

The land in a local government area is divided into 3 basic categories:

(a) rateable land; and

(b) conditionally rateable land; and

(c) land (***exempt land***) that is exempt from rates.

141 Rateable land

All land within a local government area is ***rateable*** unless it is:

(a) conditionally rateable land for which there is no approved rating proposal currently in force; or

(b) exempt land.

142 Conditionally rateable land

(1) The following land is ***conditionally rateable***:

(a) land held under a pastoral lease;

(b) land occupied under a mining tenement;

(c) other land that is classified under the regulations as conditionally rateable.

(2) Conditionally rateable land is only rateable in accordance with a rating proposal approved by the Minister at least 1 month before the commencement of the financial year for which the rates are declared.

(3) A rating proposal:

(a) must contain the information required by the Minister's guidelines; and

(b) must be submitted to the Minister for approval at least 4 months before the commencement of the financial year to which the proposal relates.

(4) The Minister:

(a) must respond to a rating proposal within 20 business days after receiving it; and

(b) may in the response:

(i) approve the rating proposal in the form submitted by the council: or

(ii) approve the rating proposal with amendments the Minister considers appropriate; or

(iii) reject the rating proposal.

(5) Before the Minister approves a rating proposal, the Minister must consult with the Minister responsible for the pastoral sector and the Minister responsible for the Mining sector.

(6) An approved rating proposal must be published in the form in which it is approved by the Minister:

(a) on the Agency's website; and

(b) on the council's website.

(7) While an approved rating proposal remains in force:

(a) conditionally rateable land within the ambit of the approved proposal is to be regarded as rateable land; and

(b) conditionally rateable land outside the ambit of the approved proposal is not to be regarded as rateable land.

(8) If there is no approved rating proposal in force for a local government area, conditionally rateable land within the area will not be regarded as rateable land.

143 Urban farm land

(1) The owner or occupier of land within a council area may apply to the council for classification of the land as urban farm land.

(2) Land is not eligible for classification as urban farm land unless:

(a) its area is more than 0.8 of a hectare; and

(b) it is used by the occupier for carrying on a prescribed business or industry; and

(c) the occupier derives a substantial part of the occupier's livelihood from carrying on that business or industry.

(3) An application for classification of land as urban farm land must be accompanied by information required by the council to show that the eligibility criteria are satisfied.

(4) The owner or occupier of land classified as urban farm land must, if so required by the council, provide the council with information required by the council to show that the eligibility criteria continue to be satisfied.

(5) If an owner or occupier fails to provide, within the time allowed by the council, the information required by the council under subsection (4), or the information provided does not, in the council's opinion, establish that the eligibility criteria continue to be satisfied, the council must declassify the land as urban farm land.

144 Exempt land

(1) The following land is exempt from rates:

(a) Crown land occupied by the Territory for a public purpose (other than the provision of public housing);

(b) land of the council, other than such land leased for a purpose that does not give rise to an exemption under some other provision of this section;

(c) a public place consisting of:

(i) a park, garden or reserve; or

(ii) a playground or sports ground; or

(iii) a cemetery; or

(iv) a road;

(d) land belonging to a religious body consisting of:

(i) a church or other place of public worship; or

(ii) a place of residence for a minister of religion associated with a church or other place of public worship; or

(iii) a place of residence for the official head in the Territory of the religious body; or

(iv) an institution for religious teaching or training;

(e) a public hospital;

(f) land used for a non-commercial purpose by a public benevolent institution or a public charity;

(g) a kindergarten, pre-school, school, university or other tertiary educational institution;

(h) land recognised by the council as a youth centre;

(i) a public library or public museum;

(j) the common property in a units plan or building development plan registered under the *Real Property (Unit Titles) Act*;

(k) land owned by a Land Trust or an Aboriginal community living area association except:

(i) land designated in the regulations as rateable; or

(ii) land subject to a lease or a licence conferring a right of occupancy; or

(iii) land used for a commercial purpose;

(l) land exempted from rates under another Act.

(2) If land is used for 2 or more different purposes, and 1 or more but not all the purposes are exempt, the land is not exempt from rates unless the non-exempt purpose is merely incidental to the exempt purpose.

Example

An allotment consists of a public museum containing a cafeteria. The existence of the cafeteria would not negative the exemption. However, if it were a restaurant attracting customers in its own right, it would do so.

(3) In deciding whether land is used for a commercial or non-commercial purpose, the fact that the user is a public benevolent institution or a public charity is irrelevant: the question is to be decided according to the nature of the use and not the nature of the user.

145 Special cases

(1) Land of the Commonwealth is only rateable if the Commonwealth agrees and, in that event, it is rateable on conditions agreed by the Commonwealth.

Example

The Commonwealth might agree that an occupier of land under a lease from the Commonwealth is to be liable for rates.

(2) A Land Trust is not liable to rates but:

(a) an occupier of land owned by the Land Trust (other than the Trust itself) is liable to rates; and

(b) if land owned by the Trust is held under a lease from the Trust, the leasehold estate constitutes the rateable land for the purposes of this Act.

Note

The above provision is applicable to land of a Land Trust that is not fully exempt from rates under section 144(1)(k).

(3) An Aboriginal community living area association is not liable to rates but:

(a) an occupier of land owned by the association (other than the association itself) is liable to rates; and

(b) if land owned by the association is held under a lease from the association, the leasehold estate constitutes the rateable land for the purposes of this Act.

Note

The above provision is applicable to land of an Aboriginal community living area that is not fully exempt from rates under section 144(1)(k).

(4) Land owned by a Land Trust or an Aboriginal community living area association:

(a) is not subject to the provisions of this Chapter under which overdue rates become a charge on the land to which they relate; and

(b) is not liable to be sold for non-payment of rates.

Note

This subsection does not, however, protect a leasehold estate from such a charge or from being sold for non-payment of rates.

146 Apportionment where land rateable for part only of a financial year

(1) If land becomes rateable during the course of a financial year, or ceases to be rateable during the course of a financial year:

(a) the land is liable to rates for the financial year; but

(b) the amount of the liability is reduced to a proportion of the rates that would have been payable if the land had been rateable for the whole of the financial year.

(2) The proportion is the proportion between the period for which the land is rateable (expressed in days) and the number of days in the financial year.

(3) A council must make any refund or remission of rates necessary to give effect to this section.

Part 11.2 Basis for assessment of rates

147 Allotments

(1) An ***allotment*** is a parcel or part of a parcel of land for which a council proposes to make a separate assessment of rates (and includes a unit or lot created by registration of a plan under the *Real Property (Unit Titles) Act* or the *Unit Titles Act*, and a unit created by the registration of a unit title scheme under the *Unit Title Schemes Act*).

(2) A council may only divide a parcel of land that is subject to the same ownership into separate allotments if:

(a) the allotments are subject to separate occupation; or

(b) the allotments fall within different zones; or

(c) there is some other good reason for disaggregating the parcel into separate allotments.

Example

If land consists of a block of flats in the same ownership but separately occupied, the council could either treat the block of flats as a single allotment and determine rates for the whole, or disaggregate it into the separate flats and determine rates for each flat.

148 Basis of rates

(1) Rates may consist of:

(a) a fixed amount (a ***fixed charge***) for each allotment; or

(b) an amount (a ***valuation-based charge***) calculated as a proportion of the assessed value of each allotment; or

(c) a combination of:

(i) fixed charges (for different purposes); or

(ii) a fixed charge (or fixed charges) and a valuation-based charge.

(2) If rates consist of, or include, a valuation-based charge, the charge may be subject to a specified minimum (a minimum charge).

Example

A valuation based charge might be expressed as a specified proportion of assessed value or $100 (whichever is the greater amount).

(3) Differential fixed charges, differential valuation-based charges, and differential minimum charges may be fixed for:

(a) allotments within different parts of the local government area; or

Example

The rates for land within different planning zones might be based on differential components.

(b) different classes of allotments.

Example

If land is divided into small allotments (such as self-storage units or marina berths) because of a subdivision for the purposes of the Unit Titles Act or Unit Title Schemes Act, and the council considers it inequitable to apply the minimum charge otherwise applicable to land within the area to the small allotments, the council could fix a different and lesser minimum for the small allotments.

(4) If an allotment is divided into separate parts or units that are adapted for separate occupation or use, a minimum charge may consist of a fixed amount to be multiplied by the number of separate parts or units.

Example

If an allotment consists of a block of flats in separate occupation, the minimum charge could consist of a fixed amount to be multiplied by the number of flats comprised in the complex.

149 Basis of assessed value

(1) A council may adopt unimproved capital value, improved capital value, or annual value as the basis of the assessed value of allotments within its area or part of its area.

(2) The ***assessed value*** of land is the unimproved capital value, the improved capital value or the annual value of the land (according to whichever basis of valuation has been adopted by the council for the land) as it appears from the valuation roll.

(3) However:

(a) the unimproved value of a mining tenement is its assessed value; and

(b) the unimproved value is taken to be 20 times the annual rental payable under the tenement.

Part 11.3 Liability for rates

150 Joint and several liability

(1) The owner and the occupier (if not the owner) of an allotment are jointly and severally liable for rates payable in respect of an allotment.

Note

It should be noted that joint and several liability does not increase the liability to rates. Take (for example) the case of an allotment on which the council imposes rates amounting to $600. Suppose that A and B are both ratepayers and jointly and severally liable for the rates. The council cannot, by seeking recovery from each separately, recover a total of $1 200. The aggregate liability remains the same (ie $600.). It follows that an amount received or recovered by the council from A reduces B's liability to the council as well.

(2) However, an occupier of an allotment (if not an owner) does not become liable for rates in respect of the allotment unless:

(a) the occupier's name is entered in the assessment record, on the occupier's own application, as the principal ratepayer for the allotment; or

(b) the council gives the occupier written notice that it proposes to seek recovery of rates from the occupier.

(3) If notice is given under subsection (2)(b) in the course of a financial year, the occupier is only liable for a proportionate part of the rates for that financial year.

151 Principal ratepayer for an allotment

(1) The owner of an allotment is the principal ratepayer for the allotment but, if the owner is not liable to rates, the occupier is, if liable to rates for the allotment, the principal ratepayer for the allotment.

Note

In the case of an allotment owned by a Land Trust, the Trust itself is not liable to rates so the lessee (if there is a lessee) is treated under this Act as the owner and hence the principal ratepayer for the allotment. If there is no lessee, the occupier may be liable for rates (See section 150(2)) and, if so, would be the principal ratepayer for the allotment.

(2) However, the principle stated in subsection (1) is subject to the following qualifications:

(a) the CEO may, on the application of an occupier who would not be the principal ratepayer in accordance with subsection (1), designate the ratepayer in the assessment record as the principal ratepayer for an allotment;

(b) if 2 or more ratepayers would, in accordance with subsection (1), be the principal ratepayer for an allotment, the CEO may designate 1 or more of them in the assessment record as the principal ratepayer for the allotment.

(3) A ratepayer designated under subsection (2) as the principal ratepayer for an allotment is the principal ratepayer to the exclusion of others.

Note

The designation is subject to reconsideration and review (See section 154).

(4) If rates are paid by, or recovered from, a ratepayer who is not the principal ratepayer for an allotment, the ratepayer may, subject to any relevant agreement, recover the amount from the principal ratepayer or set the amount off against any liability owed to the principal ratepayer.

Part 11.4 Assessment record

152 Assessment record

(1) The council must maintain an assessment record.

(2) The assessment record must contain:

(a) a brief description of each allotment within the area and a statement of its assessed value; and

(b) if a charge is imposed on non-rateable land in the area – a brief description of the land; and

(c) the name and address of the owner of the land; and

(d) if the owner is not the principal ratepayer for the land – the name and address of the principal ratepayer; and

(e) if the land is subject to a differential rate on the basis of its use – the land use; and

(f) other information the council directs to be included in the record.

(3) The assessment record may be kept by computer.

(4) A copy of the assessment record must be available for inspection, free of charge, by any member of the public at the council's public office.

(5) The CEO must, at the request of a person to whom an entry in the assessment record relates, suppress the person's name or address (or both) from the publicly accessible copy of the record.

153 Notifications to be given by ratepayers

(1) A person who becomes the principal ratepayer for a particular allotment within a council area must, within 28 days of doing so, give the CEO written notice of that fact and of the person's postal address.

Maximum penalty: 20 penalty units.

(2) If the principal ratepayer's postal address changes, the principal ratepayer must, within 28 days of the change, give the CEO written notice of the new address.

Maximum penalty: 20 penalty units.

(3) A person who ceases to be the principal ratepayer for a particular allotment within a council area must, within 28 days of doing so, give the CEO written notice of that fact.

Maximum penalty: 20 penalty units.

(4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

154 Correction of record

(1) A person may apply to the council for the correction of an entry in the assessment record.

(2) The application may be made on any one or more of the following grounds:

(a) the entry wrongly classifies an allotment that is not rateable as rateable land;

(b) the entry should, but does not, classify an allotment as urban farm land;

(c) the entry wrongly records the use of an allotment;

(d) the entry contains some other relevant misclassification or misdescription of an allotment;

(e) the entry wrongly records ownership or occupation of an allotment;

(f) the entry wrongly designates the applicant as principal ratepayer for an allotment;

(g) the entry contains some other relevant error.

(3) The application:

(a) must be in writing; and

(b) must state the applicant's interest in the allotment to which the application relates; and

(c) must state the nature of the amendment that should, in the applicant's opinion, be made.

(4) If the application is uncontroversial, the CEO may decide the application on behalf of the council but, if it raises matters of possible controversy, the application is to be dealt with by the council or a council committee.

(5) The CEO must notify the applicant, in writing, of the decision on the application as soon as practicable.

(6) If the council or council committee decides to reject the application in whole or part, the decision is reviewable.

Part 11.5 Imposition of rates and charges

Division 1 General and special rates

155 General rates

(1) A council must, on or before 31 July in each year, declare rates (*general rates*) on allotments throughout the area to raise the amount the council intends to raise for general purposes for the financial year.

(2) The council may, at the same time, raise an amount towards a special purpose.

(3) The declaration must state:

(a) the amount to be raised for general purposes and, if an amount is to be raised for a special purpose, the amount to be raised for the special purpose; and

(b) the basis or bases of the rates; and

(c) if the rates are to be payable in instalments – the number of instalments and when they will be payable.

156 Special rates

(1) A council may at any time declare rates for a particular purpose (*special rates*).

(2) If special rates are imposed for the benefit of a particular part of the area, they may be limited to allotments within the relevant part of the area.

(3) A declaration under this section must:

(a) state the purpose for which the special rates are imposed; and

(b) state the amount to be raised; and

(c) state the basis of the special rates; and

(d) state whether the special rates are imposed on rateable property generally, or on rateable property within a particular part of the area and, if they are limited to a particular part of the area, identify the relevant part.

Division 2 Charges

157 Imposition of charges

(1) If a council carries out work, or provides services, for the benefit of land, or the occupiers of land, within its area, the council may declare a charge on the land.

(2) A declaration of a charge must:

(a) state the amount or basis of the charge; and

(b) identify the land to which the charge will apply.

(3) The amount of a charge need not be limited to the cost of providing the service.

(4) Subject to the following exceptions, the provisions of this Chapter applicable to rates apply with necessary adaptations and modifications to charges imposed under this section.

Exceptions

1 A charge may be imposed on land that is not liable to rates (including land that is exempt from rates).

2 A charge may have a reasonable basis that differs from rates.

Example

A charge to recover the cost of kerbing might consist of an amount per metre of the frontage of an allotment.

3 The provisions for rate concessions do not apply to charges.

Part 11.6 General and particular notice

158 Public notice

(1) Within 21 days after declaring rates, the council must publish notice of the rates:

(a) on its website; and

(b) in a newspaper circulating generally in the council's area.

(2) The notice must:

(a) give details of the rates; and

(b) state the date on which payment of the rates will fall due and, if the council has resolved to allow payment by instalment, the date on which each instalment will fall due for payment; and

(c) give details of any discount or other concession or benefit the council has resolved to allow for prompt payment of the rates in full.

(3) Failure to publish the notice within the time limit fixed by subsection (1) does not invalidate the declaration.

159 Rates notice

(1) At least 28 days before the payment of the rates (or the first instalment of the rates) falls due, the council must issue an account for the payment of rates (a ***rates notice***) for each allotment.

(2) The rates notice must be given if practicable to the principal ratepayer for an allotment or, if it is not practicable to do so, to any other ratepayer for the allotment.

(3) The rates notice must:

(a) state the due date for payment of the rates and, if payment by instalment is allowed, the due date for payment of the first instalment; and

(b) must be given at least 28 days before the due date for payment of the rates or the first instalment of the rates.

(4) Non-compliance with subsection (3)(b) does not invalidate the rates notice.

160 Discount for prompt payment

(1) A council may resolve to allow a discount, or some other form of concession or benefit, for prompt payment of rates in full.

(2) If the council resolves to allow a discount for prompt payment of rates in full, the rate notice must state the percentage discount, the conditions on which it is to be allowed, and both the discounted and the undiscounted amount payable.

161 Payment by instalment

(1) If a council allows payment of rates by instalment, it does so on condition that each instalment is paid by the due date.

(2) It follows that, if a ratepayer defaults in payment of an instalment by the due date, all remaining instalments become immediately due and payable.

(3) A council may, however, relieve a ratepayer, or ratepayers generally, from the consequences of default to an extent decided by the council.

Part 11.7 Interest on unpaid rates

162 Accrual of interest on overdue rates

(1) If rates are not paid by the due date, interest accrues on the amount of the unpaid rates at the relevant interest rate.

Note

If the ratepayer defaults in payment, all remaining instalments become due and payable. Interest therefore accrues on the total amount of the unpaid rates and not merely the amount of the instalment. (See section 161(2)).

(2) Interest is calculated on a daily basis on the amount in default (exclusive of interest) from the due date until the date of payment.

(3) The ***relevant interest rate*** is a rate interest fixed by the council as the relevant interest rate.

(4) A council may:

(a) fix a rate of interest as the relevant interest rate; or

(b) vary a rate of interest previously fixed as the relevant interest rate.

163 Remission of interest

A council may remit interest wholly or in part.

Part 11.8 Rate concessions

164 Rate concessions

(1) A ***rate concession*** is one or more of the following:

(a) a waiver in whole or part of rates or a component of rates;

(b) a deferment in whole or part of an obligation to pay rates or a component of rates.

(2) A council may grant a rate concession unconditionally or on conditions determined by the council.

(3) If a council grants a conditional rate concession under this Part, and the ratepayer fails to comply with a condition, the council may by notice to the ratepayer:

(a) withdraw the concession; and

(b) require the ratepayer to pay an amount, on or before a date specified in the notice, to neutralise any benefit to the ratepayer of the rate concession.

165 Rate concession to alleviate financial hardship

(1) A council may grant a rate concession to alleviate financial hardship.

(2) A rate concession may be granted on application by a person who establishes to the council's satisfaction that the person will suffer financial hardship if the concession is not granted.

166 Correction of anomalies in operation of rating system

(1) A council may grant a rate concession to a ratepayer or ratepayers of a particular class if satisfied that it is necessary to do so in order to correct anomalies in the operation of the rating system.

(2) A council may grant a rate concession under this section on the council's own initiative or on application by an affected ratepayer.

167 Public benefit concessions

(1) A council may grant a rate concession if satisfied that the concession will advance one or more of the following purposes:

(a) securing the proper development of its area;

(b) preserving buildings or places of historical interest;

(c) protecting the environment;

(d) encouraging cultural activities;

(e) promoting community health or welfare;

(f) encouraging agriculture;

(g) providing recreation or amusement for the public.

(2) However, the rate concession:

(a) may only be granted if authorised under a policy formally adopted by resolution of the council; and

(b) is subject to limitations and conditions specified in that policy.

(3) A council may grant a rate concession under this section on its own initiative or on application by a ratepayer.

Part 11.9 Recovery of rates

Division 1 Application of this Part

168 Extended meaning of *rates* in this Part

In this Part:

rates includes:

(a) a charge; and

(b) if the rates (or charge) are overdue:

(i) accrued interest; and

(ii) costs reasonably incurred by the council in recovering, or attempting to recover, them.

Division 2 Recovery by action

169 Recovery by action

(1) Rates may be recovered as a debt due to the council from the principal ratepayer or any other ratepayer by action in a court of competent jurisdiction.

(2) The proceedings may be commenced at any time within 6 years after the rates were imposed.

Division 3 Overriding statutory charge

170 Overdue rates to be a charge on land

If rates are not paid by the due date, the rates become a charge on the land to which they relate.

Exceptions:

1. Rates do not become a charge on land unless the owner of the land is a ratepayer who is liable for the rates that are in arrears.

2. Rates cannot become a charge on land within an Aboriginal community living area.

171 Registration of charge

(1) After rates have been in arrears for at least 6 months, the council may apply to the appropriate registration authority for registration of the charge over the land to which the charge relates.

(2) The registration authority must, on payment of the appropriate fee by the council:

(a) register the charge as an overriding statutory charge; and

(b) notify all persons with a registered interest in or over the land of the registration of the charge.

(3) Failure to give notice of the registration of the charge under subsection (2)(b) does not invalidate the registration of the charge.

(4) A registration authority must cancel registration of a charge if the council applies for the cancellation.

(5) The council must apply for cancellation if the liability to which the charge relates is fully satisfied, and may apply for cancellation for any other reason.

172 Effect of registered charge

While a charge is registered as an overriding statutory charge under this Division, it has priority over all other registered and unregistered mortgages, charges and encumbrances except a previously registered overriding statutory charge.

Division 4 Sale of land

173 Power to sell land for non-payment of rates

If rates have been in arrears for at least 3 years, and an overriding statutory charge securing liability for the rates has been registered for at least the last 6 months, the council may sell the land.

174 Pre-conditions of sale

(1) Before the council sells land for non-payment of rates, it must give a notice to the principal ratepayer for the land at the address appearing in the assessment record:

(a) stating the period for which rates have been in arrears; and

(b) stating the total amount currently outstanding on the land; and

(c) warning that if that amount is not paid in full within a stated period (at least 1 month) after the date of the notice, the council will sell the land for non-payment of rates.

(2) A copy of the notice must be given to:

(a) any other person with a registered interest in the land; and

(b) if the land is a pastoral or other lease granted by the Territory, or a mining tenement – the Minister administering the legislation under which the lease or mining tenement was granted.

(3) If the whereabouts of a person to whom a notice (or copy) is, after reasonable inquiries, not ascertained by the council, the notice may be given by:

(a) publishing it in a newspaper circulating generally throughout the Territory; and

(b) leaving a copy of the notice in a conspicuous place on the land.

175 Sale of land

(1) If the full amount of the outstanding rates is not paid within the time allowed in the warning notice, the council may sell the land.

(2) The sale must be by public auction.

Exceptions

1 If the land is a pastoral or other lease granted by the Territory, or a mining tenement, the sale must be made as approved by the Minister administering the legislation under which the lease or mining tenement was granted.

2 If the land is a leasehold estate granted by a Land Trust, the sale must be made as approved by the relevant Land Council.

(3) A public auction must be advertised:

(a) on the council's website; and

(b) on at least 2 separate occasions in a newspaper circulating generally throughout the Territory.

(4) If before the date of the sale, the outstanding rates (including costs incurred by the council with a view to sale of the land) are paid, the council must call off the sale.

(5) If an auction fails, the council may sell the land by private contract for the best price that it can reasonably obtain.

(6) If a council sells land under this section, the council may execute a conveyance of the land under its common seal.

(7) On registration of the conveyance, title to the land vests in the purchaser freed and discharged from all mortgages, charges and encumbrances securing the payment of money.

176 Proceeds of sale

(1) The council must apply the proceeds of the sale of the land as follows:

(a) first in the payment of the costs incurred in selling the land under this Division;

(b) secondly, in the payment of all liabilities secured on the land (including the liability to the council) in the order of their priority;

(c) thirdly, in payment to the owner of the land.

(2) If the council fails, after reasonable inquiry, to discover the identity or whereabouts of a person entitled to payment under this section, the council may make the payment to the Public Trustee as unclaimed property.

(3) A payment made to the Public Trustee under subsection (2) vests in the Public Trustee under, and for the purposes of, section 59A of the *Public Trustee Act*.

Part 11.10 Correction of errors

177 Correction of errors

(1) The Minister may, by *Gazette* notice, declare that rates have been validly declared, or declared and levied, by a council despite a particular procedural non-compliance or some other irregularity or error of a minor or technical nature.

(2) The declaration validates the rates from the date of their purported declaration.

Chapter 12 Council property

Part 12.1 Property generally

178 Acquisition of property

(1) A council may acquire real or personal property (including intellectual property) by agreement.

(2) The Minister administering the *Lands Acquisition Act* may, by arrangement with a council, compulsorily acquire land for the council under that Act.

(3) The council must reimburse the relevant Minister for compensation and other costs associated with the acquisition.

179 Assumption of care control and management of land

(1) A council may, at the request or with the consent of the interested persons, assume the care, control and management of land within its area.

(2) The following are the *interested persons*

(a) the owner;

(b) a person (other than the owner) with a registered estate or interest in the land;

(c) if a person claims an interest in the land and the interest is protected by a registered caveat – the caveator.

(3) However:

(a) if the land is subject to a trust, the consent of the trustee is required but not the consent of equitable owners; and

(b) consent is not required from:

(i) a person who cannot be found after reasonable inquiry; or

(ii) a body that has become defunct.

(4) When a council assumes the care, control and management of land, it must publish notice of that fact on its website.

180 Power to develop and improve land

A council may develop and improve land in its ownership or under its care, control and management.

181 Power to act as trustee

(1) A council may act as a trustee of land or other property.

(2) However, a council cannot assume an obligation to promote a particular religion (but this subsection does not prevent a council from accepting a gift on conditions requiring the council to maintain a particular part of a cemetery set apart for the members or adherents of a particular religious group or denomination).

(3) A council may apply to the Supreme Court for an order varying the terms of a trust of which the council is a trustee.

(4) Notice of an application describing the nature of the variation sought must be given:

(a) on the council's website; and

(b) by notice published in a newspaper circulating generally in the Territory; and

(c) in any other way directed by the Supreme Court.

(5) If the Supreme Court is satisfied that it is not practicable for the council to give effect to the trust in its present form, the Court may vary the terms of the trust.

(6) The council must publish notice of the making and effect of the order on its website.

182 Power to deal with and dispose of property

(1) Subject to the Minister's guidelines, a council may deal with or dispose of property of which the council is the owner.

(2) This section does not authorise a council to act in breach of trust or in breach of conditions on which the property was accepted by the council.

Part 12.2 Reserves and cemeteries

183 Reserves

(1) If a council agrees, the Minister may, by *Gazette* notice, place a reserve in the council's area under the care, control and management of the council.

(2) The council has, in relation to the reserve, the powers and functions of trustees appointed under section 79 of the *Crown Lands Act*.

184 Public cemeteries

(1) A public cemetery situated in a council's area is under the care, control and management of the council.

(2) A council has, in regard to such a cemetery, the powers of a Board of Trustees under the *Cemeteries Act*.

Exception

If a cemetery is managed by a local government subsidiary, the powers of a Board of Trustees under the *Cemeteries Act* are vested in the local government subsidiary.

(3) A council may make by-laws for the management and control of a public cemetery.

Part 12.3 Roads

185 Roads

(1) A ***road*** is:

(a) land vested in a council at the commencement of this Act as a road or a road reserve; and

(b) land vested in, or placed under the care control and management of, a council as a road or a road reserve, after the commencement of this Act, under this or some other Act; and

(c) land reserved, dedicated or resumed, with the council's agreement, as a public street, road or thoroughfare; and

(d) land transferred to the council in fee simple, and accepted by the council, as a public road; and

(e) land declared by the council, by *Gazette* notice, to be a road with the consent of the owner of the land; and

(f) land vested in the council, with the council's agreement, by notice under subsection (2).

(2) If a council agrees, the Minister may, by *Gazette* notice, vest Crown land in, or place Crown land under the care, control and management of, the council as a road or a road reserve.

(3) Land ceases to be a road if the road is permanently closed under this or any other Act.

186 Care control and management of roads

(1) Subject to this section, all roads within an area are under the care, control and management of the council.

(2) After consulting with a council, the Minister may, by *Gazette* notice withdraw a road from the care, control and management of the council and place it under the care control and management of the Territory.

(3) Subject to any contrary agreement between the council and the Minister, if a road is vested in the council, a notice under subsection (2) divests the road from the council and vests it in the Territory.

(4) If a council has the care, control and management of a road that is vested in someone else, then, subject to any contrary agreement between the council and the owner, the powers of the council to control and manage the road are exclusive of those of the owner.

(5) While a road remains under the care, control and management of a council, the following belongs to the council:

(a) all vegetation growing on the road;

(b) anything erected on, or affixed to, the road except infrastructure or equipment belonging to the Commonwealth or the Territory or a statutory authority of the Commonwealth or the Territory.

187 Closing of roads

(1) A council may temporarily or permanently close a road, or part of a road, under its care, control and management.

(2) However, a road or part of a road is not to be permanently closed under subsection (1) unless:

(a) any relevant procedural requirements prescribed by regulation have been satisfied; and

(b) the following Ministers consent:

(i) the Minister responsible for the administration of the *Control of Roads Act*;

(ii) the Minister responsible for the administration of this Act.

(3) Subject to any contrary agreement between a council and the Minister, if a road under the care, control and management of a council is vested in the Territory, and the road is permanently closed, the land comprising the road vests in the council in fee simple.

Chapter 13 Regulatory powers

Part 13.1 By-laws

188 Power to make by-laws

(1) Subject to this Part, a council may make by-laws for the good governance of its area.

(2) Regulations may be made defining the subjects that fall within the ambit of a council's power to make by-laws or excluding subjects from the ambit of a council's power to make by-laws.

(3) A by-law may be of general or limited application.

(4) A by-law binds the Territory and all its instrumentalities.

(5) A by-law may impose a penalty, not exceeding 100 penalty units for an individual or 500 penalty units for a body corporate, for contravention of the by-law.

(6) A by-law may also provide for a daily penalty, not exceeding 5 penalty units for an individual or 25 penalty units for a body corporate, for each day a contravention of the by-law continues.

189 Principles applying to by-laws

(1) A by-law must conform with the following principles:

(a) a by-law must not exceed the power under which it is purportedly made;

(b) a by-law must not, without clear authority:

(i) operate retrospectively; or

(ii) impose a tax;

(c) a by-law must not shift the onus of proof to the accused in criminal proceedings unless:

(i) the offence is a parking offence or other minor traffic infringement; or

(ii) the shift of onus concerns only formal matters or matters peripheral to the substance of the offence; or

(iii) there is clear authority in the authorising legislation to shift the onus of proof to the accused;

(d) a by-law must not infringe personal rights in an unreasonable way or to an unreasonable extent.

(2) A by-law should reflect the following principles:

(a) a by-law should be consistent with other legislation applying in the council's area;

(b) a by-law should not impose unreasonable burdens on the community;

(c) a by-law should not restrict competition unless the benefits of the restriction clearly outweigh the detriments;

(d) a by-law should avoid duplication of, or overlap with, other legislation;

(e) a by-law should be consistent with basic principles of justice and fairness;

(f) a by-law should be expressed plainly and in gender neutral language.

(3) If a by-law infringes one or more principles stated in subsection (2) it is not necessarily invalid on that ground, but a court, in considering whether the by-law represents a reasonable exercise of the power under which the by-law was made, must take the infringement into account.

(4) This section does not affect the validity of a by-law made before the commencement of this Act.

190 Making by-laws

(1) Before a council makes a by-law:

(a) the council must at least 21 days before the meeting at which the council proposes to make the by-law:

(i) publish the proposed by-law on its website; and

(ii) make copies of the proposed by-law available for public inspection, without charge, at the council's office; and

(iii) give notice in a newspaper circulating in the area of the council of the availability of the by-law and of its general nature and effect; and

(b) the council must consider written representations made by members of the public about the by-law; and

(c) the council must obtain a certificate from a legal practitioner certifying that, in the legal practitioner's opinion, the by-law may be made consistently with the principles prescribed in this Part.

(2) A special resolution of the council is required for making a by-law.

Note

Section 63 of the Interpretation Act is also relevant to the making of by-laws. Section 63(2) provides that by-laws must be signed by a person authorised by the council to sign them and forwarded to the Minister. Section 63(3) provides that, where by-laws are forwarded to the Minister, the Minister must cause them to be notified in the Gazette and must lay them before the Legislative Assembly within 3 sitting days after the Gazette notification. By-laws are then liable to disallowance by the Legislative Assembly under section 63(9). By-laws take effect when notified in the Gazette unless the by-laws themselves make provision for commencement on a later date (section 63(3)(b)).

191 Model by-laws

(1) The Minister may, by *Gazette* notice, make, alter or revoke model by-laws dealing with a particular subject.

(2) A model by-law must be published on the Agency's website.

(3) A council may, by special resolution, adopt a model by-law, or an alteration to a model by-law, made by the Minister under this section.

192 Register of by-laws and certified copies

(1) A council must keep a register of all by-laws made or adopted by the council.

(2) The register must include the text of each by-law and of any code, standard or other document referred to or incorporated in the by-law.

(3) The register:

(a) must be accessible on the council's website; and

(b) must be available for inspection at the council's public office.

(4) A person is entitled, on payment of a fee fixed by the council, to a certified copy of a by-law.

Part 13.2 Regulatory orders

Division 1 Categories of regulatory order

193 Visual pollution

(1) If visual pollution exists on land and it detracts significantly from the amenity of the surrounding neighbourhood, a council may make an order (a ***regulatory order***) requiring the owner or occupier of the land to take specified action to get rid of, or to reduce the impact of, the visual pollution.

(2) ***Visual pollution*** exists on land if:

(a) the land itself is in an unsightly condition; or

(b) there is an unsightly structure or object on the land.

194 Mitigation of hazard or nuisance

A council may make an order (a ***regulatory order***) requiring the owner or occupier of land to remove or mitigate a hazard or nuisance, or potential hazard or nuisance.

Examples

1 *The council might require the owner to construct drains to prevent water from the land draining across an adjoining road.*

2 *The council might require the owner or occupier to cut back overhanging vegetation.*

3 *The council might require the owner or occupier to fence the land to prevent animals from running out from the land across a road.*

4 *The council might require the owner or occupier to clear away objects or materials that could prove hazardous to neighbours during a cyclone.*

195 Animals and activities involving animals

If an animal or an activity involving an animal is, or is likely to become, a hazard or nuisance, the council may make an order (a ***regulatory order***) requiring the owner or occupier of the land on which the animal is kept or the activity is carried out, to take specified action to remove or mitigate the hazard or nuisance.

Examples

1 *The council might require re-location of slaughtering activities to a place where they are less likely to cause offence or a risk to the health of others.*

2 *The council might require action to reduce the number of cats kept on a property.*

3 *The council might require action to reduce noise or odours.*

4 The council might require the destruction of a dangerous animal that cannot be adequately controlled in its current location.

Division 2 Regulatory orders generally

196 Review of orders

A regulatory order is reviewable.

197 Time for carrying out work under regulatory order

(1) A regulatory order must fix a reasonable period for taking the action required by the order.

(2) The council may, from time to time, extend the time for compliance with the order on application by the person required to comply.

198 Non-compliance with order

(1) A person who fails to comply with a regulatory order is guilty of an offence.

Maximum penalty: 100 penalty units.

(1A) An offence against subsection (1) is an offence of strict liability.

(1B) It is a defence to a charge of an offence against subsection (1) to prove that the defendant had a reasonable excuse for the non-compliance.

(2) If a person fails to comply with a regulatory order, a person authorised by the council may, after reasonable notice to the occupier of the land, enter the land and carry out work, or take other action, required under the order.

(3) The council may recover the cost of the work, or other action, as unpaid rates.

Chapter 14 Reporting and public disclosure

Part 14.1 Annual reports

199 Annual reports

(1) A council must, on or before 15 November in each year, report to the Minister on its work during the financial year ending on the preceding 30 June.

(2) The report must include a copy of the council's audited financial statement for the relevant financial year.

(3) The report must also contain an assessment of the council's performance against the objectives stated in the relevant municipal, regional or shire plan (applying indicators of performance set in the plan), and, in the case of a regional council, of the activities of any local authority within the council's area.

(4) As soon as practicable after the report has been delivered to the Minister, the council must:

(a) publish the report on the council's website; and

(b) publish a notice in a newspaper circulating generally in the area informing the public that copies of the report may be downloaded from the council's website or obtained from the council's public office.

Part 14.2 Public access to information

200 Information to be publicly available

The following material is to be available on the council's website and at the council's public office:

(c) the council's draft and final municipal, regional or shire plans (See sections 22(3) and 24(2));

(d) the constitution of a local government subsidiary for which the council is a constituent council (See section 29);

(e) the notices and minutes of meetings of the council, local authorities, local boards, council committees and electors (See sections 59(4) and 63(3));

(f) a statement of the level of allowances and expenses to be paid to members under this Act (See sections 71 and 72);

(g) the register of members' interests (See section 74(2));

(h) the council's code of conduct (See section 77(3));

(i) an approved rating proposal (See section 142(6));

(j) notice of the declaration of rates (and charges) for the current financial year (See section 158(1));

(k) notice of the council's intention to sell land, by auction, for non-payment of rates (See section 175(3));

(l) notice of the council's assumption of the care, control and management of land (See section 179(4));

(m) notice of an application by the council to the Supreme Court for variation of a trust (See section 181(4)) and notice of an order made on such an application (See section 181(6));

(n) notice of a proposed by-law the council intends to make (See section 190(1));

(o) the register of by-laws (See section 192(3));

(p) the council's annual reports (See section 199(4));

(q) a list setting out each category of reviewable decisions (See section 227(2)).

201 Suppression of certain information

(1) The CEO must suppress from publicly available material information classified under the regulations as confidential.

(2) A person may apply, in writing, to the CEO for the suppression of the person's address, or name and address, from publicly available material.

(3) The CEO must comply with an application under subsection (2) unless there is good reason for not doing so.

(4) The CEO must notify an applicant, in writing, of the result of the application.

(5) A decision to refuse suppression is reviewable.

(6) In this section:

publicly available material means an assessment record or other material (except an electoral roll) that is to be made publicly available under this Part or any other provision of this Act.

Chapter 15 Compliance reviews and investigations

Part 15.1 Inspectors

202 Inspectors

(1) The Minister may appoint inspectors of local government.

(2) An appointment may be made on terms and conditions specified in the instrument of appointment.

(3) The terms and conditions of appointment may limit the circumstances in which the appointee may exercise powers as an inspector.

Example

If an inspector's field of expertise lies in auditing financial records, the appointment could limit the inspector to that field.

203 Identity cards for inspectors

(1) The Agency must issue each inspector with an identity card:

(a) containing the inspector's name and a photograph of the inspector; and

(b) stating that the person whose name and photograph appear on the card is an inspector.

(2) The inspector must, at the reasonable request of a person, produce the inspector's identity card for inspection.

(3) A person must, on ceasing to be an inspector, return the identity card to the Agency.

Maximum penalty: 20 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a charge of an offence against subsection (3) to prove that the defendant had a reasonable excuse for the non-compliance.

204 Functions of an inspector

The functions of an inspector are:

(a) to carry out compliance reviews; and

(b) to investigate suspected irregularities in or affecting the conduct of a council's affairs.

Part 15.2 Compliance review

205 Program of compliance reviews

(1) The Agency must establish a program of compliance reviews for councils.

(2) The purpose of a compliance review is to ensure that councils conduct their business lawfully.

206 Carrying out of compliance review

A compliance review is to be carried out by an inspector, or 2 or more inspectors, assigned to the review by the Agency.

207 Agency must report on results of compliance review

(1) The Agency must report to the council on the results of a compliance review.

(2) The report may contain recommendations for administrative or regulatory change.

Part 15.3 Investigations

208 Investigations

(1) If there are reasonable grounds to suspect a material irregularity in or affecting the conduct of a council's affairs, the Agency may direct an investigation into the affairs of the council.

(2) An investigation is to be carried out by an inspector, or 2 or more inspectors, assigned to the investigation by the Agency.

Part 15.4 Powers of inspector

209 Power of entry and access

(1) For the purposes of a compliance review or an investigation, an inspector:

(a) may enter, examine and search land and premises of the council; and

(b) may examine and take copies of any records or other documents of the council.

(2) The CEO or any other member of the council's staff must, at the request of an inspector:

(a) do anything reasonably necessary to facilitate the exercise of powers under subsection (1); or

(b) answer questions relevant to the compliance review or the investigation asked by the inspector; or

(c) produce specified records or documentary material relevant to the compliance review or the investigation; or

(d) give other assistance the inspector reasonably requires; or

(e) do any combination of the above.

(3) A person to whom a request is addressed under subsection (2) must comply with the request.

Maximum penalty: 100 penalty units.

(3A) An offence against subsection (3) is an offence of strict liability.

(4) It is a defence to a charge of an offence against subsection (3) to prove that the defendant had a reasonable excuse for the non-compliance.

210 Power of formal questioning

(1) For the purposes of a compliance review or investigation, an inspector may, by notice, require a person:

(a) to provide, within the time allowed in the notice, written answers to specified questions or other specified written information; or

(b) to attend before the inspector at a specified time and place for examination on a subject stated in the notice; or

(c) to produce specified records or documents or records or documents of a specified kind.

(2) A person required by notice under this section to provide written answers to questions or other written information must, if the notice requires, verify the answers or information by statutory declaration.

(3) A person who, in response to a notice under this section, attends for examination before an inspector:

(a) must, if the inspector so requires, take an oath to answer truthfully all questions put to the person by the inspector; and

(b) must answer questions put to person at the examination.

(4) A person must comply with a requirement under this section.

Maximum penalty: 100 penalty units.

(4A) An offence against subsection (4) is an offence of strict liability.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant had a reasonable excuse for the non-compliance.

211 Inspector's report

(1) If an inspector finds evidence of an irregularity in the conduct of a council's affairs, the inspector must report the matter to:

(a) the Agency; and

(b) the council.

(2) If the irregularity appears to involve dishonesty or serious illegality, the inspector must also report the matter to the Minister.

Part 15.5 Agency's power to remedy irregularity

212 Power to commence proceedings to recover loss

(1) If the Agency is satisfied, on the report of an inspector, that a council has suffered loss as a result of an irregularity affecting the conduct of the council's affairs but that the loss is recoverable in whole or part by action in a court of competent jurisdiction, the Agency may bring an action in the name of the council to recover the loss.

(2) The Agency must indemnify the council against any liability for costs arising from an action taken by the Agency in the council's name under this section.

213 Power to impose surcharge

(1) If the Agency is satisfied, on the report of an inspector, that a council has suffered loss as a result of dishonesty or serious illegality, the council may impose a surcharge on the person whose dishonest or illegal act gave rise to the loss.

(2) The surcharge is imposed by giving the person a notice:

(a) stating the grounds on which the surcharge has been imposed; and

(b) stating the amount of the surcharge; and

(c) stating the period within which payment of the amount of the surcharge must be made.

(3) A person on whom a surcharge has been imposed may, within 28 days after the imposition of the surcharge, appeal to the Tribunal against the surcharge.

(4) On an appeal, the Tribunal may:

(a) confirm the surcharge; or

(b) vary the surcharge; or

(c) set aside the surcharge.

214 Recovery of surcharge

(1) A surcharge may be recovered as a debt due to the council.

(2) The council may set off against the amount of a surcharge the amount of any liability owed by the council to the person liable for the surcharge.

Chapter 16 Inquiries

Part 16.1 Establishment of commission

215 Establishment of commission of inquiry

(1) The Minister may establish a commission of inquiry to inquire into:

(a) the affairs of a particular council; or

(b) any other question relevant to local government in the Territory.

(2) A commission of inquiry consists of one or more persons (***commissioners***) appointed by the Minister to constitute the commission of inquiry.

(3) If the Minister establishes a commission of inquiry to inquire into the affairs of a particular council, the Minister must give notice to the relevant council of the reasons for and subject matter of the inquiry.

216 Commissioner's terms of office

(1) The remuneration and other terms and conditions on which a commissioner holds office are determined by the Minister.

(2) A commissioner has, in relation to the performance of official functions, the same privileges and immunities as a Judge of the Supreme Court.

Part 16.2 Conduct of inquiry

217 Conduct of inquiry

(1) A commission of inquiry must inquire diligently into the subject matter of the inquiry and report to the Minister on the results of the inquiry.

(2) A commission of inquiry may gather information in any way it considers appropriate and is not bound by the rules of evidence.

(3) Proceedings of a commission of inquiry are to be held in a place open to the public unless the commission considers it desirable, in the public interest, to hold the proceedings in private.

(4) If a commission of inquiry is appointed to inquire into the affairs of a particular council, it must allow the council a reasonable opportunity to make submissions on the subject matter of the inquiry.

218 Evidentiary powers of commission

(1) A commission of inquiry may exercise any of the following evidentiary powers:

(a) it may require a person to appear before it to give evidence;

(b) it may require a person to provide written answers to questions put to the person by the commission and to verify the answers by statutory declaration;

(c) it may require a person to produce documents or other evidentiary materials in the person's possession or control to the commission.

(2) A requirement under subsection (1) is made by giving the person whose compliance is required a notice in writing:

(a) stating the subject matter of the inquiry; and

(b) setting out the terms of the requirement; and

(c) fixing or allowing a reasonable time for compliance with the requirement.

(3) The commission may require a person appearing before it to give evidence on oath.

(4) A person commits an offence if:

(a) the person fails, without reasonable excuse, to comply with a requirement under subsection (1); or

(b) the person, after appearing before the commission to give evidence:

(i) fails or refuses to take an oath when required to do so by the commission; or

(ii) fails or refuses, without reasonable excuse, to answer a question relevant to the subject matter of the inquiry when required to do so by the commission.

Fault element: Intention.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(5) A person who gives evidence to a commission of inquiry has the same privileges and immunities as a witness in proceedings before the Supreme Court.

219 Legal representation

A council or other person whose conduct is under investigation by a commission of inquiry is entitled to be represented by a legal practitioner in proceedings before the commission.

220 Re-opening of inquiry

The Minister may direct a commission of inquiry to re-open the inquiry if fresh evidence comes to light or it appears desirable for some other reason to re-open the inquiry.

221 Report of commission of inquiry

(1) Publication of a report of a commission of inquiry is absolutely privileged.

(2) Publication of a fair report of proceedings or findings of a commission of inquiry is protected by qualified privilege.

Chapter 17 Defaulting councils

Part 17.1 Suggested remedial action

222 Suggested action to remedy deficiencies

(1) If the Minister is satisfied that deficiencies have been identified in the conduct of a council's affairs, the Minister may:

(a) recommend to the council specified remedial action to ensure that the deficiencies are properly addressed; and

(b) ask the council to report to the Minister, within a specified period, on the action taken to give effect to the recommendation or, if no action has been taken, the reasons why no action has been taken.

(2) The council must comply with a request under subsection (1)(b).

Part 17.2 Required remedial action

223 Power to require action to remedy deficiencies

(1) If the Minister is satisfied that deficiencies have been identified in the conduct of a council's affairs and that action must be taken to address them, the Minister may:

(a) require the council to take specified remedial action within a specified period; and

(b) require the council to report to the Minister, at the end of the specified period, on the action taken to give effect to the requirement.

(2) If a council fails to comply with a requirement under this section, each member of the council is guilty of an offence.

Maximum penalty: 500 penalty units.

(2A) An offence against subsection (2) is an offence of strict liability.

(3) It is a defence to a charge of an offence against subsection (2) to prove that the defendant acted with reasonable diligence to secure the council's compliance.

Part 17.3 Official management

224 Official management of councils

(1) If the Minister is satisfied that serious deficiencies have been identified in the conduct of a council's affairs, the Minister may, by *Gazette* notice, place the council under official management.

(2) When the Minister places a council under official management:

(a) all members of the council are suspended from office; and

(b) the Minister:

(i) must appoint a suitable person to manage the affairs of the council; and

(ii) must appoint a suitable person (who may – but need not – be the manager) to investigate and report back to the Minister, within a period allowed by the Minister, on the conduct of the suspended members and the affairs and financial position of the council.

(3) The Minister may from time to time extend the time allowed for the investigator's report.

(4) When the Minister receives the investigator's report, the Minister must invite written submissions from the suspended members on the content of the report within a reasonable period (at least 21 days) specified in the invitation.

(5) After considering the report and any submissions made in response to an invitation under subsection (4), the Minister must:

(a) reinstate the suspended members; or

(b) dismiss the suspended members from office.

225 Official manager

(1) The manager has full power to transact any business of the council and to do anything else the council could have done but for the suspension or dismissal of its members.

(2) The manager may act in the manager's own name, or in the name of the council, and may execute a document under the common seal of the council.

(3) The manager's remuneration and terms and conditions of office are determined by the Minister.

(4) The manager's remuneration is payable from the funds of the council.

(5) If the members of the council are reinstated, the manager ceases to hold office.

(6) If the members of the council are dismissed from office, the manager ceases to hold office at the conclusion of the next election of members of the council.

226 Election after dismissal of members

(1) If the members of a council are dismissed from office under this Part, and a general election is not to be held within 1 year, the Minister must fix a date for the holding of a by-election to fill the vacancies created by the dismissal

(2) The CEO must summon a meeting of the council within 14 days after declaration of the result of the election.

Chapter 18 Review and appeal

Part 18.1 Internal review

227 Reviewable decisions

(1) A ***reviewable decision*** is a decision or order made by a council, or an officer of a council, that is designated as reviewable:

(a) by this Act (or a by-law under this Act); or

(b) by resolution of the council.

(2) A list setting out each category of reviewable decisions must be accessible on a council's website.

Note

The following are designated by this Act as reviewable:

(a) a decision by the council or a council committee to reject an application for correction of an entry in the assessment record (Section 154(6));

(b) a regulatory order (Section 196);

(c) a decision to refuse to suppress a person's name or address (or both) from publicly available material (Section 201(5)).

228 Right to apply for review

(1) A person who is adversely affected by a reviewable decision may, within 14 days after the date of the decision, apply to the CEO for a review of the decision.

(2) The application must:

(a) be made in writing; and

(b) set out in detail the grounds on which the decision should, in the applicant's opinion, be re-considered.

(3) The CEO may extend the period for making an application for review if the CEO is satisfied that there are exceptional circumstances justifying the extension.

229 Consideration of application by administrative review committee

(1) The CEO must, on receiving an application for review, refer the application to a committee established by the council for inquiring into such applications (an ***administrative review committee***).

(2) The administrative review committee may summarily reject an application for review if satisfied that the application is frivolous, vexatious or lacking in substance.

(3) The administrative review committee:

(a) must (unless it rejects the application under subsection (2)) inquire into the matters raised by the application; and

(b) must make a recommendation on the application to the council.

(4) The recommendation may be:

(a) for confirmation of the decision; or

(b) for amendment of the decision; or

(c) for revocation of the decision; or

(d) for making some further decision to mitigate the effect of the decision.

230 Council's decision on recommendation

(1) After receiving a recommendation from an administrative review committee, the council must make a final decision on the application.

(2) The decision need not be consistent with the administrative review committee's recommendation.

(3) The CEO must notify the applicant of the council's final decision on the application.

231 Appeal against council's final decision on review

An applicant may, within 28 days after the date of the notice of the council's final decision, appeal to the Tribunal against the decision.

Part 18.2 Appeal

Division 1 Local Government Tribunal

232 Local Government Tribunal

(1) The Local Government Tribunal continues.

(2) All magistrates are members of the Tribunal.

(3) The Chief Magistrate is President of the Tribunal.

(4) The President has administrative control of the Tribunal.

233 Constitution of Tribunal

(1) The Tribunal is constituted for the purpose of hearing and determining a proceeding of a single magistrate.

(2) The Tribunal may be constituted in separate divisions in accordance with subsection (1) to hear different proceedings simultaneously.

234 Registrars of the 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) Each Registrar must keep a register, in a form approved by the President, of proceedings commenced at, or referred to, the registry.

(4) The Principal Registrar must keep a composite register, in a form approved by the President, of all proceedings in the Tribunal.

Division 2 Evidence and procedure

235 Evidence and procedure before the Tribunal

(1) The Tribunal may inform itself as it thinks fit without regard to the rules of evidence.

(2) The Tribunal must act according to the substantial merits of the case without regard to technicalities or legal form.

(3) A party to a proceeding before the Tribunal may appear personally or be represented by a legal practitioner or other representative.

236 Witnesses

(1) The Tribunal may issue a summons (an ***evidentiary summons***) requiring a person:

(a) to attend before the Tribunal, at a nominated time and place, to give evidence; or

(b) to produce specified documents, at or before a specified time, to the Tribunal or a Registrar; or

(c) to attend before the Tribunal, at a nominated time and place, to give evidence and to produce specified documents.

(2) An evidentiary summons may be issued by any member of the Tribunal or a Registrar.

(3) The Tribunal may require a person appearing before it to give evidence on oath.

(5) A person is guilty of an offence if the person, without reasonable excuse:

(a) fails to attend before the Tribunal to give evidence, or fails to produce documents to the Tribunal or a Registrar, as required by an evidentiary summons; or

(b) refuses to take an oath when required to do so by the Tribunal; or

(c) refuses to answer a question when required to do so by the Tribunal.

Fault element: Intention.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

Division 3 Jurisdiction of Tribunal

237 Jurisdiction of Tribunal

The Tribunal has the jurisdiction to hear and determine appeals and other proceedings conferred under this or any other Act.

Note for section 237

The Tribunal has jurisdiction in the following matters:

(a) to determine eligibility for membership of a council (Section 40);

(b) to declare a decision of a council, local authority, local board or council committee void where it is vitiated by conflict of interest (Section 74);

(c) to determine an appeal against a decision of a disciplinary committee (Section 82);

(d) to determine electoral disputes (Section 94);

(e) to determine an appeal against a surcharge (Section 213);

(f) to determine an appeal against a decision by a council on review of a reviewable decision.

The Tribunal also has jurisdiction to hear appeals under the Darwin Waterfront Corporation Act.

238 Stay of effect of decisions and orders

(1) An appeal does not suspend the operation of the decision or order to which it relates.

(2) However, the Tribunal may make an order suspending an obligation arising under a decision or order to which an appeal relates, or prohibiting action to give effect to such a decision or order, until the appeal has been determined.

239 Costs

The Tribunal may make orders for costs.

Division 4 Further appeals

240 Appeals to the Supreme Court

(1) A party may appeal to the Supreme Court against a decision or order of the Tribunal.

(2) The appeal must be commenced in accordance with the rules of the Supreme Court.

(3) The appeal is limited to a question of law.

Division 5 Rules

241 Power to make rules

(1) The President may make rules:

(a) regulating the practice and procedure of the Tribunal; and

(b) providing for the enforcement of the Tribunal's decisions and orders; and

(c) dealing with incidental matters.

(2) The rules may provide for the exercise of procedural powers by a Registrar.

Chapter 19 Miscellaneous

Part 19.1 Local Government Association

242 Continuance of the Local Government Association

(1) The Local Government Association of the Northern Territory continues.

(2) The Association is a body corporate.

(3) The Association has full legal capacity:

(a) to acquire, hold or dispose of real or personal property; and

(b) to acquire or incur any other rights, powers, obligations and liabilities that may attach to a body corporate.

(4) The Association is to be administered in accordance with its constitution (which may be amended from time to time in accordance with procedures for amendment contained in the constitution).

(5) The Association acts, in accordance with its constitution:

(a) through officers or employees with authority to act on its behalf; or

(b) through agents appointed to act on its behalf; or

(c) under its common seal.

(6) An apparently genuine document that appears to bear the common seal of the Association will, in the absence of proof to the contrary, be taken to have been duly executed by the Association.

Part 19.2 Criminal responsibility

243 Application of Criminal Code

(1) An offence against this Act is an offence to which Part IIAA of the Criminal Code applies.

Note

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences. For example, the extended meaning given to the concept of

recklessness in section 43AK(4) of the Code should be noted.

(2) If a provision creating an offence contains a statement identifying certain elements as fault elements of the offence:

(a) the fault elements identified in the statement are the only fault elements of the offence; and

(b) the statement operates to the exclusion of fault elements that might otherwise be implied under provisions of the Criminal Code.

Note

It follows that fault elements that might otherwise be implied under section 43AM of the Criminal Code are excluded by the statement.

(3) If a provision creating an offence contains a statement classifying the offence as one of strict liability (and thus excluding fault elements), section 43AN(1) of the Criminal Code applies to the offence.

Part 19.3 Legal proceedings

244 Commencement of legal proceedings on behalf of council

(1) Legal proceedings (including proceedings for an offence) may be commenced in the name of a council by the CEO or some other person authorised by the council to bring the proceedings on its behalf.

(2) Proceedings for an offence against this Act may be commenced at any time within 3 years after the date on which the offence is alleged to have been committed.

245 Infringement notice offences

(1) If a regulation or by-law fixes an infringement notice penalty for an offence against this Act, the regulation or by-law, a council or officer of a council who might otherwise have prosecuted the offence in court (the ***prosecutor***) may, as an alternative, serve an infringement notice on the alleged offender.

(2) The infringement notice must:

(a) state the name, or give other identifying particulars, of the alleged offender; and

(b) describe the offence alleged to have been committed; and

(c) state the date, time and place of the alleged offence; and

(d) state the amount of the infringement notice penalty; and

(e) state the period within which the penalty must be paid and the means of payment; and

(f) state that the alleged offender may elect to be dealt with by a court of competent jurisdiction.

(3) The prosecutor may withdraw an infringement notice at any time before payment of the infringement notice penalty so that the offence may be prosecuted in court.

246 Monetary penalties

(1) If the council prosecutes an offence committed in its area, and a monetary penalty is imposed for the offence, the amount of the penalty must be paid to the council.

(2) If the council issues an infringement notice for an offence alleged to have been committed in the council's area, the penalty payable under the infringement notice is payable to the council.

247 Recovery of damages

A court may, on application by a council, make an award of compensation against a person and in favour of a council if:

(a) the court finds the person guilty of an offence against this Act or a by-law; and

(b) the council incurred expenditure, or sustained loss or damage, in consequence of the offence.

Part 19.4 Service of documents

248 Service of documents on council

A document may be served on a council:

(a) by handing it to the CEO personally; or

(b) by leaving it at the council office with a member of the council's staff; or

(c) by posting it to the council's postal address; or

(d) by serving the document in any other way notified on the council's website as a permissible way to serve the document.

249 Service of documents by council

(1) A notice, order or other document the council is required or permitted to serve under this Act, may be served:

(a) personally on the person to whom it is addressed; or

(b) by leaving it for the person at the person's place of residence, employment or business; or

(c) by posting it, addressed to the person, at the person's last-known place of residence, employment or business.

Note

This provision is intended to apply irrespective of whether there is an explicit reference to service in the provision requiring or permitting service or some other expression such as "give the notice ..." is used.

(2) If a council serves a notice, order or other document on a person in the person's capacity as owner or occupier of land, it binds successors in title or successive occupiers (as the case requires).

Part 19.5 Evidence

250 Judicial notice to be taken of certain facts

A court will take judicial notice of the following:

(a) the existence of a municipality or shire and its boundaries;

(b) the division of a municipality or shire into wards and the boundaries of each ward;

(c) the existence and membership of the council for each municipality or shire;

(d) the election of members of the council;

(e) the appointment and signature of the CEO.

251 Certified copies of minutes

An extract from the minutes of a council, local board, or council committee certified correct by the CEO is admissible in legal proceedings as evidence of proceedings and decisions to which the extract relates.

252 Evidence of land ownership

A certificate signed by the Registrar-General is admissible in legal proceedings as evidence of the ownership of an estate in fee simple, or a leasehold estate, in land to which the certificate relates.

Part 19.6 Misleading representations

253 Misleading representations

A person is guilty of an offence if the person makes a misleading representation to a council, a local board, council committee, or an officer or staff member of a council to obtain some advantage for him/herself or another or to cause detriment to another.

Fault elements:

(a) intention to make the representation; and

(b) knowledge that it is misleading; and

(c) intention to obtain an advantage or cause a detriment.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

Part 19.7 Carrying out work on land

254 Occupier entitled to carry out work on land

(1) If an owner of land fails to carry out work on land that the owner is required under this Act to carry out, the occupier of the land may do so instead.

(2) If the occupier of land carries out work under this section, the occupier may recover the reasonable cost of doing so from the owner as a debt, or set off the amount against liabilities owed to the owner.

255 Owner entitled to re-enter land to carry out work

(1) If:

(a) the owner of land is required under this Act to carry out work on land; and

(b) the owner is not in occupation of the land;

the owner may, after reasonable notice to the occupier, re-enter the land to carry out the work.

(2) An occupier is guilty of an offence if the occupier unreasonably obstructs the re-entry of the owner to carry out the work or the carrying out of the work.

Fault element: An intention to obstruct (whether or not the defendant considers the obstruction unreasonable).

Maximum penalty: 100 penalty units.

Part 19.8 Certificates of liabilities, etc.

256 Certificates

(1) A council must, on application by a person with a proper interest in land within the council's area, issue a certificate containing:

(a) details of outstanding rates and charges due to the council in relation to the land; and

(b) details of statutory notices and orders issued by the council in relation to the land.

(2) If a person, acting on faith in the certificate, purchases land or lends money on mortgage over the land, the council is estopped as against that person from disputing the correctness of the certificate.

(3) For this section, a person has a proper interest in land if the person is:

(a) an owner or occupier of the land; or

(b) a purchaser or prospective purchaser of the land; or

(c) a mortgagee or prospective mortgagee of the land; or

(d) a person acting for any of the above.

Part 19.9 Acquisition of property

257 Acquisition of property

(1) If a person acquires property by operation of the relevant legislation, or an administrative act under the relevant legislation, on terms that would not (apart from this subsection) be just, the person from whom the property is acquired is entitled to

compensation, sufficient to remedy the injustice, from the person who acquires the property.

(2) The Supreme Court may, in an action brought by a person entitled to compensation under subsection (1), determine and make an order for the payment of the compensation.

(3) If the Supreme Court is satisfied that:

(a) a body corporate from which property has been acquired by operation of the relevant legislation or an administrative act under the relevant legislation has been dissolved by or under the relevant legislation; and

(b) the body corporate would, but for its dissolution, have been a claimant for compensation under this section;

the Court may, by order, annul the dissolution of the body corporate and make any further provision that may be necessary or appropriate to secure the continued existence of the body corporate or to facilitate its claim for compensation under this section.

Note

The Court might, by its order, convert the body corporate into an association under the Associations Act. Such an order is possible even though its effect is to reverse the effect of legislative and administrative acts (such as the conversion of the body corporate from an association into a community government council by restructuring order under the former Act.) taken for the purpose of achieving transition to the system of local government provided by this Act.

(4) However, the Court cannot restore the body corporate's powers of local government.

(5) If:

(a) a body corporate that continues in existence by order of the Supreme Court under this section succeeds in its claim for compensation; and

(b) the Court is satisfied that, if the former system of local government had continued, the body corporate would have been obliged to apply property for which an entitlement to compensation has been established for the benefit of a particular community or locality or for some other particular purposes;

the Court may make orders regulating the disposition or use of the compensation.

Note

The intention is that the ultimate beneficiaries of the compensation for acquisition

of the property should be substantially the same as the ultimate beneficiaries of the property itself assuming it had remained in its former ownership and subject to the former administration.

(6) This section operates retrospectively in relation to:

(a) an acquisition made under the relevant legislation before the commencement of this Act; or

(b) proceedings related to such an acquisition commenced before the commencement of this Act.

(7) In this section:

relevant legislation means:

(a) this Act; or

(b) the amendments to the former Act made by the *Local Government Amendment Act 2007*.

Part 19.10 Guidelines and regulations

258 Guidelines

(1) The Minister may make, amend or revoke guidelines for the purposes of this Act.

(2) The guidelines must be published on the Agency's website.

(3) The Minister must table guidelines in the Legislative Assembly within 6 sitting days after making them, but they are not a disallowable instrument.

259 Regulations

The Administrator may make regulations under this Act.

Chapter 20 Repeals and transitional provisions

Part 20.1 Repeals

260 Acts repealed

The Acts specified in Schedule 3 are repealed.

Part 20.2 Transitional provisions for Local Government Act 2008

261 Definitions

In this Part:

date of transition means 1 July 2008.

former Act means the Act formed of the Acts repealed by this Act.

Top End councils means:

(a) the Litchfield municipal council; and

(b) the Belyuen community government council (which becomes a shire council under this Chapter); and

(c) the Coomalie community government council (which becomes a shire council under this Chapter); and

(d) the Cox Peninsula community government council (which becomes a shire council under this Chapter).

262 Constitution of new councils

(1) On the date of transition:

(a) a body corporate constituted as a prospective council by a restructuring order under the former Act becomes a shire council; and

(b) the area for which the body corporate was constituted becomes (as it existed immediately before the date of transition) the council's shire; and

(c) the councils (***constituent councils***) for local government areas subsumed into the shire are dissolved and all their property, rights, liabilities and obligations (including

contractual rights, liabilities and obligations) become property rights, liabilities and obligations of the shire council.

(2) The by-laws of the constituent councils continue in force (subject to revocation by by-laws made under this Act) as by-laws of the new shire council (but their territorial application remains unchanged).

(3) Until the conclusion of the first general election after the date of transition, the person who was manager of the prospective council immediately before the date of transition (or some other person appointed by the Minister to take that person's place) continues as manager of the shire council.

(4) While the manager continues in office, the manager has all the powers and functions of the council.

(5) However, if a special resolution is required for the exercise of a particular power, the manager may only exercise the power if satisfied that there is substantial support for the proposed exercise of the power among the council's electors.

(6) No stamp duty is payable in respect of a transfer of property under this section.

(7) This section is subject to the following qualifications:

(a) the body corporate constituted as the prospective Top End Shire Council by restructuring order under the former Act:

(i) does not become a shire council; and

(ii) continues in existence only for the purpose of being wound up;

(b) the proposed Top End Shire is abolished;

(c) this section has no effect on the councils that were to be constituent councils for the proposed Top End Shire (i.e. the Top End councils).

(8) When the winding-up of the body corporate constituted as the prospective Top End Shire Council is complete, the Minister may, by *Gazette* notice, dissolve the body corporate.

263 Continuation of existing nominees, appointees etc.

If, immediately before the date of transition, a person held a position on a statutory board, committee or other body as an appointee or nominee of a council that ceases to exist on the date of transition, the appointment or nomination continues in force from

the date of transition until the conclusion of the first general election to be held after the date of transition.

264 Continuation of existing councils

(1) Except as provided in this Chapter:

(a) councils and local government areas continue in existence, subject to this Act, as constituted immediately before the date of transition; and

(b) members of a council in office immediately before the date of transition continue in office, subject to this Act, until the next general election for the council.

(2) The by-laws of a council that continues in existence under this section continue in force subject to variation or revocation by by-laws made under this Act.

(3) A code of conduct made or adopted by a council before the date of transition continues in force (subject to variation or revocation under this Act) as the council's code of conduct.

(4) A budget prepared in accordance with the provisions of the former Act for the 2007/2008 financial year, by a council that continues in existence under this section, or by a body corporate constituted as a prospective council under the former Act, is taken to comply with the requirements of this Act.

(5) Anything done by a council after the enactment but before the commencement of this Act, and in accordance with its provisions, is validly done despite any conflict with the provisions of the former Act.

Example

A council might in its budget for the 2008-2009 financial year fix allowances for its members (see section 127(2)(f)).

(6) If, immediately before the date of transition, a person was holding an appointment under section 264(2)(b) of the former Act as manager of a council then, as from the date of transition, the council will be taken to have been placed under official management, and the manager will have the powers and responsibilities of a manager, under Part 17.3.

265 Special provisions for Top End councils

(1) This Chapter applies to the Top End councils subject to the following qualifications.

(2) On the date of transition:

(a) the name of the Litchfield municipal council is changed to *Litchfield Council*;

(b) the Belyuen Community Government Council becomes a shire council under a name to be assigned by the Minister and the area of the council becomes a shire; and

(c) the Coomalie Community Government Council becomes a shire council under a name to be assigned by the Minister and the area of the council becomes a shire; and

(d) the Cox Peninsula Community Government Council becomes a shire council under a name to be assigned by the Minister and the area of the council becomes a shire.

(3) The Minister may, by *Gazette* notice:

(a) assign a name to a council under subsection (2); or

(b) fix a date for the holding of the first general election for a Top End council to be held after the date of transition.

(4) Subject to any such *Gazette* notice, a general election for the Litchfield Council is to be held at the same time as general elections for shire councils in 2008.

266 Roads

(1) Any roads within the area of a council that were, immediately before the date of transition, vested in or under the care, control and management of the Territory remain, at the date of transition, vested in, or under the care, control and management of the Territory despite the provisions of this Act.

(2) Such a road continues to be vested in the Territory subject to:

(a) any agreement between the Territory and the council for vesting the road in the council; or

(b) any other proper dealing by the Territory with the road.

267 Approved proposal for rating conditionally rateable land in the 2008/2009 financial year

(1) If, before the date of transition, the Minister approved a proposal for rating conditionally rateable land in the area or the proposed area of a council or prospective council in the 2008/2009 financial year, the approved proposal becomes on the date of transition an approved

rating proposal for the purposes of section 142 and remains in force until the end of the 2008/2009 financial year.

(2) The reference in subsection (1) to a ***prospective council*** is a reference to a body corporate that is constituted as a prospective council by a restructuring order under the former Act and becomes a shire council on the date of transition.

268 Rating limitations for early period of the operation of this Act

(1) The Minister may, by *Gazette* notice, impose limits on rates for the 2008/2009, 2009/2010 and 2010/2011 financial years.

(2) A limit imposed under this section may have a general or limited application.

(3) However, such a limit may only apply to:

(a) rates imposed by shire councils; or

(b) rates imposed by municipal councils on conditionally rateable land.

(4) The Minister may, by *Gazette* notice, vary or revoke a limit imposed under this section.

269 Dissolution of Binjari Community Government Council

(1) The Binjari Community Government Council is dissolved.

(2) Any assets and liabilities of the Binjari Community Government Council remaining on its dissolution vest in the Katherine Town Council.

270 Preservation of local government functions of Nhulunbuy Corporation Limited

(1) Subject to this section:

(a) the Nhulunbuy Corporation Limited continues to have the same local government functions as it had under the former Act immediately before the date of transition; and

(b) the *Nhulunbuy (Animal Control) By-laws* continue in force (subject to amendment or revocation under this Act) as by-laws under this Act; and

(c) this Act applies to the Nhulunbuy Corporation Limited, in relation to its performance of local government functions as if it were a shire council constituted under this Act.

(2) The Minister may, by *Gazette* notice:

(a) withdraw local government functions from, or add to or modify the local government functions of, the Nhulunbuy Corporation Limited; or

(b) modify the operation of this Act in its application to the Nhulunbuy Corporation Limited.

271 Special provision permitting certain councils to establish policy of allowing Chair of council meeting to exercise casting vote

If:

(a) there is to be no general election for a council in 2008; and

(b) the council wants the Chair of council meetings to be allowed to exercise a casting vote;

then, despite section 61(7)(a), the council may, by resolution passed at a meeting held before the end of the 2008 calendar year establish a policy to that effect.

272 Continuation of *Local Government (Darwin Parking Local Rates) Regulations*

The *Local Government (Darwin Parking Local Rates) Regulations* continue in operation (subject to the amendments made by the *Local Government (Consequential Amendments) Act 2008* and subsequent amendment or revocation by later regulations) as regulations under this Act.

Part 20.3 Transitional provisions for Electoral and Other Legislation Amendment Act 2011

273 Member of council who is also employee of council

(1) This section applies to a person who, immediately before the commencement of this section, was a member of a council and an employee of the council.

(2) Section 37 as amended by the *Electoral and Other Legislation Amendment Act 2011* does not:

(a) disqualify the person from office as a member of the council for the remainder of the person's term of office as a member of that council; or

(b) prevent the person continuing to be an employee of the council for the remainder of that term.

Note for subsection (2)

Under section 38, a council member's term of office ends at the conclusion of the next general election for the council following the member's election or appointment.

274 Savings – failed election

(1) This section applies if:

(a) an election held for an area before the commencement of this section fails; and

(b) as a result, another election (the ***fresh election***) is to be held for the area.

(2) If the fresh election is to be held after the commencement of Part 3 of the *Electoral and Other Legislation Amendment Act 2011*, it must be conducted as if Parts 3 and 5 of that Act had not commenced.

(3) If the fresh election is to be held after the commencement of Part 4 of the *Electoral and Other Legislation Amendment Act 2011*, it must be conducted as if Parts 3 to 6 of that Act had not commenced.

Part 20.4 Transitional provisions for Local Government Amendment Act 2013

275 Regional management plans

Any regional management plan in force immediately before the date on which this section commences ceases to have any force on and from that date and no rights, duties or obligations under such a plan may be enforced on and from that date.

Schedule 2 Code of conduct – core provisions

section 78

1 Honesty and integrity

A member must act honestly and with integrity in performing official functions.

2 Care and diligence

A member must act with reasonable care and diligence in performing official functions.

3 Courtesy

A member must act with courtesy towards other members, council staff, electors and members of the public.

4 Conduct towards council staff

A member must not direct, reprimand, or interfere in the management of, council staff.

5 Respect for cultural diversity

A member must respect cultural diversity and must not therefore discriminate against others, or the opinions of others, on the ground of their cultural background.

6 Conflict of interest

A member must, if possible, avoid conflict of interest between the member's private interests and official functions and responsibilities.

Where a conflict in fact exists, the member must comply with the member's statutory obligations of disclosure.

7 Respect for confidences

A member must respect the confidentiality of information obtained in confidence in the member's official capacity.

A member must not make improper use of confidential information obtained in an official capacity to gain a private benefit or to cause harm to another.

8 Gifts

A member must not solicit or encourage gifts or private benefits from any person who might have an interest in obtaining a benefit from the council.

9 Accountability

A member must be prepared at all times to account for the member's performance as a member and the member's use of council resources.

10 Interests of municipality or shire to be paramount

A member must act in what the member genuinely believes to be the best interests of the municipality, region or shire.

In particular, a member must seek to ensure that the member's decisions and actions are based on an honest, reasonable, and properly informed judgment about what will best advance the best interests of the municipality, region or shire.

Schedule 3 Repealed Acts

section 260

Local Government Act 1993	Act No. 83 of 1993
Local Government Amendment Act 1995	Act No. 35 of 1995
Local Government Amendment Act (No. 2) 1995	Act No. 36 of 1995
Local Government Amendment Act (No. 3) 1995	Act No. 57 of 1995
Local Government Amendment Act 2000	Act No. 4 of 2000
Local Government Amendment Act 2002	Act No. 28 of 2002
Local Government Amendment Act 2004	Act No. 15 of 2004
Local Government Amendment Act 2007	Act No. 15 of 2007

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 2008 (Act No. 12, 2008)

Assent date	23 May 2008
Commenced	s 257: 23 May 2008; rem: 1 July 2008

Jabiru Town Development Amendment Act 2008 (Act No. 24, 2008)

Assent date	30 June 2008
Commenced	1 July 2008 (s 2)

Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)

Assent date	14 November 2008
Commenced	1 July 2008 (s 2)

Unit Title Schemes Act 2009 (Act No. 14, 2009)

Assent date	26 May 2009
Commenced	pt 2.3, div 3, sdv 4 and s 135 (to ext ins s 54C): 1 January 2010; s 111: 1 July 2010; rem: 1 July 2009 (s 2, *Gaz* S30, 26 June 2009, p 1, s 2 *Land Title and Related Legislation Amendment Act 2008* (Act No. 3, 2008) and *Gaz* S30, 26 June 2009, p 1)

Statute Law Revision Act 2009 (Act No. 25, 2009)

Assent date	1 September 2009
Commenced	16 September 2009 (*Gaz* G37, 16 September 2009, p 3)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

Electoral and Other Legislation Amendment Act 2011 (Act No. 40, 2011)

Assent date	21 December 2011
Commenced	pts 4, 6 and 7: 1 May 2012; rem: 21 December 2011 (s *2*)

Constitutional Convention (Election) Act 2011 (Act No. 41, 2011)

Assent date	21 December 2011
Commenced	21 December 2011

Darwin Waterfront Corporation Amendment Act 2012 (Act No. 10, 2012)

Assent date	27 April 2012
Commenced	1 July 2012 (s 2)

Local Government Amendment Act 2013 (Act No. 28, 2013)

Assent date	8 November 2013
Commenced	8 November 2013

3 LIST OF AMENDMENTS

s 3	amd No. 40, 2011, ss 36, 42 and 44; No. 28, 2013, s 3
s 5	amd No. 28, 2013, s 4
s 7	amd No. 28, 2013, s 5
s 8	sub No. 28, 2013, s 6
s 9	amd No. 28, 2013, s 7
s 11	amd No. 28, 2013, s 8
s 12	amd No. 28, 2013, s 9
ch 3 hdg	amd No. 28, 2013, s 10
ch 3 pt 3.1 hdg	rep No. 28, 2013, s 11
ch 3 pt 3.2 hdg	amd No. 28, 2013, s 12
s 22	amd No. 28, 2013, s 13
s 23	amd No. 28, 2013, s 14
s 24	amd No. 28, 2013, s 15
s 24A	ins No. 28, 2013, s 16
s 26	amd No. 28, 2013, s 17
s 32	amd No. 28, 2013, s 18
s 37	amd No. 40, 2011, s 37
s 39	amd No. 40, 2011, s 42
s 40	amd No. 40, 2011, 80
s 41	amd No. 28, 2013, s 19
s 42	amd No. 28, 2013, s 20
s 44	amd No. 28, 2013, s 21
ch 5 hdg	amd No. 28, 2013, s 22
s 48	amd No. 28, 2013, s 23
s 49	amd No. 28, 2013, s 24
s 50	amd No. 28, 2013, s 25
s 51	amd No. 24, 2008, s 18; No. 28, 2013, s 26
s 52	amd No. 28, 2013, s 27
ch 5 pt 5.1A hdg	ins No. 28, 2013, s 28
ss 53A – 53F	ins No. 28, 2013, s 28
s 54	amd No. 24, 2008, s 19
ch 6 pt 6.2 hdg	amd No. 28, 2013, s 29
s 62	sub No. 28, 2013, s 30
s 63	amd No. 28, 2013, s 31
s 64	amd No. 28, 2013, s 32

ch 6	
pt 6.3 hdg	amd No. 28, 2013, s 33
s 65	amd No. 28, 2013, s 34
s 66	amd No. 28, 2013, s 35
s 67	amd No. 28, 2013, s 36
s 68	amd No. 28, 2013, s 37
s 69	amd No. 28, 2013, s 38
s 71	amd No. 28, 2013, s 39
s 72	sub No. 28, 2013, s 40
s 73	amd No. 28, 2013, s 41
s 74	amd No. 28, 2013, s 42
s 75	amd No. 28, 2013, s 43
s 76	amd No. 28, 2013, s 44
s 77	amd No. 28, 2013, s 45
s 86	amd No. 40, 2011, 45
s 88	amd No. 40, 2011, ss 38 and 46
s 89	amd No. 41, 2011, s 199
s 90	amd No. 40, 2011, s 42
s 91	amd No. 40, 2011, 47
s 92	amd No. 40, 2011, 80
s 96	amd No. 40, 2011, 48
s 99	sub No. 40, 2011, s 39
s 107	amd No. 40, 2011, s 42; No. 28, 2013, s 46
s 108	amd No. 28, 2013, s 47
s 115	amd No. 40, 2011, s 42
s 116	amd No. 40, 2010, s 79
s 126	amd No. 28, 2013, s 48
s 127	amd No. 28, 2013, s 49
s 128	amd No. 28, 2013, s 50
s 131	amd No. 28, 2013, s 51
s 133	amd No. 28, 2013, s 52
s 137	amd No. 40, 2011, s 42
s 139	amd No. 40, 2011, s 42
s 147	amd No. 14, 2009, s 140
s 148	amd No. 14, 2009, s 141
s 153	amd No. 40, 2011, s 42
s 168	amd No. 25, 2009, s 10
s 184	amd No. 28, 2013, s 53
s 198	amd No. 40, 2011, s 42
s 199	amd No. 28, 2013, s 54
s 200	amd No. 28, 2013, s 55
s 203	amd No. 40, 2011, s 42
s 209	amd No. 40, 2011, s 42
s 210	amd No. 40, 2010, s 80; No. 40, 2011, s 42
s 218	amd No. 40, 2010, s 81
s 223	amd No. 40, 2011, s 42
s 236	amd No. 40, 2010, s 82
s 237	amd No. 10, 2012, s 15; No. 28, 2013, s 56
ch 20	
pt 20.2 hdg	amd No. 40, 2011, s 40
s 270	ins No. 28, 2008, s 6
	amd No. 28, 2013, s 57
ss 271 – 272	ins No. 28, 2008, s 6
ch 20	
pt 20.3 hdg	ins No. 40, 2011, s 41
s 273	ins No. 40, 2011, s 41
s 274	ins No. 40, 2011, s 41
	amd No. 40, 2011, 48

ch 20	
pt 20.4 hdg	ins No. 28, 2013, s 58
s 275	ins No. 28, 2013, s 58
sch 1	rep No. 28, 2013, s 59
sch 2	amd No. 28, 2013, s 60