NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT ACT 2019

As in force at 2 March 2024

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 2 March 2024

LOCAL GOVERNMENT ACT 2019

An Act to provide for, and regulate, local government, and for related purposes

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

This Act may be cited as the *Local Government Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 1.2 What this Act is about

4 Principles

(1) The underlying principles of this Act are as follows:

(a) local government is a distinct and essential sphere of government;

(b) the system of local government:

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

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

(2) Anyone exercising a power or performing a function under this Act must, as far as practicable, uphold the principles.

(3) However, the principles do not affect the operation of any law in force in the Territory.

5 Rights and interests of Aboriginal traditional owners

The rights and interests of Aboriginal traditional owners, as set out in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth), are to be recognised and the delivery of local government services must be in harmony with those Acts.

6 Overview

This Act provides for the following:

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

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

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

(d) the imposition of high standards of ethical conduct on council members;

(e) the requirement on councils of high standards of governance, service delivery, asset management and financial accountability;

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

Part 1.3 Interpretation

7 Definitions

In this Act:

Aboriginal community living area means an area granted as an Aboriginal community living area under Part 8 of the *Pastoral Land Act 1992*, or the corresponding previous legislative provisions.

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

acting in an official capacity, in relation to a person or officer, means the person or officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

administrative review committee, see section 324(1).

affected person, for an NTCAT reviewable decision, see section 327(2).

allotment, see section 225.

annual return of interests:

(a) for a council member – see section 110(1); or

(b) for a staff member of a council or local government subsidiary – see section 178(1) or (2).

approved form means a form approved under section 341.

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

assessed value, see section 227(2).

assessment record means the assessment record maintained under section 230.

associate, see section 8.

audit committee means an audit committee established and maintained by a council under section 86(1).

auditor, means the person appointed by a council as an auditor for the council under section 209.

Australian Accounting Standards means the following standards in force from time to time and published by the Australian Accounting Standards Board:

(a) Accounting Standards;

(b) Statements of Accounting Concepts;

(c) Interpretations;

(d) Framework for the Preparation and Presentation of Financial Statements.

Australian Accounting Standards Board means the Office of the Australian Accounting Standards Board established by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth).

authorised deposit account, for Chapter 10, Part 10.1, see section 191.

authorised person means a person appointed to be an authorised person under section 183.

borrowing, for Chapter 10, Part 10.3, see section 196.

by-election means a by-election mentioned in section 136.

campaign donation return, for Chapter 8, Part 8.6, see section 147(1).

campaign material, for Chapter 8, Part 8.7, see section 158.

casual vacancy means a vacancy in the office of a member of a council under section 50.

cemetery plan, see section 7 of the *Burial and Cremation Act 2022*.

CEO, of a council, means the council's chief executive officer as appointed under section 165(1), who is in charge of day-to-day operations of the council.

CEO of the Agency means the Chief Executive Officer of the Agency.

chairperson, of a meeting of:

(a) a council – see section 95; or

(b) an audit committee – see section 98; or

(c) a council committee – see section 98; or

(d) a local authority – see section 98.

chief executive, of a local government subsidiary, means the local government subsidiary's chief executive as appointed under section 71(1), who is in charge of day-to-day operations of the local government subsidiary.

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 grandchild; or

(ii) the child or grandchild of the person's spouse or de facto partner; or

(c) the relationship between a person and:

(i) the person's parent or grandparent; or

(ii) the parent or grandparent of the person's spouse or de facto partner; or

(d) the relationship between siblings.

commission of inquiry means a commission of inquiry established by the Minister under section 309.

commissioner means a person appointed by the Minister to be a commissioner under section 309(2).

committee, for Chapter 3, see section 26.

community cemetery, see section 7 of the *Burial and Cremation Act 2022*.

compliance date, for Chapter 10, Part 10.9, see section 214(2).

conclusion, in relation to an election, means the declaration of a poll, or if there is no poll, on declaration that the candidates for election are elected.

conditionally rateable, in relation to land, see section 219.

conflict of interest, in relation to a member of an audit committee, a council, a council committee or a local authority, see section 114.

constituent council means a council that forms a local government subsidiary under section 67(1).

corporation, for Chapter 8, Part 8.6, see section 147(1).

council, for an area, means the local government council constituted for that area under section 14(b).

council area means the area for which the council is constituted under section 14(b).

council committee means a council committee established by a council under section 82.

council panel, for Chapter 7, Part 7.4, Division 2, see section 122(2)(b).

council senior staff member means a staff member of the council who is:

(a) employed in a position in the management level immediately beneath the CEO (of the council) in the council's organisational structure; and

(b) directly reporting to the CEO (of the council).

Crown land, see section 3 of the *Crown Lands Act 1992*.

decision maker, for Chapter 11, Part 11.4, section 233(5).

decision notice, for a decision, means a written notice setting out:

(a) the decision and the reasons for it; and

(b) any right the person to whom the notice is to be given has, under this Act or another Act, to apply for a review of the decision, to apply for a consideration of the matter or to appeal the decision.

Deputy CEO, of a council, see section 165(2).

deputy principal member, of a council, means the member appointed by the council to be the deputy principal member under section 61(3).

details, for Chapter 8, Part 8.6, see section 147(1).

disclosure period, for Chapter 8, Part 8.6, see section 147(1).

disposition of property, for Chapter 8, Part 8.6, see section 147(1).

donation, for Chapter 8, Part 8.6, see section 147.

election means a general election or a by-election.

election day means the day fixed by or under this Act for an election.

elector, for an area or a ward, means a person:

(a) who is an elector within the meaning of section 3 of the *Electoral Act 2004*; and

(b) who is enrolled within the meaning of section 3 of the *Electoral Act 2004* in respect of a place of residence that is in the ward or area.

electoral matter, for Chapter 8, Part 8.7, see section 159.

electoral roll means a roll of electors prepared by the Electoral Commission for an area or a ward under section 139.

entity, for Chapter 8, Part 8.6, see section 147(1).

exempt land, for Chapter 11, Part 11.1, see section 222.

facility, see section 7 of the *Burial and Cremation Act 2022*.

general election means:

(a) a general election mentioned in section 134 or 319; or

(b) a periodic general election mentioned in section 135.

general rates, see section 237.

guidelines mean guidelines made by the Minister under section 342.

inspector means an inspector of local government appointed under section 294.

investigator, see section 318(2)(c)(ii).

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) the land to which an interest in a mining tenement relates; and

(e) for land held under a 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 Trust means an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

loan, for Chapter 8, Part 8.6, see section 147(1).

local authority means a local authority established by a council under section 76.

local government area means an area that the Territory is divided into for the system of local government established by this Act.

local government council means the council constituted for a local government area and is responsible for the government and management of the area at the local level.

local government subsidiary, see section 67(1).

Lord Mayor, see section 58(2)(a).

Mayor, see section 58(1) or (3).

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

mining tenement means:

(a) the following under the *Mineral Titles Act 2010*:

(i) an extractive mineral lease;

(ii) an extractive mineral permit;

(iii) a mineral lease;

(iv) a mineral authority that corresponds with a mineral lease, an extractive mineral lease or an extractive mineral permit;

(v) a mineral claim granted under the *Mining Act 1980* and continued under section 204 of the *Mineral Titles*

Act 2010 for which the Minister responsible for the administration of the *Mineral Titles Act 2010* has not taken an action under section 203 of the Act; and

(b) the following under the *Petroleum Act 1984*:

(i) a production licence;

(ii) a lease granted under the *Petroleum (Prospecting and Mining) Act 1954* and continued under section 119(2) of the *Petroleum Act 1984*.

municipality means the local government area classified as a municipality under section 15.

municipal plan, see section 33(2)(a).

NTCAT reviewable decision, see section 327(1).

official manager, see section 318(2)(c)(i).

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

ordinary meeting, of a council, see section 90(1).

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.

prescribed corporation, see section 9.

prescribed corporation panel, see section 127(2).

President, see section 58(2)(b) or (3).

principal member, of a council, means the member appointed or elected to be the principal member under section 60 or 61.

principal ratepayer, for an allotment, see section 229.

private company means a proprietary company as defined in the Corporations Act 2001 with fewer than 25 members.

public cemetery, see section 7 of the *Burial and Cremation Act 2022*.

public notice means notice published in accordance with section 11.

public office, of a council, means the office of the council that is open to the public during business hours.

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

rateable, in relation to land, see section 218.

rate concession, see section 247(1).

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

rates, for Chapter 11, Part 11.9, see section 252.

rectification order, for Chapter 10, Part 10.9, see section 214(1).

region means Territory region.

regional plan, see section 33(2)(b).

register of annual returns of interests, see section 111.

register of declared conflicts, see section 116(1).

register of declared gifts and benefits, see section 113(1).

regulatory order, see section 282.

relevant interest rate, see section 10.

relevant returning officer, in relation to material that relates to an election, means the returning officer for an election that is:

(a) after the election to which the material relates but not after the next periodic general election; and

(b) for a ward or local government area affected by the election to which the material relates.

Remuneration Tribunal means the Tribunal as defined in section 2 of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

reserve, see section 76 of the *Crown Lands Act 1992*.

responsible entity, for a community cemetery or a public cemetery, see section 7 of the *Burial and Cremation Act 2022*.

returning officer, for an election:

(a) if the election is a by-election – see section 136(10); or

(b) otherwise – means the Electoral Commissioner.

reviewable decision, see section 322(1).

road, see section 270.

shire means a local government area classified as a shire under section 15.

shire plan, see section 33(2)(c).

special meeting, of a council, see section 90(5).

special rates, see section 238.

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

Territory region means a local government area classified as a region under section 15.

urban farm land means land classified by a council as urban farm land under section 221.

valuation roll means the valuation roll prepared and maintained under the *Valuation of Land Act 1963*.

ward means a divided portion of a local government area.

zone means a zone constituted under the *Planning Act 1999.*

Note for section 7

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

8 Meaning of *associate*

A person is an ***associate*** of another person 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.

9 Meaning of *prescribed corporation*

The ***prescribed corporation*** is the corporate entity prescribed by regulation.

10 Meaning of *relevant interest rate*

A ***relevant interest rate*** is a rate of interest:

(a) prescribed by regulation; or

(b) if the rate of interest is not prescribed by regulation – fixed by the council.

11 Public notice for matters in relation to elections

(1) If this Act requires public notice to be given about a matter in relation to an election, notice about the matter must be published as follows:

(a) the returning officer for the election must publish information about the matter in a newspaper circulating in the relevant local government area;

(b) the returning officer for the election must direct the relevant council to make that information available on the council's website in accordance with section 292.

(2) The council must comply with the direction under subsection (1)(b).

(3) This section does not prevent the giving of notice about the matter in another way.

Examples for subsection (3)

Radio or television broadcast.

(4) However, if under this Act, a specified period after a public notice is required or allowed for a matter, the period starts on the date the notice is first published under subsection (1).

12 Council policies to be consistent with code of conduct

If this Act provides for a council to adopt a policy about a particular matter, the policy must be consistent with the council's code of conduct.

Part 1.4 Application of Criminal Code

13 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 13

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.

Chapter 2 System of local government

Part 2.1 Local government areas

14 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 local government council is constituted for each area to be responsible for the government and management of the area at the local level.

15 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

16 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) merge 2 or more local government areas;

(c) divide a local government area into 2 or more local government areas;

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

(e) change a municipality into a shire or a shire into a municipality;

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

(g) change a region into a shire or a shire into a region;

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

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

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

(k) create or abolish wards;

(l) define or change the boundaries of a ward;

(m) assign a name to, or change the name of, a ward;

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

(o) 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 under subsection (1)(a).

(3) 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 taken to be read as a reference to the area or council as changed by the notice.

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

17 Merger of local government areas or division of local government area

(1) This section applies if the Administrator (or the Minister):

(a) merges 2 or more local government areas under section 16(1)(b) or (2); or

(b) divides a local government area into 2 or more local government areas under section 16(1)(c) or (2).

(2) If there has been no substantial change affecting the electoral representation of a ward in the area, the Administrator may, by *Gazette* notice, make a declaration that the member or members of

the ward continue to hold office as a member or members of the council after the merger or division.

(3) If a principal member continues to hold office under subsection (2), the principal member ceases to hold office as a principal member but continues to hold office as a member of the council after the merger or division.

(4) The Administrator may, by *Gazette* notice, make a declaration that the principal member is to be elected or appointed after the merger or division.

(5) The Minister may also, by *Gazette* notice, exercise the power conferred by subsection (2) or (4).

18 Consequential adjustment of rights and liabilities

(1) The Administrator may, by *Gazette* notice, make any disposition of property or rights and liabilities in relation to a local government council that may be desirable as a consequence of:

(a) the constitution or abolition of a local government area; or

(b) the merging of 2 or more local government areas; or

(c) the division of a local government area into 2 or more local government areas; or

(d) a change to the boundaries of a local government area.

(2) The Minister may also, by *Gazette* notice, exercise the power conferred by subsection (1).

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

19 Prospective council

(1) This section applies if:

(a) the Administrator intends to constitute a local government area under section 16(1)(a) or divide a local government area into 2 or more local government areas under section 16(1)(c); or

(b) the Minister intends to divide a local government area into 2 or more local government areas under section 16(2).

(2) The Administrator or the Minister may, by *Gazette* notice, establish a prospective council under the name to be assigned to the council for the local government area before exercising the power mentioned in subsection (1).

(3) The prospective council:

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) is capable of acquiring, holding and disposing of real property (including leasehold) and personal property and of suing and being sued.

(4) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the prospective council affixed to a document and are to assume that it was duly affixed.

(5) The prospective council is constituted by the person appointed under subsection (6) until the prospective council becomes the council or otherwise ceases to exist.

(6) The Administrator or the Minister may, by *Gazette* notice, appoint a person to constitute the prospective council.

(7) A prospective council established under subsection (2) has full power to transact any business or do anything else as if:

(a) the prospective council were the council for the local government area; and

(b) the local government area had been constituted under section 16(1)(a).

(8) The prospective council becomes the council after the general election for the council for the local government area.

Note for section 19

The Minister must call a general election for an area if the area is newly constituted under section 134.

20 By-laws

(1) This section applies in relation to by-laws that apply in a part of the Territory immediately before:

(a) the constitution of a local government area; or

(b) the merging of 2 or more local government areas; or

(c) the division of a local government area into 2 or more local government areas; or

(d) the boundaries of a local government area are changed; or

(e) there is a change in the classification of a local government area.

(2) The by-laws:

(a) continue to apply within the local government area to the extent that the by-laws applied before the constitution, merger, division, boundary change or change in classification; and

(b) may be amended or repealed by the council for the area, even if the by-laws were not originally made by that council.

(3) Despite subsection (2), the Administrator or the Minister may, by *Gazette* notice, determine the by-laws that apply to a local government area or part of a local government area.

Part 2.3 Role, functions and objectives of councils

21 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 or another Act.

22 Functions of 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 make prudent financial decisions;

(d) to manage the employment of the CEO;

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

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

(g) to plan and develop council facilities and services in its area in a sustainable way;

(h) to plan the use of council resources for the benefit of its area;

(i) other functions assigned to the council under this Act or another Act.

(2) The functions of a council may (if the council decides to perform the functions) 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 programs that benefit its area.

23 Powers of council

A council may do all things necessary or convenient to be done for, or in relation to, the performance of the council's functions.

24 Objectives of 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.

25 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 a local government area – with the Minister's consent.

(2) For subsection (1)(a), mutual agreement may only be established by resolution of each council to the agreement.

(3) For subsection (1)(b), the council may only seek the Minister's consent by resolution of the council.

(4) 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 for subsection (4)

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 local level

Part 3.1 Definition

26 Definition

In this Chapter:

committee means the Local Government Representation Committee, established by section 27.

Part 3.2 Local Government Representation Committee

27 Local Government Representation Committee

(1) There is a Local Government Representation Committee.

(2) The committee consists of:

(a) the Electoral Commissioner; and

(b) the Surveyor-General; and

(c) the CEO of the prescribed corporation.

(3) The chairperson of the committee is the person mentioned in subsection (2)(c).

28 Powers of committee

(1) The committee may determine:

(a) if a local government area is divided into wards:

(i) that the local government area remain divided into the same wards or be divided into different wards; or

(ii) that the local government area should not be divided into wards; or

(b) if a local government area is not divided into wards:

(i) that the local government area remain that way; or

(ii) that the local government area should be divided into wards.

(2) If the committee makes a determination that a local government area be divided into wards or different wards, the committee must also determine:

(a) the number of wards for the local government area; and

(b) the boundaries of the wards for the local government area; and

(c) the number of ordinary members for each ward.

(3) However, the determination under subsection (2)(c) must provide for the same total number of positions for ordinary members for the area that was in place before the determination.

(4) The committee may also make recommendations in relation to the local government area.

Example for subsection (4)

The committee may make a recommendation in relation to:

(a) the names of the wards; or

(b) the external boundaries of the local government area.

29 Procedures

Subject to this Act, the committee may determine its own procedures.

30 Considerations for determination

(1) Before making a determination under section 28, the committee must:

(a) invite written submissions from the council for the local government area and the public no later than 10 months after the election day for a general election for the council; and

(b) allow at least 60 days after the invitation to make submissions under paragraph (a) to receive submissions; and

(c) after receiving the submissions:

(i) consider the submissions; and

(ii) publish a preliminary report on its website proposing its determination or alternate determinations; and

(iii) invite written submissions from the council and the public on the preliminary report; and

(d) allow at least 60 days after the invitation to make submissions under paragraph (c)(iii) to receive submissions; and

(e) after receiving the submissions:

(i) consider the submissions; and

(ii) publish a final report with its determination on its website.

(2) The committee may, for subsection (1)(c), hold a public hearing or request further information from a person who made a submission.

(3) The committee must provide its final report to the council and the Minister at least 18 months before the next periodic general election for the council.

(4) The Minister must, by *Gazette* notice, notify the making of the determination.

(5) The determination takes effect from:

(a) if a general election for the council takes place 12 months or more after date of the determination – that election; or

(b) otherwise – the next periodic general election.

31 Assessment criteria for committee to use in determinations

In making a determination under section 28, the committee must consider the following matters:

(a) community of interests in the local government area including economic, social and regional interests;

(b) types of communication and travel in the local government area with special reference to issues arising out of remoteness or distance;

(c) the trend of population changes in the local government area;

(d) the density of population in the local government area;

(e) the physical features of the local government area.

32 Assessment criteria in relation to division of wards

(1) This section applies if the committee determines:

(a) if a local government area is divided into wards – that the local government area remain divided into the same wards or be divided into different wards; or

(b) if a local government area is not divided into wards – that the local government area should be divided into wards.

(2) In making the determination, the committee must consider the desirability of:

(a) the number of electors for each ward being as near to equal as practicable at the next general election; and

(b) keeping the area of each ward containing rural and remote areas as small as practicable; and

(c) keeping the demographic and geographic nature of each ward as uniform as practicable; and

(d) including an identifiable community wholly within one ward if practicable.

Part 3.3 Municipal, regional or shire plans

33 Meaning of *municipal*, *regional* or *shire plans*

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

(2) The plan for a council is:

(a) for a municipality – the ***municipal plan***; and

(b) for a region – the ***regional plan***; and

(c) for a shire – 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 from the council's public office at a fee fixed by the council.

34 Contents of municipal, regional or shire plan

(1) A municipal, regional or shire plan:

(a) must include:

(i) a service delivery plan for the period to which the plan relates; and

(ii) the council's budget and any amended budget; and

(b) must include, or incorporate by reference:

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

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

(c) for a regional plan – must take into account the projects and priorities for the area identified by a local authority or authorities; and

(d) must define indicators for judging the standard of the council's performance.

(2) 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.

35 Municipal, regional or shire plans

(1) A council must, by resolution, adopt its municipal, regional or shire plan between 1 March and 30 June in each year.

(2) The council must give a copy of the plan to the Agency by the latter date mentioned in subsection (1).

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

(a) at a meeting of the council, approve a draft of the plan; 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.

(4) A copy of the draft of the plan must be provided to the members of the council at least 6 business days before the meeting referred to in subsection (3)(a).

(5) 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 an amended budget.

(6) The adoption of a budget, or of an amended budget, operates to amend the municipal, regional or shire plan so that it conforms with the most recent budget of the council.

36 Core services

(1) The Minister may, by *Gazette* notice, advise a council as to the services that, in the Minister's view, are services that the council should, as a priority, provide.

(2) The council must consider the advice when adopting and renewing its plan.

Chapter 4 Council and its members

Part 4.1 Council as body corporate

Division 1 Corporate nature, capacity and powers of council

37 Council as body corporate

(1) A council:

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real property (including leasehold) and personal property and of suing and being sued.

(2) All courts, judges and persons acting judicially are to take judicial notice of the common seal of a council affixed to a document and are to assume that it was duly affixed.

(3) A council has the name assigned to it under section 16(1)(h).

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

38 How council acts in its corporate capacity

(1) A council acts:

(a) through local authorities, 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 for subsection (1)

It follows that a contract is to 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.

39 Formation, ownership or participation in other bodies corporate

(1) A council must not form, own (in full or in part) or otherwise participate in any type of corporation, partnership or other trading body, irrespective of whether such formation, ownership or participation is for the purposes of investment or otherwise.

(2) However, the Minister, in consultation with the Treasurer, may approve a formation, ownership or participation, on any conditions the Minister thinks fit.

Division 2 Delegation

40 Delegation

(1) A council may delegate its powers and functions.

(2) A delegation may be made to:

(a) the CEO; or

(b) a council committee; or

(c) a local authority; or

(d) a local government subsidiary.

(3) Despite subsection (1):

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

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

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

(d) subject to subsections (4) and (5), power to enter into a transaction on conditions that are not arm's length conditions cannot be delegated; and

(e) subject to subsections (4) and (5), power to make a decision that requires a council resolution cannot be delegated; and

(f) if power to enter into a contract is delegated – the contract must be below the threshold value.

(4) A council may delegate to the CEO the following:

(a) the power to enter into a transaction on conditions that are not arm's length conditions if the transaction will provide a community benefit;

(b) the power to waive a fee for service (wholly or partly) under section 289(4) if the waiver will provide a community benefit.

Note for subsection (4)(b)

A decision to waive a fee for service (wholly or partly) under section 289(4) requires a council resolution.

(5) A delegation under subsection (4) must be in accordance with the regulations and any guidelines that the Minister may make.

(6) A council must, within the first 6 months of its term, determine, by resolution, the threshold value for a contract for subsection (3)(f).

(6A) Despite subsection (2), a council, as the responsible entity for a public cemetery or a community cemetery, may only delegate the powers and functions of the responsible entity under the *Burial and Cremation Act 2022* to a local government subsidiary.

(7) In this section:

arm's length conditions means the conditions that might be expected to operate between commercial entities dealing wholly independently with one another in comparable circumstances.

41 Review of delegation

A council must review any delegations of its functions and powers within the timeframe prescribed by regulation.

Part 4.2 Council members

Division 1 Composition of councils

42 Composition of council

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

43 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

44 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 be properly informed to enable participation 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; and

(f) to ensure that council resources are used prudently and solely in the public interest; and

(g) to actively monitor the financial affairs of the council.

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

(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.

45 Professional development of members

(1) The CEO of the Agency may approve training courses for members of a council.

(2) The training courses must be about the responsibilities of being a member of council under this Act.

(3) A member of a council must complete a training course within 12 months of each general election.

(4) If a member is elected in a by-election or appointed to fill a casual vacancy, the training course must be completed within 12 months of the election or appointment, unless the election or appointment is less than 12 months before the next general election.

Division 3 Terms and conditions of membership

Subdivision 1 Term of membership and disqualification

46 Eligibility for membership

A person is eligible for election or appointment as a member of a council unless the person is disqualified under section 47.

47 Disqualification

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

(a) holds a ***judicial office***; or

(b) is bankrupt; or

(c) is sentenced to a term of imprisonment of 12 months or more for an offence against the law of the Commonwealth or of a State or Territory in the circumstances specified in subsection (3); or

(d) is a staff member of the council; or

(e) is a staff member of the local government subsidiary of which the council is a constituent council of the local government subsidiary; or

(f) is indebted to the council and fails to discharge the debt within 6 months after the debt becomes due and payable in accordance with the regulations; or

(g) is certified mentally unfit to carry out the functions of a member; or

(h) is disqualified from managing a corporation under the Corporations Act 2001 or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or

(i) is disqualified under section 40 of the *Associations Act 2003* from being an officer of an incorporated association; or

(j) is a member of the Commonwealth House of Representatives or the Senate; or

(k) is determined by NTCAT to be unfit to be a member under section 133; or

(l) for the period mentioned in that subsection – is incapable of holding a local government office under section 89(3) of the Criminal Code; or

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

(n) ceases to have a principal place of residence within the area; or

(o) is absent, without permission of the council in accordance with the regulations, from 2 consecutive ordinary meetings of the council.

Note for subsection (1)

A person is not qualified to be a member of a council if the person is a member of the Legislative Assembly (see section 21(1)(a) of the Northern Territory (Self-Government) Act 1978 (Cth)).

(2) For subsection (1)(a), a judicial office includes the following, but does not include a justice of the peace:

(a) a Justice of the High Court;

(b) a Judge of the Federal Court;

(c) a Supreme Court Judge;

(d) a Local Court Judge;

(e) the President, a Deputy President or an ordinary member of NTCAT.

(3) For subsection (1)(c), a person is disqualified if:

(a) the person is serving the term of imprisonment of 12 months or more over the period that the person would have otherwise been eligible as a member of a council or a candidate for election as a member of a council; or

(b) the person is sentenced to a term of imprisonment of 12 months or more after the person is elected to be a member of a council.

(4) For subsection (1)(g), 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.

48 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.

49 Disclosure requirements

(1) If a council member is convicted of any offence, the member must notify the CEO of the conviction as soon as practicable.

(2) The CEO must notify the Agency of the conviction no later than 14 days after the CEO has been notified by the member under subsection (1).

(3) A member commits an offence if:

(a) the member is convicted of an offence; and

(b) does not notify the CEO of the conviction.

Maximum penalty: 100 penalty units.

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

Note for section 49

If a member is convicted of an offence demonstrating that the member to be unfit to remain in office, NTCAT may determine the member is unfit to be a member under section 133.

Subdivision 2 Casual vacancies

50 Casual vacancies

Subject to this Act, 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 under section 47; or

(c) resigns by written notice given to the CEO.

51 Resignation or notification if disqualified

(1) If a member reasonably believes the member ceases to hold office as a member of a council under section 47(1)(a) to (j) or (l) to (o), the member must resign by written notice to the CEO as soon as practicable.

(2) A resignation under subsection (1):

(a) cannot be withdrawn; and

(b) takes effect on the date the notice is given to the CEO.

(3) The CEO must give a copy of the notice mentioned in subsection (1) to the Electoral Commissioner as soon as practicable.

(4) If a person has ceased to hold office because of section 50(a), the CEO must notify the Electoral Commissioner as soon as practicable.

(5) A person commits an offence if:

(a) the person is:

(i) disqualified from office as a member of the council under section 47(1)(a) to (j) or (l) to (o); and

(ii) reckless in relation to that circumstance; and

(b) the person fails to resign by written notice to the CEO as soon as practicable.

Maximum penalty: 100 penalty units.

(6) Strict liability applies to subsection (5)(b).

52 Electoral Commissioner to confirm if person is not enrolled as an elector

(1) This section applies if:

(a) a person has ceased to hold office because the person is disqualified under section 47(1)(m); and

(b) the person does not resign under section 51(1).

(2) The CEO must, in writing, request the Electoral Commissioner to confirm that the person is not enrolled as an elector in respect of a place of residence within the area for the council for which the person held office as a member.

(3) If the Electoral Commissioner confirms, in writing, that the person is not enrolled as an elector under subsection (2), the person's disqualification takes effect on the date of the Electoral Commissioner's written notice.

53 Notifying CEO of resignation

(1) If a member resigns by written notice given to the CEO under section 50(c), 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 3 months later) specified in the notice.

(2) The CEO must give a copy of the notice mentioned in subsection (1) to the Electoral Commissioner as soon as practicable.

54 Filling casual vacancy generally

(1) This section applies if a casual vacancy occurs in the office of a member other than a principal member.

(2) If a casual vacancy occurs:

(a) less than 18 months, but not less than 6 months, before the next general election – the council may, by vote of existing members, appoint a person to fill the vacancy until the next general election; or

(b) 6 months or less before the next general election – the council may, by vote of existing members:

(i) appoint a person to fill the vacancy until the next general election; or

(ii) may leave the office vacant; or

(c) 18 months or more before the next general election – the council must hold a by-election.

(3) The council must fill a casual vacancy under subsection (2)(a) or (b) in accordance with its policy for filling casual vacancies, adopted by resolution.

55 Reinstatement if member stands as candidate

(1) Despite section 54, a person is reinstated as a member of the council if:

(a) the person resigns in order to stand as a candidate for election to the Legislative Assembly, 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 person is not elected; and

(d) the person applies to the CEO to be reinstated as a member of the council within 7 days after the result of the election is known.

(2) A person reinstated to office under subsection (1) is not entitled to any remuneration, allowances, expenses or benefits for the period between resignation and reinstatement.

(3) If the person reinstated to office under subsection (1) is the principal member:

(a) the vacancy is taken to be a period during which the member was absent from official duties; and

(b) the member is reinstated as the principal member.

(4) If the member reinstated to office under subsection (1) is the deputy principal member:

(a) if the member's term of office as the deputy principal member did not expire during the period between resignation and reinstatement – the member is reinstated as the deputy principal member; or

(b) if the member's term of office as the deputy principal member expired during the period between resignation and reinstatement – the member is reinstated as an ordinary member.

(5) A member ceases to hold office as a member of the council under this section if the result of the election is declared and:

(a) the member has been elected; or

(b) the member has not been elected, the period for applying for reinstatement under subsection (1) has expired and the former member has not applied for reinstatement.

Subdivision 3 Eligibility for office

56 Determination of eligibility for office by NTCAT

(1) A person may apply to NTCAT to determine whether a member is eligible to hold office if the member may be disqualified under section 47, unless the member may be disqualified under section 47(1)(k) or (m).

(2) The member whose eligibility is to be determined is the respondent to the application under subsection (1).

(3) The applicant must serve the application on the respondent.

(4) The respondent may, within 7 days after service or a longer period allowed by NTCAT, file in NTCAT a reply to the application.

(5) The reply must be served on the applicant.

(6) If NTCAT determines a member is not eligible to hold office, NTCAT may dismiss the member from office.

(7) NTCAT must, in writing, notify the Electoral Commissioner if it dismisses a member under subsection (6).

Subdivision 4 Protection from liability

57 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as a member of a council.

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

(3) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

Subdivision 5 Principal member

58 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 council for the City of Darwin local government area – the principal member is to have the title ***Lord Mayor***; and

(b) in the case of the Litchfield Council – the council may, by resolution, decide the principal member instead has the title ***President***.

(3) A council for a region or a shire may, by resolution, decide the principal member of the council has the title ***Mayor*** or ***President***.

59 Role and functions of principal member and deputy or acting principal member

(1) In addition to the role of a member mentioned in section 44, the principal member of a council has the following functions:

(a) to chair meetings of the council;

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

(c) to liaise with the CEO about the performance of the council's and CEO's functions;

(d) to promote behaviour among the members of the council that meets the standards set out in the code of conduct;

(e) to lead the council to undertake regular review of the performance of the CEO.

(2) In addition to the role of a member mentioned in section 44, 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 reason.

(3) If the principal member is absent from official duties 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 another member of the council to act in the principal member's position for a specified period or until the principal member resumes official duties.

60 Election or appointment of principal member

(1) The principal member of a council is to be elected or appointed to the office.

(2) A 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 council may, by special resolution, change the basis of filling the office.

(4) The council must, as soon as practicable, notify the Electoral Commissioner and the CEO of the Agency if the council changes the basis of filling the office under subsection (3).

(5) 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 12 months, but not more than 18 months, before the end of that term.

(6) If a change is made to the basis of filling the office:

(a) the change does not take effect until the next general election; and

(b) for the next general election, the change takes effect as follows:

(i) if the change is that the office is to be filled by election – the number of members of the council is increased by one;

(ii) if the change is that the office is to be filled by appointment – the number of members of the council is decreased by one.

(7) If there is a change in the classification of a local government area under section 16, the basis of filling the office of the principal member remains the same as it was before the change, until changed under this section.

61 Election or appointment of principal member and deputy principal member

(1) If election is the basis of filling the office of the principal member, the office is to be filled at each general election.

(2) 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 after a general election, appoint one of its members to be the principal member.

(3) The council may appoint another one of its members to be the deputy principal member of the council.

62 Term of office

(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.

63 Resignation of principal member

(1) If appointment is the basis of filling the office of the principal member of a council, the principal member may resign as the principal member and continue the member's term of office as an ordinary member.

(2) The resignation must include the following:

(a) a statement that the principal member is resigning from the office of principal member;

(b) a statement whether the principal member is also resigning from the office of ordinary member.

(3) If the resignation does not include the statement mentioned in subsection (2)(b), the member is taken not to have resigned from the office of ordinary member.

(4) If election is the basis of filling the office of the principal member, the member is not entitled to continue the member's term of office as an ordinary member.

Note for section 63

Section 52 provides that a resignation takes effect on the date the notice is given to the CEO or on a date (not more than 3 months later) specified in the notice.

64 Resignation of deputy principal member

(1) The deputy principal member of a council may resign as the deputy principal member and continue the member's term of office as an ordinary member.

(2) The resignation must include the following:

(a) a statement that the deputy principal member is resigning from the office of deputy principal member;

(b) a statement whether the deputy principal member is also resigning from the office of ordinary member.

(3) If the resignation does not include the statement mentioned in subsection (2)(b), the member is taken not to have resigned from the office of ordinary member.

Note for section 64

Section 53(1)(b) provides that a resignation takes effect on the date the notice is given to the CEO or on a date (not more than 3 months later) specified in the notice.

65 Filling casual vacancies – principal member

(1) This section applies if a casual vacancy occurs in the office of a principal member.

Note for subsection (1)

Section 54(2) applies to fill the casual vacancy in the office of an ordinary member if appointment was the basis for filling the office of the principal member.

(2) If appointment was the basis for filling the office of the principal member, and a casual vacancy in the office of the principal member occurs, the council:

(a) if the vacancy occurs 3 months or more before the next general election – must, by vote of existing members, appoint a member to fill the vacancy; or

(b) if the vacancy occurs less than 3 months before the next general election:

(i) may, by vote of existing members, appoint a member to fill the vacancy; or

(ii) may leave the office vacant.

(3) If election was the basis for filling the office of the principal member, and a casual vacancy in the office of the principal member occurs, the council:

(a) if the vacancy occurs 18 months or more before the next general election – must hold a by-election; or

(b) if the vacancy occurs less than 18 months but more than 3 months before the next general election:

(i) may, by a vote of existing members, appoint a person to fill the vacancy; or

(ii) may hold a by-election; or

(c) if the vacancy occurs 3 months or less before the next general election:

(i) may, by vote of existing members, appoint a person to fill the vacancy; or

(ii) may hold a by-election; or

(iii) may leave the office vacant.

(4) If a person is voted to fill a casual vacancy in the office of an elected principal member:

(a) the person is not (unless appointed by the council to be its principal member) to be the council's principal member; and

(b) 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.

Part 4.3 Council office

66 Council office

(1) A council must have at least one public office.

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

(3) If a council has more than one public office, 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.

Part 4.4 Local government subsidiary

67 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:

(a) any conditions of the Minister's approval; and

(b) any guidelines that the Minister may make.

68 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) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real property (including leasehold) and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of a council affixed to a document and are to assume that it was duly affixed.

(4) 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.

(5) A local government subsidiary acts:

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

(b) under its common seal.

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

(7) The constituent council or councils are jointly and severally liable for any liabilities of the local government subsidiary.

69 Constitution of local government subsidiary

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

(2) The constitution must provide that any 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 the constituent council or councils.

70 Reporting obligations

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

(2) Each 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 audited financial statements for the relevant financial year.

71 Chief executive

(1) A local government subsidiary must appoint an individual to be the chief executive for the local government subsidiary.

(2) The chief executive is the person in charge of day-to-day operations of the local government subsidiary.

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

(a) the person is disqualified from managing a corporation under the Corporations Act 2001 or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or

(b) the person is disqualified under section 40 of the *Associations Act 2003*; or

(c) the person is bankrupt.

(4) However, a person mentioned in subsection (3) becomes eligible to be the chief executive if the circumstances in that subsection no longer apply to the person.

72 Delegation by chief executive

(1) The chief executive may delegate a power or function under this Act or another Act to a person or committee.

(2) However, the chief executive must not delegate a power or function to any of the following:

(a) an audit committee;

(b) a council committee;

(c) a local authority.

73 Offences for conflict of interest

(1) A person commits an offence if:

(a) the person is a staff member; and

(b) the staff member has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice; and

(c) the member does not disclose the interest:

(i) if the staff member is the chief executive – to the local government subsidiary; or

(ii) in any other case – to the chief executive.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if:

(a) the person is a staff member; and

(b) the staff member has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice; and

(c) the staff member acts in the matter in a way other than as authorised by the chief executive or the local government subsidiary under subsection (5) (as the case requires).

Maximum penalty: 100 penalty units.

(3) An offence against subsection (1) or (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant was unaware of the personal or financial interest.

(5) The local government subsidiary may:

(a) provide authorisation, on any conditions it considers appropriate, to the chief executive; and

(b) authorise the chief executive to provide authorisation, on any conditions the chief executive considers appropriate, to a staff member.

(6) The local government subsidiary provides the authorisation under subsection (5):

(a) for a local government subsidiary with one constituent council – by resolution of the constituent council; or

(b) for a local government subsidiary with more than one constituent council – by resolution of the local government subsidiary.

(7) In this section:

staff member includes:

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

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

(c) a person acting under powers of the local government subsidiary conferred by delegation.

74 Abolition of local government subsidiary

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

(2) Irrespective of the constitution of the local government subsidiary, on abolition of a local government subsidiary, the Minister may make directions in relation to the transfer or vesting of its property, rights and liabilities.

Chapter 5 Local decision making

Part 5.1 Local authorities

75 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.

76 Local authorities

(1) The Minister may, by *Gazette* notice, identify a council for a region 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.

77 Constitution of local authority

(1) A local authority consists of:

(a) at least one member of the council appointed by the council by resolution; 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 by resolution.

Note for subsection (1)

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

(2) The member mentioned in subsection (1)(a) is required to be a member for the ward in which the local authority is located and may be the principal member.

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

78 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 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:

(i) the council's budget; and

(ii) the part of the council's area within which the local authority performs its functions; and

(fa) to endorse the cemetery plan and cemetery policies for each public cemetery and community cemetery located within the authority's area; and

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

79 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.

80 Reporting

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

81 Council to work with local authority

A council for a region that has established and maintained one or more local authorities must:

(a) seek advice and recommendations from the local authority or local authorities in relation to the following:

(i) the council's budget;

(ii) the council's priorities for expenditure;

(iii) the council's service delivery;

(iv) the council's regional plans;

(v) the council's strategic directions;

(vi) the council's funding;

(vii) matters in relation to cemeteries, including cemetery plans and cemetery policies for the public cemeteries and community cemeteries located within the local authority's area; and

(b) ensure its strategies and plans are informed by the vision and priorities of the local authority or local authorities; and

(c) work with the local authority or local authorities to foster constructive working relationships between the council members and the residents and organisations of the region.

Notes for section 81

1 A council's regional plan must take into account the projects and priorities for the area as identified by a local authority under section 34(1)(c).

2 The minutes of a meeting of a local authority must form part of the agenda of the next ordinary meeting of the council under section 101(5).

3 A council's annual report must provide an assessment of the council's performance of service delivery and projects with reference to the advice and recommendations of a local authority or authorities under section 291(1)(g).

Part 5.2 Council committees

82 Council committees

(1) A council may, by resolution, establish one or more council committees.

(2) A council committee consists of the persons appointed, by resolution, 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 for subsection (3)

A member of the council's staff is eligible for appointment as a member of a council committee (even though staff members are 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, by resolution, abolish a council committee.

(6) The council must establish or abolish a council committee in accordance with any guidelines that the Minister may make.

83 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) A council committee carries out, on behalf of the council, functions delegated to it by the council.

(4) A council committee must have terms of reference, approved by council resolution, that set out its functions.

84 Control and direction by council

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

85 Procedures

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

Part 5.3 Audit committees

86 Audit committee

(1) A council must, by resolution, establish and maintain an audit committee.

(2) An audit committee consists of the persons appointed, by resolution, by the council to be members of the committee.

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

Note for subsection (3)

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

(4) However, the chairperson of an audit committee must not be a member of the council or a member of the council's staff.

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

(6) The council may, by resolution, abolish an audit committee.

(7) The council must establish or abolish an audit committee in accordance with any guidelines that the Minister may make.

87 Nature of committee's functions

An audit committee has the following functions in relation to a council:

(a) to monitor and review the integrity of the council's financial management;

(b) to monitor and review internal controls;

(c) to make recommendations to the council about any matters the committee considers require the council's consideration as a result of the committee's functions under paragraph (a) or (b).

88 Control and direction by the council

An audit committee is subject to control and direction by the council.

89 Procedures

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

Chapter 6 Meetings

Part 6.1 Council meetings

90 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:

(a) be held within 21 days after the conclusion of that general election; and

(b) set the schedule for the holding of ordinary meetings for the term of the council.

(4) The schedule for the holding of ordinary meetings may be altered at a subsequent meeting.

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

91 Convening of meetings

(1) Meetings of a council are to be 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.

92 Notice for meeting

(1) A notice convening a council meeting:

(a) must be in writing; and

(b) must state the date, time, place and agenda (including any confidential business) for the meeting; and

(c) must include any business papers to be considered at the meeting (including any business papers for confidential business); and

(d) 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.

(2) The notice may be given to a member personally, by post, by email, by any other electronic means or in any other way arranged by the CEO with the member.

93 Publication of notice

(1) The notice:

(a) for an ordinary meeting:

(i) must be published on the council's website at least 3 business days before the date of the meeting; and

(ii) must be posted on a notice board at the council's public office at least 3 business days before the date of the meeting; and

(b) for a special meeting:

(i) must be published on the council's website at least 4 hours before the time of the meeting; and

(ii) must be posted on a notice board at the council's public office at least 4 hours before the time of the meeting.

(2) If business that deals with confidential information is to be considered at the meeting, the notice available to the public must contain a statement of that fact and the provision of this Act under which the information is confidential.

(3) If it is not practicable to do so, the business papers for the meeting may not be posted with the copy of the notice posted on the notice board, however the notice must contain information on how to otherwise access the business papers on the council's website.

(4) If the business papers considered at the meeting are different to the business papers published and posted for the meeting under subsection (1), the business papers considered at the meeting must be published on the council's website at the same time the minutes of the meeting are published under section 102(2).

(5) If any other papers or documents are considered at a meeting that have not been published and posted for the meeting under subsection (1), the papers or documents must be published on the council's website at the same time the minutes of the meeting are published under section 102(2).

Note for section 93

1 Information may be suppressed from the material that is made publicly available because the information is confidential (see section 293).

2 The regulations prescribe the information that may be suppressed.

94 Business to be considered at 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 decide, by resolution, to deal with other business.

95 Procedure at meeting

(1) The chairperson of a meeting of a council is:

(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 resolution, 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 holding office at the time of the meeting.

(3) 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 a council resolution establishing a policy for attendance in such a manner; 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.

(4) 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.

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

(6) A policy to allow the chairperson 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.

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

(8) 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 audit committees, council committees and local authorities

96 Timing of meetings of audit committees, council committees and local authorities

(1) Subject to direction by the council:

(a) an audit committee meets at times determined by the audit committee; and

(b) a council committee meets at times determined by the 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.

97 Convening of meetings

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

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

(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 audit committee, council committee or local authority within the timeframe prescribed by regulation and before the time appointed for the meeting; and

(d) must be accessible on the council's website within the timeframe prescribed by regulation and before the time appointed for the meeting; and

(e) must be posted on a notice board at the council's public office within the timeframe prescribed by regulation.

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

98 Procedure at meeting

(1) The chairperson of a meeting of an audit committee, council committee or local authority is:

(a) for an audit committee – a member appointed by the council to be the chairperson of the audit committee; or

(b) for a council committee – a member appointed by the council to be the chairperson of the committee; or

(c) for a local authority – a member appointed by the local authority to be the chairperson of the local authority; or

(d) for an audit committee, a council committee or a local authority, if the chairperson is not present (or no one is appointed to the position of the chairperson at the time of the meeting) – a member chosen by the members present at the meeting to chair the meeting.

(2) A quorum at a meeting of an audit committee, a council committee or a local authority consists of a majority of its members holding office at the time of the meeting.

(3) 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 a council resolution establishing a policy for attendance in such a manner; 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.

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

(5) Subject to this Act and any direction by the council, an audit committee, a council committee or a local authority may determine its own procedures.

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

99 Meetings to be open to public

(1) A meeting of a council, council committee or local authority must be open to the public.

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

(3) If the council, council committee or local authority considers confidential business at a meeting, the agenda for the meeting must identify the type of matter that is to be considered at the meeting.

(4) A meeting of an audit committee may be conducted in private.

100 Postponement of meeting

(1) If a quorum is not present within 30 minutes of the start time for the meeting of an audit committee, a council, a council committee or a local authority, the following may postpone a meeting to a time later on the same day:

(a) the chairperson;

(b) if the chairperson is not present but 2 or more members are present – the majority of members present;

(c) if the chairperson is not present and fewer than 2 members are present – the CEO or a person authorised by the CEO.

(2) If a meeting is postponed under subsection (1), the CEO must, in writing, record the fact that the meeting was postponed and the record must be:

(a) published on the council's website; and

(b) posted on the notice board at the council's public office.

(3) If it is impracticable for a meeting to be postponed to a time later on the same day under subsection (1), the CEO may postpone the meeting for up to 21 days.

(4) The person who postpones a meeting under subsection (1) or (3) 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.

(5) If a meeting is postponed under subsection (3), the notice of the postponement and of the time and place to which the meeting has been postponed must be, within the timeframe prescribed by regulation:

(a) published on the council's website; and

(b) posted on the notice board at the council's public office.

101 Minutes

(1) The CEO must ensure that proper minutes of meetings of an audit committee, a council, a council committee and a local authority are kept.

(2) The minutes must be in writing and:

(a) must set out:

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

(ii) the business transacted at the meeting; and

(iii) any confidential business that was considered at the meeting; and

(iv) any other information required by regulation; and

(b) must 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 audit committee, council, council committee or local authority must, at its next meeting, or next ordinary meeting, confirm the minutes (with or without amendment), including any confidential business considered at the meeting, as a correct record of the meeting.

(4) The minutes of an audit committee, a council committee or a local authority must be tabled at the next meeting of the council.

(5) The minutes of a local authority must be included in the agenda for the next ordinary meeting of the council and the council's response to those minutes must be recorded in the minutes of the meeting of the council.

(6) The council must report back to the local authority on its response to the local authority's minutes.

102 Public access to minutes

(1) This section applies to the minutes of a council, council committee or local authority.

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

(a) on the council's website; and

(b) at the council's public office.

(3) If business that deals with confidential information was considered at the meeting, the copy of the minutes available to the public must contain a statement of that fact and the provision of this Act under which the information is confidential.

Note for subsection (3)

1 Information may be suppressed from the material that is made publicly available because the information is confidential (see section 293).

2 The regulations prescribe the information that may be suppressed.

(4) 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 any fee fixed by the council, obtain an identical copy of the minutes; and

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

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

(a) the minutes, in the form in which the minutes are made available to the public, must be marked with a warning to the effect that the minutes 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

103 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 may call a meeting of the electors for its local authority 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.

104 Procedure at meeting

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

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

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

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

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

105 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

106 Allowance for members of council

(1) A member of a council is entitled to be paid the allowance or allowances determined by the Remuneration Tribunal under section 7B of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

(2) The allowances payable under this section are to be paid by the council.

(3) The council must publish the amounts of the allowances payable by the council on its website.

(4) If there is no determination that applies to a council, the allowances are to be as determined by the Minister.

(5) For subsection (4), the Minister may determine any of the following:

(a) differential allowances for principal members, deputy principal members and other members of a local government council;

(b) a fixed amount, a minimum amount or a maximum amount of an allowance;

(c) different categories of allowances;

(d) that an allowance should be indexed and the basis of, and method for, indexation;

(e) any rules that apply to eligibility for, or payment or application of, an allowance.

(6) If the Minister determines a minimum amount of an allowance under subsection (5)(b), the Minister must also determine a maximum amount of that allowance.

(7) If the Remuneration Tribunal or the Minister determines an allowance for members of a council that is not a fixed amount, the council may fix the amount of that allowance payable to members in respect of each financial year as part of the council's budget.

(8) Subject to a determination referred to in subsection (1) or under subsection (5), the allowances fixed by a council for a financial year under subsection (7):

(a) must not be increased during the financial year; and

(b) may be decreased during the financial year.

(9) If a council fixes an allowance at a rate less than the maximum amount in a determination referred to in subsection (1) or under subsection (5), the allowance payable must be proportionate for all council members.

107 Allowance for members of local authority

(1) A member of a local authority is entitled to be paid the allowance or allowances determined by the Remuneration Tribunal under section 7E of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

(2) The allowances payable under this section are to be paid by the council.

(3) The council must publish on its website the amounts of the allowances payable by the council.

(4) If there is no determination that applies to a local authority, the allowances must be determined by the council in accordance with any guidelines that the Minister may make and that apply in the relevant financial year.

109 Expenses and benefits

(1) A council may, by resolution, adopt a policy providing that members of an audit committee, a council, a council committee or a local authority are (subject to the 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 audit committee, council, council committee or local authority for which the person is a member; or

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

(2) A council may, by resolution, adopt a policy providing that members of the council are entitled to the following that may be incurred or required as a result of undertaking official duties:

(a) payment or reimbursement of other reasonable expenses;

(b) non-monetary benefits.

(3) The expenses or benefits under this section must:

(a) be provided for in the council's budget; and

(b) be identified in monthly and annual financial reports of the council.

Part 7.2 Interests

110 Annual return of interests – members

(1) A council member must submit an annual return to the CEO, containing the details prescribed by regulation (an ***annual return of interests***):

(a) within 60 days of the council member's election; and

(b) by no later than 30 September each year for the duration of the council member's membership.

(2) The annual return must be submitted in the prescribed form.

(3) However, if a member has submitted an annual return of interests after 31 March in a calendar year, the member is not required to submit another return before 30 September in that year.

(4) A member commits an offence if:

(a) the member engages in conduct; and

(b) the conduct results in a failure to submit an annual return of interests in accordance with this section.

Maximum penalty: 20 penalty units.

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

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

111 Register of annual returns of interests

The CEO must keep a register (***register of annual returns of interests***) of annual returns of interests of council members.

112 Relevant gifts and benefits

(1) A council must, by resolution, adopt a policy in relation to relevant gifts or benefits received by council members.

(2) The policy must:

(a) differentiate between what is given to a council member for the council and what is given to the member as a relevant gift or benefit; and

(b) be in accordance with any relevant guidelines the Minister may make.

(3) A council member must notify the CEO as soon as practicable after the council member receives a relevant gift or benefit from another person.

113 Register of declared gifts and benefits

(1) The CEO must keep a register (***register of declared gifts and benefits***) setting out the relevant gifts and benefits received by council members.

(2) The register of declared gifts and benefits must set out:

(a) the name of the member that received the relevant gift or benefit; and

(b) the details of the relevant gift or benefit, in accordance with the council's policy mentioned in section 112(1); and

(c) any other matter prescribed by regulation.

114 Conflict of interest

(1) A member has a ***conflict of interest*** in a question arising for decision by the audit committee, council, council committee or local authority if the member or an associate of the member has any of the following interests in how the question is decided:

(a) a direct interest;

(b) an indirect financial interest;

(c) an indirect interest by close association;

(d) an indirect interest due to conflicting duties.

(2) However, each of the following is not a conflict of interest:

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

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

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

(3) In this section:

direct interest means an interest that occurs when a member is likely to be directly affected if the matter is decided in a particular way.

Example for definition ***direct interest***

A company controlled by the member is tendering for a contract that is being discussed by the council.

indirect financial interest means an interest that occurs when a member is likely to receive a benefit or incur a loss because another person has an interest.

Example for definition ***indirect financial interest***

The member has shares in, or is employed by, a company that is tendering for a contract that is being discussed by the council.

indirect interest by close association means an interest that occurs when an associate of a member has a direct or indirect interest, or a resident of the member's household has a direct interest.

Examples for definition ***indirect interest by close association***

1 The member's sibling is suing the council and the council is considering whether to settle the matter.

2 A resident of the member's household is tendering for a contract that is being discussed by the council.

indirect interest due to conflicting duties means an interest that occurs when a member is a director, partner, agent, trustee, manager, office holder or employee of a person or entity, including a non-profit body or association, that has a direct interest.

Examples for definition ***indirect interest due to conflicting duties***

1 The member is a director of a non-profit body or association that is seeking a sponsorship or donation being discussed by the council.

2 The member is an employee of a non-profit body or association that is tendering for a contract being discussed by the council.

115 Disclosure of interest

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

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

(b) to the CEO.

(2) A member must not:

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

(b) participate in any decision in relation to the matter; or

(c) engage in behaviour that may influence the audit committee, council, council committee or local authority's consideration of or decision in relation to the matter.

(3) The Minister may approve the following on any conditions the Minister considers appropriate:

(a) a member's participation in the consideration of the matter in which the member has a conflict of interest;

(b) a member's participation in the decision in relation to the matter in which the member has a conflict of interest.

(4) A member commits an offence if the member:

(a) intentionally engages in conduct; and

(b) the conduct results in a failure to disclose an interest and the member is reckless in relation to the result.

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

(5) A member commits an offence if the member:

(a) intentionally engages in conduct; and

(b) the conduct results in a contravention of subsection (2) or a condition of an approval in subsection (3) and the member is reckless in relation to the result.

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

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

116 Register of declared conflicts

(1) The CEO must keep a register (***register of declared conflicts***) setting out conflicts of interest disclosed by council members under section 115.

(2) The register of declared conflicts must set out:

(a) the name of the member making the disclosure of the conflict of interest; and

(b) the nature of the interest that gives rise to the conflict of interest; and

(c) the nature of the question on which the conflict of interest arises; and

(d) any other matter prescribed by regulation.

117 Registers to be published

The register of annual returns of interests, the register of declared conflicts and the register of declared gifts and benefits must be published on the council's website.

Part 7.3 Confidential information

118 Improper use of information

(1) A person commits an offence if:

(a) the person obtains information as a member of an audit committee, a council, a council committee or a local authority; and

(b) the person intentionally engages in conduct; and

(c) the conduct results in the improper use of the information and the person is reckless in relation to the result.

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

(2) Strict liability applies to subsection (1)(a).

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

Part 7.4 Code of conduct

Division 1 Code of conduct to apply

119 Code of conduct to apply

(1) The code of conduct set out in Schedule 1 governs the conduct of members of an audit committee, a council, a council committee and a local authority.

(2) The code of conduct must be published on the council's website.

Division 2 Contravention of code of conduct by council members

Subdivision 1 Complaint and review of decision about complaint

120 Complaints of contravention of code of conduct

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

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

(b) giving particulars of the alleged contravention.

(2) The complaint:

(a) must be in the approved form; and

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

(c) must be made within 3 months after the date of the alleged contravention.

121 Policy for contravention of code of conduct

A council must, by resolution, adopt a policy in relation to a contravention of the code of conduct.

122 Complaint referred to council by CEO

(1) As soon as practicable after receiving a complaint under section 120, the CEO must refer the complaint to the council.

(2) After receiving the complaint from the CEO, the council must:

(a) decide the complaint; or

(b) refer the complaint to a panel (***council panel***) for the council panel to decide the complaint; or

(c) refer the complaint to a third party.

(3) A council panel is established by the council and consists of at least 3 members of the council.

(4) The regulations may prescribe any other procedures to be undertaken by the CEO or council on receipt of a complaint.

123 Council or council panel decides complaint

(1) If the council or council panel decide the complaint under section 122(2)(a) or (b), the council or council panel must decide, in accordance with the council's policy:

(a) that no action is to be taken; or

(b) that the respondent did not contravene the council's code of conduct; or

(c) that the respondent contravened the council's code of conduct.

(2) If the council or council panel make a decision under subsection (1)(a), the council or council panel is not required to decide whether the respondent contravened the council's code of conduct.

(3) If the council or council panel make a decision under subsection (1)(c) the council or council panel must decide, in accordance with the council's policy, the following:

(a) to take no action;

(b) either or both of the following:

(i) to issue a reprimand to the respondent;

(ii) to recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date.

124 Complainant or respondent may request referral to third party or refer to prescribed corporation

(1) The complainant or respondent may request the council refer the complaint to a third party before the council has taken an action under section 122(2).

(2) The council may accept or reject a request under subsection (1).

(3) The following may refer the complaint to the prescribed corporation before the council has taken an action under section 122(2):

(a) if the complainant is a member of the council – the complainant;

(b) the respondent.

125 Referral to third party

(1) This section applies if:

(a) the council refers the complaint to a third party under section 122(2)(c); or

(b) the complainant or respondent has requested that the complaint be considered by a third party under section 124(1) and the council has accepted the request.

(2) The third party must:

(a) consider the complaint; and

(b) refer the complaint back to the council.

(3) The third party may give advice in relation to the complaint to the council.

(4) After receiving a referral from the third party under subsection (2)(b), the council must:

(a) take into consideration any advice of the third party in relation to the complaint; and

(b) decide the complaint in accordance with section 123.

126 Notice of decision – council or council panel

(1) This section applies if the council or council panel has made a decision under section 123 or 125(4)(b).

(2) The council or council panel must, within 90 days of the receipt of the complaint by the CEO, give a decision notice of the decision to the complainant and the respondent.

(3) A complainant or respondent may, within 28 days of receiving the decision notice under subsection (2), apply to the prescribed corporation for consideration of the complaint.

127 Referral or application for consideration to prescribed corporation

(1) This section applies if:

(a) a complainant or respondent refers the complaint to the prescribed corporation under section 124(3); or

(b) a complainant or respondent applies to the prescribed corporation for consideration of the complaint under section 126(3) after the council or council panel made a decision.

(2) On receipt of a referral or application the prescribed corporation must establish a panel (***prescribed corporation panel***) of the following to make a decision under this section:

(a) 2 nominees of the corporation;

(b) one nominee of the Agency.

(3) The prescribed corporation panel must decide:

(a) that no action is to be taken; or

(b) that the respondent did not contravene the council's code of conduct; or

(c) that the respondent contravened the council's code of conduct.

(4) If the prescribed corporation panel makes a decision under subsection (3)(a), the prescribed corporation panel is not required to decide whether the respondent contravened the council's code of conduct.

(5) If the prescribed corporation panel makes a decision under subsection (3)(c) the prescribed corporation panel must decide the following:

(a) to take no action;

(b) any or a combination of the following:

(i) to issue a reprimand to the respondent;

(ii) to recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date;

(iii) any other recommendation the prescribed corporation panel considers appropriate.

128 Procedure of prescribed corporation panel

(1) The prescribed corporation panel may summarily reject a complaint referred under section 124(3) or an application to consider a complaint under section 126(3) without considering the complaint if the prescribed corporation panel is satisfied 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 prescribed corporation panel summarily rejects a complaint under subsection (1)(b), the prescribed corporation panel must give a decision notice to the complainant and the respondent as soon as practicable after making the decision.

(3) If the prescribed corporation panel decides to proceed to consider the complaint, the prescribed corporation panel must give the complainant and the respondent an opportunity to make representations to the panel.

(4) The prescribed corporation panel must decide an application to consider a complaint under section 126(3) as if the council or the council panel had not made a decision in relation to the complaint.

(5) The prescribed corporation panel may obtain information in any way it considers appropriate and is not bound by the rules of evidence, however the rules of natural justice apply.

(6) Proceedings of the prescribed corporation panel are to be held in a place open to the public unless the prescribed corporation panel considers it desirable, in the public interest, to hold the proceedings in private.

129 Notice of decision – prescribed corporation panel

The prescribed corporation panel must, within 90 days of the receipt of the referral under section 124(3) or the application under section 126(3) give a decision notice of the prescribed corporation panel's decision under section 127 to the complainant and the respondent.

130 Failure to comply with prescribed corporation panel recommendation

(1) If a person is subject to a recommendation of the prescribed corporation panel, and does not comply with the recommendation, the complainant or the respondent may apply to NTCAT to deal with the failure.

(2) NTCAT, after determining the application, may:

(a) order that the complainant, respondent or any other person attend training, mediation or counselling by a specified date; or

(b) if NTCAT finds the respondent contravened the code of conduct – order that the respondent not subsequently contravene the code of conduct; or

(c) make any other order NTCAT considers appropriate.

Subdivision 2 No decision by council, council panel or prescribed corporation panel

131 No decision by council or council panel

(1) If the council or council panel does not give a decision notice in accordance with section 126, the complainant or respondent may refer the complaint to the prescribed corporation.

(2) On receipt of an application under subsection (1), sections 127 to 130 apply.

132 No decision by prescribed corporation panel

(1) If the prescribed corporation panel does not give a decision notice in accordance with section 129, the complainant or respondent may refer the complaint to NTCAT.

(2) NTCAT must deal with the complaint in accordance with sections 127 to 129, as if it were the prescribed corporation panel.

(3) In addition to the powers set out in section 127, NTCAT may:

(a) if NTCAT finds the respondent contravened the code of conduct – order that the respondent not subsequently contravene the code of conduct; or

(b) make any other order NTCAT considers appropriate.

Part 7.5 Removal from office by NTCAT

133 Removal of member from office

(1) If a member of a council is convicted of an offence under this Act or another Act demonstrating that the member to be unfit to remain in office, a person may apply to NTCAT to determine whether the member, once convicted, is unfit to remain in office.

(2) The applicant must:

(a) reside in the same local government area as the member; and

(b) be registered to vote in the local government area.

(3) NTCAT must consider the following in determining whether the member is unfit to remain in office:

(a) whether the nature and details of the offence makes the member unfit to remain in office;

(b) the member's role as a community representative;

(c) the member's position of influence and trust;

(d) the member's responsibility for managing public funds.

(4) If NTCAT determines the member has been convicted of an offence that demonstrates that the member is unfit to remain in office, NTCAT may dismiss the member from office.

(5) If NTCAT dismisses the member under subsection (4), NTCAT may disqualify the person from holding office as a council member for a period of up to 5 years.

(6) NTCAT must, in writing, notify the Electoral Commissioner if it decides the following:

(a) dismisses a member under subsection (4);

(b) disqualifies the person from holding office under subsection (5).

Chapter 8 Elections and polls

Part 8.1 General elections

134 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) subject to subsection (3), a substantial change is made affecting the electoral representation of the area; or

(c) a general election fails for any reason.

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

(3) If the substantial change affecting the electoral representation of the area is because the area is divided into wards or there is a change in the boundaries of the wards within the area, the Minister may, instead of calling a general election for the area, call a by-election for the ward or wards.

135 Periodic general elections

(1) A periodic general election is to be held:

(a) on 28 August 2021; and

(b) on the 4th Saturday in August in the 4th year after the most recent previous periodic general election was held.

(2) The Electoral Commissioner may, by *Gazette* notice, provide that a periodic general election be held on a date other than the date on which it is scheduled to be held under subsection (1) (the ***nominal date***) if:

(a) the date for an election mentioned in section 394 of the *Commonwealth Electoral Act 1918* (Cth) is the same as the nominal date; or

(b) the date for a general election under the *Electoral Act 2004* is the same as the nominal date.

(3) However, the new date on which the periodic general election is to be held under subsection (2) must not be:

(a) earlier than 2 months before the nominal date; or

(b) later than 2 months after the nominal date.

(4) Subject to subsection (5), if a general election for an area is called by the Minister under section 134 or if a general election for the council is called by the Minister under section 319(1) or (2), and the general election is held less than 1 year before the date for a periodic general election under this section:

(a) a further periodic general election for the area must not be held on the later date; and

(b) the next periodic general election for the area must be held on the date on which it is scheduled to be held under subsection (1), as if the general election for the area or council had not been called by the Minister and a periodic general election had been held in the ordinary course.

(5) A general election for an area must not be called less than 3 months before a periodic general election.

Part 8.2 By-elections

136 By-elections

(1) This section applies if a by-election must be held:

(a) under section 54(2)(c), 65(3) or 134(3); or

(b) as prescribed by regulation.

(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 returning officer.

(4) If a by-election must be held under section 54(2)(c), the date for the by-election must fall within 4 months after the Electoral Commissioner:

(a) is notified of the casual vacancy:

(i) by the CEO under section 51(3) or (4) or 53(2); or

(ii) by NTCAT under section 56(7) or 133(6); or

(b) confirms the casual vacancy under section 52(3).

(5) If the by-election mentioned in subsection (4) is because a member of a council has resigned under section 50(c), the nomination date for the by-election must be after the date that the member's resignation takes effect.

(6) Unless a person is appointed under subsection (7) to be the returning officer for a by-election, the by-election (including nomination of candidates and other related processes) is to be conducted as decided by the Electoral Commissioner.

Note for subsection (6)

See section 141 for the requirements in relation to the conduct of an election or poll of electors.

(7) The council may appoint the CEO or another person (other than the Electoral Commissioner) to be the returning officer for the by-election, by doing the following within 2 months after the Electoral Commissioner is notified of the casual vacancy under section 51(3) or (4), 53(2), 56(7) or 133(6) or confirms the casual vacancy under section 52(2):

(a) passing a resolution appointing the person;

(b) if the person is not the CEO – entering into a contract with the person for the performance of the functions of returning officer.

(8) As soon as practicable after the council appoints a person to be the returning officer for a by-election under subsection (7), and in any event not later than 5 days after the appointment, the council must notify the Electoral Commissioner of the identity of the returning officer.

(9) However, failure to notify the Electoral Commissioner under subsection (8) does not affect the validity of the appointment.

(10) In this section:

returning officer, for a by-election, means:

(a) if a resolution is passed under subsection (7) in relation to the by-election – the person appointed by the resolution; or

(b) otherwise – the Electoral Commissioner.

137 Resolution for mandatory postal vote election

(1) A council for a municipality may decide that the only way to vote in a by-election (a ***mandatory postal vote election***) is by postal vote.

(2) If the council does so, the council must, within 2 months after the Electoral Commissioner is notified of a casual vacancy under section 51(3) or (4), 53(2), 56(7) or 133(6) or confirms the casual vacancy under section 52(3), pass a resolution declaring the by-election to be a mandatory postal vote election.

(3) As soon as practicable after the council passes the resolution, and in any event not later than 5 days after the passage of the resolution, the council must notify the following persons that the resolution has been passed:

(a) if the returning officer is the Electoral Commissioner – the Electoral Commissioner;

(b) otherwise – the Electoral Commissioner and the returning officer.

(4) Failure to notify a person as required by subsection (3) does not affect the validity of the resolution.

Part 8.3 Electors and electoral rolls

138 Entitlement to vote

A person is entitled to vote at an election or a poll of electors for an area or a ward if:

(a) the person is 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; or

(b) subject to any requirements prescribed by the regulations, the person is entitled under the *Electoral Act 2004* to be enrolled as an elector for the area or ward in which the election or poll is to be conducted.

139 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.

(2) The roll must contain the same information about each elector required of a roll prepared under the *Electoral Act 2004*.

Note for subsection (2)

Section 11 of the Electoral Act 2004 specifies the information required of a roll prepared under that Act.

(3) If the address of an elector is suppressed from a roll prepared under the *Electoral Act 2004*, 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) As soon as practicable after an electoral roll closes for a by-election, the Electoral Commissioner must give a copy of the roll to the returning officer (unless the Electoral Commissioner is the returning officer).

(7) 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 2004*.

140 Use of electoral roll for by-election

(1) A returning officer for a by-election commits an offence if:

(a) the returning officer is given a copy of an electoral roll under section 139(6); and

(b) the returning officer intentionally engages in conduct; and

(c) the conduct results in the information obtained from the copy of the roll being used improperly and the returning officer is reckless in relation to the result.

Maximum penalty: 80 penalty units.

(2) A person, other than the returning officer for a by-election, commits an offence if:

(a) the returning officer for the by-election is given a copy of an electoral roll under section 139(6); and

(b) the person intentionally engages in conduct; and

(c) the conduct results in the information obtained from the copy of the roll being used improperly and the person is reckless in relation to the result.

Maximum penalty: 50 penalty units.

(3) Strict liability applies to subsections (1)(a) and (2)(a).

(4) In this section:

improper, in relation to the use of the copy of the electoral roll, means that the copy of the roll is used otherwise than for a proper purpose connected with the by-election.

Part 8.4 Conduct of elections

141 Conduct of elections and polls

(1) Subject to section 136(6), an election or poll of electors must 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 2001*, 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.

142 Voting

(1) Voting is compulsory.

(2) Subject to a resolution passed under section 137 and 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 voting centre; or

(d) in any other way authorised by regulation.

(3) A person commits an offence if:

(a) the person is an elector; and

(b) the person fails to vote at an election or poll of electors.

Maximum penalty: 1 penalty unit.

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

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

Part 8.5 Electoral disputes

143 Disputing validity of election or poll

(1) The returning officer or a person with a proper interest in the result of an election or poll of electors may, by application to NTCAT, 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 or a prospective candidate for election for the relevant area 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 NTCAT; and

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

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

(5) The period mentioned in subsection (4) cannot be extended.

144 Service of application

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

(a) the returning officer; 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 NTCAT 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 NTCAT, file in NTCAT a reply to the application.

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

145 Powers of NTCAT

(1) NTCAT has the following powers:

(a) declare the election or poll of electors void and order another election;

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

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

(d) order that the votes for an ineligible candidate be distributed to the candidate next in order of the voter's preferences on the ballot paper.

(2) NTCAT must not 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, NTCAT finds that a person has committed an offence, the Registrar of NTCAT must, as soon as practicable, report the finding to the Minister.

(4) NTCAT cannot inquire into the correctness of an electoral roll and must take the roll to be conclusive evidence that the persons enrolled were, at the close of the roll, entitled to be enrolled.

(5) Section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply in relation to a decision of NTCAT under this section.

146 Exclusive method of challenge

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

Part 8.6 Donation disclosure

147 Interpretation

(1) In this Part:

campaign donation return means the return required to be given by a candidate to the Electoral Commission under section 148.

corporation means a corporation as defined in section 57A of the *Corporations Act 2001* (Cth).

details means:

(a) for a donation or loan made on behalf of the members of an unincorporated association, other than a registered industrial organisation:

(i) the name of the association; and

(ii) the names and addresses of the members of the executive committee (however described) of the association; or

(b) for a donation or loan out of a trust fund or the funds of a foundation:

(i) the names and addresses of the trustees of the fund or foundation; and

(ii) the name, title or description of the trust fund or foundation; or

(c) for another donation or loan – the name and address of the person or entity that made the donation or loan.

disclosure period means:

(a) for a periodic general election held under section 135 – the period mentioned in section 149(1); or

(b) for a general election held under section 134 or 319 – the period mentioned in section 149(2); or

(c) for a by-election – the period mentioned in section 149(3).

disposition of property means a disposition of property as defined in section 176 of the *Electoral Act 2004*.

donation means any disposition of property made by a person or entity to someone else without consideration in money or money's

worth or with inadequate consideration, and includes providing a service for no consideration or for inadequate consideration, but does not include:

(a) a disposition of property by will; or

(b) volunteer labour provided by a person that is:

(i) conducted outside the person's normal working hours or while the person is on leave; and

(ii) not remunerated; or

(c) such a disposition of property or service provided to a candidate for election:

(i) that is made in a private capacity to the candidate for the candidate's personal use; and

(ii) that the candidate has not used, and will not use, solely or substantially for a purpose related to an election.

entity, see section 176 of the *Electoral Act 2004*.

loan, see section 176 of the *Electoral Act 2004.*

(2) For this Part, the regulations may:

(a) prescribe matters relating to methods or processes for determining the value of a donation; and

(b) broaden or narrow the definition of ***donation***.

148 Campaign donation return

(1) Each candidate for election who received a donation or loan during the disclosure period for that election must give a campaign donation return for the disclosure period to the Electoral Commission within 40 days after the expiry of the disclosure period.

(2) The campaign donation return must be in the form approved by the Electoral Commission.

(3) Despite subsection (1), a candidate for election is not required to give a campaign donation return for:

(a) a donation from a person or entity if the amount or value of the donation and the sum of all other donations made by the person or entity to the candidate during the disclosure period for the election is less than $200; or

(b) a loan from a person or entity (the ***lender***) to the candidate if:

(i) the lender is an ADI; or

(ii) the amount or value of the loan is less than $1 500.

149 Disclosure period

(1) The disclosure period for a periodic general election held under section 135 is the period beginning on 1 July in the year before the year in which the election is to be held and ending 30 days after the election day for the election.

(2) The disclosure period for a general election held under section 134 or 319 is:

(a) if the general election is to be held in the same year that a periodic general election is scheduled to be held under section 135 – the period beginning on 1 July in the year before the year in which the election is to be held and ending 30 days after the election day for the election; or

(b) otherwise – the period beginning on 1 July preceding the day on which the general election is to be held and ending 30 days after the election day for the election.

(3) The disclosure period for a by-election is the period beginning on 1 July preceding the day on which the by-election is to be held and ending 30 days after the election day for the election.

150 Candidate to know details for donation or loan

A candidate must not accept a donation or loan from a person or entity during the disclosure period unless the candidate knows the details for the campaign donation return for the donation or loan.

151 Contents of return

(1) A campaign donation return must include the following information for the disclosure period:

(a) the amounts or values of each donation made, directly or indirectly, to the candidate;

(b) the dates each donation was made;

(c) the details of the donors;

(d) the amounts and terms of any loan to the candidate;

(e) the details of the lenders of the loan.

(3) A copy of the campaign donation return must be made available for public inspection by the Electoral Commissioner 30 days after the candidate was required to give the campaign donation return and for 4 years from that date.

(4) The candidate must keep and maintain records in relation to the donations or loans specified in the campaign donation return for a period of 4 years.

152 Incomplete campaign donation return

If a candidate cannot complete a campaign donation return, the candidate may:

(a) prepare the campaign donation return to the extent possible; and

(ab) give the Electoral Commission the campaign donation return so prepared; and

(b) give the Electoral Commission a notice stating:

(i) the return is incomplete; and

(ii) the information the candidate cannot obtain; and

(iii) the reasons why the candidate cannot obtain the information; and

(iv) if the candidate believes on reasonable grounds that another person can provide the information, the name and address of the person.

153 Permission to amend campaign donation return

(1) A candidate may request permission from the Electoral Commission:

(a) to personally amend a campaign donation return to correct an omission or an error; or

(b) for the Electoral Commission to amend a campaign donation return to correct an omission or an error.

(2) The amendment of a campaign donation return under this section does not affect the liability of a candidate for an offence against section 154(2).

154 Offences

(1) A candidate commits an offence if:

(aa) the candidate is required to give the Electoral Commission a campaign donation return for the disclosure period under section 148; and

(a) the candidate engages in conduct; and

(b) the conduct results in a failure to give the Electoral Commission a campaign donation return within the time required under section 148(1).

Maximum penalty: 100 penalty units.

(2) A candidate, except a candidate who complies with section 152, commits an offence if:

(aa) the candidate is required to give the Electoral Commission a campaign donation return for the disclosure period under section 148; and

(a) the candidate engages in conduct; and

(b) the conduct results in the giving of an incomplete campaign donation return to the Electoral Commission.

Maximum penalty: 100 penalty units.

(3) An offence against subsection (1) or (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

155 Time limit for starting prosecutions

Despite section 52 of the *Local Court (Criminal Procedure) Act 1928* and section 329(4) of this Act, a prosecution for an offence against section 154(1) or (2) may be started at any time within 4 years after commission of the offence.

156 Investigation by Electoral Commission

Sections 216 to 219 of the *Electoral Act 2004* apply to this Part.

Part 8.7 Miscellaneous matters

Division 1 Interpretation

157 Definitions

In this Part:

campaign material, see section 158.

electoral matter, see section 159.

158 Meaning of *campaign material*

(1) ***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.

(2) Without limiting subsection (1), campaign material includes 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.

(3) The returning officer for an election may, in writing, declare a thing mentioned in subsection (1) or (2) is not campaign material.

(4) The returning officer may do so only if the returning officer 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 returning officer considers appropriate.

159 Meaning of *electoral matter*

(1) ***Electoral matter*** is matter, in printed or electronic form, that is intended or likely to affect voting at an election.

(2) Without limiting subsection (1), 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.

Division 2 Miscellaneous matters

160 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.

161 Caretaker policy during general election

(1) A council must, by resolution, adopt a caretaker policy governing the conduct of the council and its staff during the period that:

(a) commences on the nomination day for a general election as prescribed by regulation; and

(b) ends when the result of the general election is declared in accordance with the regulations.

(2) The caretaker policy must be published on the council's website.

162 Interference with proper conduct of election or poll

(1) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in the obstruction or interference with the proper conduct of an election or poll of electors; and

(c) the person is reckless in relation to the result.

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

(2) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct is violence or intimidation; and

(c) the conduct results in the influence of the vote of an elector at an election or poll of electors; and

(d) the person is reckless in relation to the result.

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

(3) Strict liability applies to subsection (2)(b).

163 Secrecy of vote

(1) A person commits an offence if:

(a) the person is acting in an official capacity in relation to an election or poll of electors or is assisting a person to vote; and

(b) the person finds out how a voter voted; and

(c) the person intentionally engages in conduct; and

(d) the conduct results in the disclosure of the voter's vote and the person is reckless in relation to the result.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) Strict liability applies to subsection (1)(a) and (b).

164 Offences relating to campaign material

(1) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in the publication or distribution of campaign material and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units.

(2) Subsection (1) does not apply if:

(a) the publication is the announcement by advertisement in a newspaper of the holding of a meeting; or

(b) the campaign material:

(i) clearly states, in a sufficient font size to be read by the intended audience for the material and given the type of material, the name and address of the person authorising the publication or distribution; and

(ii) clearly identifies, in a sufficient font size to be read by the intended audience for the material and given the type of material, the source of the funding for that material; and

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

(iv) if the material is intended to be viewed from 2 sides – includes the information mentioned in this paragraph on both sides.

(3) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in the publication or distribution of campaign material and the person is reckless in relation to that result; and

(c) the campaign material:

(i) is likely to mislead a voter casting a vote; or

(ii) is likely to deceive a voter casting a vote; or

(iii) is likely to improperly interfere with a voter casting a vote; or

(iv) contains an untrue or incorrect statement; and

(d) the person has knowledge of the circumstance mentioned in paragraph (c).

Maximum penalty: 100 penalty units.

Chapter 9 Council staff

Part 9.1 Council's CEO

165 CEO

(1) A council must appoint an individual to be the CEO.

(2) The CEO may, in writing, appoint a ***Deputy CEO*** for the period (not exceeding 2 years) specified in the appointment, and is eligible for reappointment.

(3) If the CEO is on leave:

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

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

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

(5) The CEO must notify all members of the council if the CEO will be on leave.

(6) Appointments to the office of CEO are to be made, as occasion requires, by the council in accordance with:

(a) the requirements prescribed by regulation; and

(b) any relevant guidelines the Minister may make.

166 Eligibility for CEO and Deputy CEO

(1) A person is not eligible to be the CEO or the Deputy CEO if:

(a) the person is disqualified from managing a corporation under the Corporations Act 2001 or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or

(b) the person is disqualified under section 40 of the *Associations Act 2003*; or

(c) the person is bankrupt.

(2) However, a person mentioned in subsection (1) becomes eligible to be the CEO or the Deputy CEO if the circumstances in that subsection no longer apply to the person.

167 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 to ensure council reviews council's policies, plans and decisions in a timely manner; and

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

(c) to ensure that the appointment of the council's staff is properly managed within the budget allocated to staffing expenditure approved by the council; and

(d) to ensure that the management of the council's operations are properly managed within the budget allocated to non-staffing expenditure approved by the council; and

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

(f) 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

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

(h) to ensure that proper standards of financial management are maintained, including proper controls over revenue and expenditure; and

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

(j) to appoint, manage and, if necessary, terminate the appointment of the council's staff (other than the CEO); and

(k) to ensure that the council's policies on human resource management comply with section 172; and

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

168 Delegation by CEO

(1) The CEO may delegate the CEO's powers and functions under this Act or another Act.

(2) A delegation may be made to an individual or a committee.

(3) Despite subsections (1) and (2):

(a) the power to authorise a staff member in relation to a conflict of interest under section 179(6) cannot be delegated; and

(b) a power or function under the *Burial and Cremation Act 2022* can only be delegated to an individual.

(4) Despite subsection (2), the CEO must not delegate a power or function to the following:

(a) an audit committee;

(b) a council committee;

(c) a local authority;

(d) a local government subsidiary.

169 Vacancy

If there is a vacancy in the office of the CEO, the council must advertise the vacancy:

(a) within 6 weeks of the vacancy occurring; and

(b) in accordance with the requirements prescribed by regulation.

Part 9.2 Other staff

170 Other staff of council

The CEO is responsible for the appointment of the council's staff in accordance with a budget allocated to staffing expenditure approved by the council.

171 CEO to notify council of change in staff

The CEO must notify each member of the council if any of the following occurs:

(a) the CEO appoints a person to be a council senior staff member;

(b) a council senior staff member resigns;

(c) a council senior staff member's appointment is terminated;

(d) a council senior staff member's contract expires and is not renewed.

Part 9.3 Principles and policies

172 Principles of human resource management

A council must adopt policies on human resource management and ensure that those policies 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) the council's staff must have reasonable access to training and development and opportunities for advancement and promotion;

(c) the council's 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 the council's 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 the council's staff.

173 Employment policies

(1) The CEO must maintain up-to-date employment policies.

(2) The employment policies:

(a) must cover:

(i) recruitment; and

(ii) probation and performance assessment; and

(iii) opportunities for advancement that are based on merit and are fair and equitable; and

(iv) access to training and development; and

(v) access to employment-related benefits; and

(vi) resolution of employment-related grievances; and

(b) may cover other employment-related subjects.

(3) The employment policies must be consistent with the principles of human resource management specified in section 172.

174 Allowances and other benefits policy

(1) A council must, by resolution, adopt a policy in relation to allowances and any other benefits for the CEO.

(2) The CEO must determine a policy in relation to allowances and any other benefits for the council's staff.

(3) The policies:

(a) must cover:

(i) allowances; and

(ii) vehicles; and

(iii) accommodation; and

(b) may cover other subjects related to allowances and other benefits.

175 Code of conduct for CEO and staff

(1) A council must, by resolution, adopt a code of conduct for the CEO.

(2) The CEO must determine the code of conduct for the council's staff.

Part 9.4 Local government subsidiary

176 Application to local government subsidiary

(1) This Chapter, except Parts 9.1 and 9.7, apply to a local government subsidiary as if:

(a) a reference to a council were a reference to a local government subsidiary; and

(b) a reference to a CEO were a reference to a chief executive.

(2) In relation to the application of Part 9.3, the local government subsidiary may:

(a) create its own policies or code of conduct; or

(b) adopt the policies or code of conduct of its constituent council or one of its constituent councils.

(3) The policies and code of conduct of the local government subsidiary must be approved by the constituent council or councils.

Part 9.5 Staff obligations

177 Standards to be observed by council's staff and local government subsidiary's staff

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

178 Annual return of interests – staff

(1) The following persons must submit an annual return to the council containing the details prescribed by regulation (an ***annual return of interests***):

(a) a CEO;

(b) a council senior staff member.

(2) The following persons must submit an annual return to the constituent council or councils of a local government subsidiary containing the details prescribed by regulation (an ***annual return of interests***):

(a) a chief executive;

(b) a local government subsidiary senior staff member.

(3) Each person mentioned in subsection (1) or (2) must submit the annual return of interests:

(a) within 14 days of the commencement of the person's employment; and

(b) by no later than 30 September each year for the duration of the person's employment.

(4) However, if the person has submitted an annual return of interests after 31 March in a calendar year, the person is not required to submit another return before 30 September in that year.

(5) The council and the constituent council or councils of the local government subsidiary must keep a register of annual returns of interest submitted under this section.

(6) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct results in a failure to submit an annual return of interests in accordance with this section.

Maximum penalty: 20 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

(8) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.

(9) In this section:

local government subsidiary senior staff member means a member of staff of the local government subsidiary:

(a) employed in a position in the management level immediately beneath the chief executive of the local government subsidiary in the local government subsidiary's organisational structure; and

(b) directly reporting to the chief executive of the local government subsidiary.

179 Offences for conflict of interest

(1) A person commits an offence if:

(a) the person is a staff member; and

(b) the person has a personal or financial interest in a matter in regard to which the staff member is required or authorised to act or give advice; and

(c) the person does not disclose the interest:

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

(ii) in any other case – to the CEO.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if:

(a) the person is a staff member; and

(b) the person has a personal or financial interest in a matter in regard to which the staff member is required or authorised to act or give advice; and

(c) the person acts in the matter in a way other than as authorised by the CEO or the council (as the case requires).

Maximum penalty: 100 penalty units.

(3) An offence against subsection (1) or (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant was unaware of the personal or financial interest.

(5) The council may, by resolution, provide the authorisation mentioned in subsection (2)(c) to the CEO.

(6) The CEO may, in writing, provide the authorisation mentioned in subsection (2)(c) to a staff member.

(7) A separate authorisation under subsection (2)(c), (5) or (6) is required for each instance in which a conflict arises.

(8) In this section:

staff member includes:

(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 council committee or a local authority) acting under powers of the council conferred by delegation.

Part 9.6 Rights and immunities of staff

180 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 employer to which this section also applies (the ***later employer***) within 3 months, may elect, in accordance with this section, to transfer accrued and accruing rights to long service leave to the later employment.

(2) An employer must, as soon as practicable after an employee enters into employment, require the employee to provide to the employer, not later than 28 days after the requirement, a written declaration stating:

(a) whether the employee was employed by another employer within the 3 months immediately preceding the entering into employment; and

(b) if the employee was employed by another employer within those 3 months – whether the employee elects to transfer accrued and accruing rights to long service leave to the later employment.

(3) The requirement under subsection (2) is to be given to the employee not later than 5 days after the employee enters into employment, but failure to do so within those 5 days does not affect the validity of the requirement.

(4) An employee who does not provide a declaration under subsection (2) is considered to have decided not to elect to transfer any accrued and accruing rights to long service leave to the later employment.

(5) If the declaration under subsection (2) states that the employee elects to transfer accrued and accruing rights to long service leave to the later employment:

(a) the later employer must, not later than 3 months after the employee enters into employment, notify the former employer, in writing, that the employee has made an election under this section; and

(b) the former employer must, not later than 30 days after receiving a notification under paragraph (a):

(i) notify the later employer, in writing, of the applicant's accrued and accruing rights to long service leave as appear from the former employer's records; and

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

(6) An amount mentioned in subsection (5)(b)(ii) that remains unpaid after the 30 days may be recovered as a debt due to the later employer from the former employer by action in a court of competent jurisdiction.

(7) 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) the prescribed corporation.

181 Resignation to contest election – staff members

(1) This section applies if the following persons resign in order to stand as a candidate for election to a council, the Legislative Assembly, the Commonwealth House of Representatives or the Senate:

(a) a CEO;

(b) a chief executive;

(c) a staff member of a council;

(d) a staff member of a local government subsidiary.

(2) However, this section does not apply if a person mentioned in subsection (1) resigns in order to stand as a candidate for election to a council that is not:

(a) in the case of a CEO or a staff member of a council – the council the CEO or staff member is employed by; or

(b) in the case of a chief executive or a staff member of a local government subsidiary – the constituent council or councils for the local government subsidiary the chief executive or staff member is employed by.

(3) The person must give the following written notice at the time of resignation that the person claims the benefit of this section:

(a) for a CEO – the principal member of the council;

(b) for a subsidiary chief executive – the constituent council or councils of the local government subsidiary;

(c) for a staff member of a council – the CEO of the council;

(d) for a staff member of a local government subsidiary – the subsidiary chief executive for the local government subsidiary.

(4) The person's resignation must take effect not more than 28 days before the close of nominations for the relevant election.

(5) If the person is not elected, and applies to the person mentioned in subsection (3) to be reinstated within 7 days after the result of the election is declared, the person must be reinstated to the person's former position or an equivalent position.

(6) A person reinstated under subsection (5) is to be treated as having been on unpaid leave between the date of resignation and the date of reinstatement.

182 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as a member of staff of a council.

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

(3) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

Part 9.7 Authorised persons

Division 1 Appointment of authorised persons

183 Appointment of authorised persons

(1) A council may, in writing, appoint a person (other than a member of the council) to be an authorised person.

(2) The council may, by written notice to the authorised person:

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

(b) revoke the appointment.

184 Powers of authorised persons

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

185 Identity card

(1) The council must give an authorised person an identity card stating the person's name and that the person is an authorised person.

(2) The identity card must:

(a) display a recent photograph of the authorised person; and

(b) state the card's date of issue and expiry; and

(c) be signed by the authorised person.

(3) This section does not prevent the issue of a single identity card to a person for this and another Act.

186 Return of identity card

(1) A person who ceases to be an authorised person must return the person's identity card to the council within 21 days after the cessation.

Maximum penalty: 20 penalty units.

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

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

Division 2 General powers of authorised person

187 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 commits an offence if:

(a) the person is required to comply with a requirement under subsection (1); and

(b) the person fails to comply with the requirement.

Maximum penalty: 20 penalty units.

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

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

188 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 of the peace; or

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

(3) A justice of the peace 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.

189 Assistance of police

An authorised person may call a police officer for assistance in the exercise of powers under this Act or a by-law.

Division 3 Obstruction of authorised person

190 Obstruction of authorised person

(1) A person commits an offence if:

(a) the person intentionally obstructs another person; and

(b) the other person is an authorised person; and

(c) the authorised person is acting in an official capacity and the person has knowledge of that circumstance.

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

(2) Strict liability applies to subsection (1)(b).

(3) In this section:

obstruct includes hinder and resist.

Chapter 10 Financial management

Part 10.1 Receipt and expenditure of money

191 Definition

In this Part:

authorised deposit account means an account with an ADI.

192 Authorised deposit accounts

(1) A council or local government subsidiary may establish as many authorised deposit accounts as may be necessary for proper financial administration.

(2) All money received by a council or local government subsidiary must be paid into an authorised deposit account.

(3) All expenditure made by a council or local government subsidiary must be made from an authorised deposit account.

193 Segregation of certain money

(1) Trust money must be kept separate from the general funds of the council or local government subsidiary 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 or local government subsidiary receives funds for a particular purpose, the funds must not be used for any other purpose unless the provider of the funds authorises use of the funds for another purpose.

Note for section 193

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 266).

Part 10.2 Investment

194 Investment

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

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

(3) A council may, by resolution, adopt a policy for investing money that is consistent with this Act and the Minister's guidelines.

(4) A local government subsidiary may adopt a policy for investing money, approved by the constituent council or councils, that is consistent with this Act and the Minister's guidelines.

(5) An investment must be in accordance with the council's policy or the local government subsidiary's policy for investing money.

(6) If the council or local government subsidiary do not have a policy for investing money, the council or local government subsidiary may only invest money by banking money in an interest bearing account with an ADI.

Part 10.3 Council or local government subsidiary borrowing

195 Definition

In this Part:

borrowing, see section 196.

196 Meaning of *borrowing*

A council or local government subsidiary ***borrows*** money if the council or local government subsidiary obtains any form of financial accommodation.

Examples for section 196

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

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

197 Council's or local government subsidiary's power to borrow

(1) Subject to subsection (2), the Minister's approval, to be given after consultation with the Treasurer, is required before a council or local government subsidiary borrows money.

(2) However, the Minister's approval is not required for the following:

(a) an advance on overdraft if:

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

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

(b) a transaction classified as a minor transaction under guidelines issued by the Minister.

(3) Subject to subsection (4), the council or local government subsidiary may borrow money if:

(a) for the council – council has, by resolution, sought the Minister's approval to borrow money; and

(b) for the local government subsidiary – the local government subsidiary has obtained written authorisation from each of its constituent councils to seek the Minister's approval to borrow money; and

(c) if the Minister's approval is required for the borrowing – the Minister has approved the borrowing of the money.

(4) If subsection (2) applies, the council or local government subsidiary may borrow money if:

(a) for the council – the council has, by resolution, decided to borrow money; and

(b) for the local government subsidiary – the local government subsidiary has obtained written authorisation from each of its constituent councils to borrow money.

(5) A council resolution or written authorisation under subsection (3)(a) or (b) or (4)(a) or (b) must specify the following:

(a) the amount to be borrowed;

(b) the proposed lender or provider of financial accommodation;

(c) the purpose of the loan or financial accommodation;

(d) the terms of the loan or financial accommodation.

198 Security for borrowing

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

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

(3) The Minister must 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 or local government subsidiary.

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

199 Security over general revenue

(1) If a council or local government subsidiary defaults on an obligation secured on the general revenue of the council or local government subsidiary, 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 or local government subsidiary 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 or local government subsidiary'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 plan

200 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) the projected statement of income and expenditure for each financial year of the period to which the plan relates; and

(c) any other matters prescribed by regulation.

(4) The council must provide the Agency with a copy of its long-term financial plan by 30 June in the year preceding the first financial year to which the plan relates.

Part 10.5 Annual budgets

201 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 the projected statement of income and expenditure for the financial year, differentiating between operating and capital expenditure; and

(c) list the council's fees for services and the estimates of revenue from each of those fees; and

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

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

(f) include an assessment of the social and economic effects of its rating policies; and

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

(h) separately provide for a budget for each local authority established by the council (if any); and

(h) include any other information required by any guidelines that the Minister may make or as prescribed by regulation; and

(i) be in a form required by any guidelines that the Minister may make or as prescribed by regulation.

202 Budget not to be for deficit

A council must not budget for a deficit except in accordance with the regulations.

203 Adoption of budget or amended budget

(1) A council must adopt its budget for a particular financial year on or before 30 June in the previous financial year.

(2) Subject to subsection (3), a council may, after adopting its budget for a particular financial year, adopt an amended budget.

(3) An amended budget must not have the effect of:

(a) increasing the amount of an allowance for the financial year for the members of the council; or

(b) changing the amount of an allowance for the financial year for members of a local authority established by the council except in accordance with any guidelines made by the Minister.

(4) As soon as practicable after adopting its budget or an amended budget for a particular financial year a council must:

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

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

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

(5) If an amended budget is published on the council's website, the budget as previously adopted must remain published on the council's website clearly indicating that the budget has been superseded by an amended budget.

(6) The council's budget and any amended budget forms part of the council's municipal, regional or shire plan.

204 Allocation of money not in budget

(1) A council must not allocate money unless provision for the allocation is made in the budget for the relevant financial year.

(2) However, a council may allocate money that is not provided for in the budget if the allocation is:

(a) authorised by resolution of the council; or

(b) either:

(i) within the terms of a grant accepted by council; or

(ii) covered by revenue that compensates the expenditure.

Example for subsection (2)(b)(ii)

The council enters a contract to provide civil works. The council purchases equipment and materials to perform the works. The cost of the equipment and materials is within the amount the council is to be paid under the contract.

(3) If a council allocates money under subsection (2)(b), any spending of the allocation that will have a material effect on the council's budget must be reported to the next ordinary meeting of the council.

(4) An allocation of money under subsection (2) must be included in any subsequent amended budget for the council.

(5) In this section:

material has the same meaning as in Accounting Standard AASB 1031 of the Australian Accounting Standards.

Part 10.6 Accounting records

205 Accounting records

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

(a) the council's revenue and expenditure; and

(b) the council's assets and liabilities.

(2) The records must be kept in accordance with the requirements prescribed by regulation.

206 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, by resolution, adopt a privacy policy protecting members and staff of the council from undue intrusion into their private affairs.

(4) A local government subsidiary must adopt a privacy policy protecting the local government subsidiary's staff from undue intrusion into their private affairs.

Example for subsection (4)

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

(5) The local government subsidiary adopts the policy:

(a) for a local government subsidiary with one constituent council – by resolution of the council; or

(b) for a local government subsidiary with more than one constituent council – by resolution of the local government subsidiary.

Part 10.7 Annual financial statement

207 Annual financial statement

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

(2) The annual financial statement must conform with:

(a) the Australian Accounting Standards; and

(b) any other requirements prescribed by regulation; and

(c) any guidelines that the Minister may make.

208 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 is available no later than 15 November in the calendar year in which the financial year ends.

Part 10.8 Audit

Division 1 Auditor

209 Auditor

(1) A council must, by resolution, appoint 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 auditor's appointment:

(a) fix the term of appointment, which must be between 2 and 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 reappointed; or

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

(6) In this section:

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

210 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

211 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 and the ICAC on any evidence found in the course of the audit of a contravention of the law or serious financial irregularity; and

(d) if the results of the audit provide for a disclaimer of opinion – provide a copy of the report of the results of the audit to the Minister.

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

(3) The auditor's report mentioned in subsection (1)(b) must be tabled at the next meeting of the council.

(4) The CEO must prepare a report on any action to be taken to implement any of the auditor's recommendations as a result of the audit and table the report at the next meeting of the council.

(5) In this section:

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

212 Other audits

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

213 Assistance to be provided to 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 commits an offence if:

(a) the person is required to comply with a requirement under subsection (1); and

(b) the person fails to comply with the requirement.

Maximum penalty: 100 penalty units.

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

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

Part 10.9 Rectification orders

214 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) On application by the council, the Minister may postpone the compliance date.

215 Non-compliance with rectification order

(1) A person commits an offence if:

(a) the person is a member of a council; and

(b) the council fails to comply with a rectification order by the compliance date.

Maximum penalty: 100 penalty units.

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

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant acted with reasonable diligence to secure compliance by the council.

Part 10.10 Shared services

216 Shared services policy

(1) A council must, by resolution, adopt a policy for shared services.

(2) A policy for shared services may deal with the following matters:

(a) sharing the delivery of a council service with another council;

(b) the council jointly procuring from a third party the delivery of a service with another council.

Chapter 11 Rates and charges

Part 11.1 Rateability

217 Categorisation of land

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

(a) rateable land under section 218; and

(b) conditionally rateable land under section 219; and

(c) land that is exempt from rates under section 222.

218 Rateable land

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

(a) conditionally rateable land that is not within the ambit of a notice published under section 219 that is in force; or

(b) exempt land.

219 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 prescribed by regulation as conditionally rateable.

(2) Conditionally rateable land is only rateable in accordance with a *Gazette* notice made by the Minister at least 2 months before the commencement of the financial year for which the rates are declared.

(3) The council for the area may make submissions to the Minister in relation to conditionally rateable land.

(4) Before publishing the notice, the Minister must:

(a) if the submission is received by the Minister by 31 December in the year before the beginning of the relevant financial year – consider a submission made under subsection (3); and

(b) consult with the Minister responsible for the administration of pastoral matters and the Minister responsible for the administration of mining matters.

(5) As soon as practicable after the *Gazette* notice is published:

(a) the council must publish the notice on its website; and

(b) the Agency must publish the notice on the Agency's website.

(6) In this section:

pastoral lease means a pastoral lease granted under the *Pastoral Land Act 1992*.

220 Council to rate all rateable land

A council must rate all rateable and conditionally rateable land in the council area.

221 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.

222 Exempt land

(1) The following land (***exempt land***) is exempt from rates:

(a) Crown land that is:

(i) vacant and not the subject of a lease; or

(ii) 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 hospital conducted by the Territory;

(f) a medical clinic or health centre conducted by the Territory;

(g) subject to subsections (3) and (4), land used for a non-commercial purpose by a public benevolent institution or a public charity that is registered with the Australian Charities and Not-for-profits Commission established under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

(h) a kindergarten, a Government school, a non-Government school, a university or other tertiary educational institution or an early childhood service owned or operated by the Territory or owned or operated by a non-Government school;

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

(j) a public library or public museum;

(k) the common property:

(i) in a units plan or building development plan registered under the *Real Property (Unit Titles) Act 1975*; or

(ii) of a scheme formed under the *Unit Title Schemes Act 2009*;

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

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

(ii) land used for a commercial purpose;

(m) land exempted from rates by another Act.

(2) If land is used for 2 or more different purposes, and one 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 for subsection (2)

An allotment consists of a public museum containing a cafeteria. The allotment is exempt from rates despite the existence of the cafeteria. However, if the allotment were a restaurant attracting customers in its own right, the allotment would not be exempt from rates.

(3) Subject to subsection (4), 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 and the question is to be decided according to the nature of the use and not the nature of the user.

(4) However, a non-commercial purpose does not include the land being used for a residential purpose for employees or contractors of the institution or charity.

(5) In this section:

Government school, see section 5 of the *Education Act 2015*.

non-Government school means a non-Government school registered under the *Education Act 2015*.

223 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 for subsection (1)

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 for subsection (2)

This subsection applies to land of a Land Trust that is not fully exempt from rates under section 222(1)(l).

(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 for subsection (3)

This subsection applies to land of an Aboriginal community living area that is not fully exempt from rates under section 222(1)(l).

(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 the rates relate; and

(b) is not liable to be sold for non-payment of rates.

Note for subsection (4)

However, this subsection does not protect a leasehold estate from such a charge or from being sold for non-payment of rates.

224 Apportionment if land rateable for part only of 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

225 Allotments

(1) An ***allotment*** is a parcel of land or part of a parcel of land for which a council proposes to make a separate assessment of rates.

(2) A parcel of land includes the following:

(a) a unit or lot created by registration of a plan under the *Real Property (Unit Titles) Act 1975* or the *Unit Titles Act 1975*;

(b) a unit created by the registration of a unit title scheme under the *Unit Title Schemes Act 2009*.

(3) 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 for subsection (3)

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.

(4) In this section:

parcel of land, see section 4 of the *Valuation of Land Act 1963*.

226 Basis of rates

(1) Rates may be set as:

(a) a fixed amount (a ***fixed amount***) for each allotment; or

(b) an amount (a ***valuation-based amount***) calculated as a proportion of the assessed value of each allotment; or

(c) a combination of a fixed amount and a valuation-based amount.

(2) If rates consist of, or include, a valuation-based amount, the amount may be subject to a specified minimum (a ***minimum amount***).

Example for subsection (2)

A valuation-based amount might be expressed as a specified proportion of assessed value or $100 (whichever is the greater amount).

(3) Different fixed amounts, different valuation-based amounts, and different minimum amounts may be set for:

(a) allotments within different parts of the local government area; or

(b) different classes of allotments; or

(c) a combination of both paragraphs (a) and (b).

Example for subsection (3)(a)

The rates for land within different planning zones might be based on different components.

Example for subsection (3)(b)

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 1975 or Unit Title Schemes Act 2009, and the council considers it inequitable to apply the minimum amount otherwise applicable to land within the area to the small allotments, the council could set a different and lesser minimum for the small allotments.

(4) However, different amounts must not be set on the basis of who the owner or occupier of the allotment is.

(5) If an allotment is divided into separate parts or units that are adapted for separate occupation or use, a minimum amount may consist of a set amount to be multiplied by the number of separate parts or units.

Example for subsection (5)

If an allotment consists of a block of flats in separate occupation, the minimum amount could consist of a set amount to be multiplied by the number of flats comprised in the complex.

227 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.

(4) In this section:

annual value, of land, see section 8A of the *Valuation of Land Act 1963.*

improved capital value, of land, see section 8 of the *Valuation of Land Act 1963*.

unimproved capital value, of land, see section 9 of the *Valuation of Land Act 1963.*

Part 11.3 Liability for rates

228 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.

(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.

229 Principal ratepayer for an allotment

(1) The owner of an allotment is the ***principal ratepayer*** for the allotment.

(2) However, the occupier of the allotment is the principal ratepayer if the owner is not liable to rates for any reason.

Note for subsection (2)

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 228(2)) and, if so, would be the principal ratepayer for the allotment.

(3) Subsections (1) and (2) are 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 (2), 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) or (2), be the principal ratepayer for an allotment, the CEO may designate one or more of the ratepayers in the assessment record as the principal ratepayer for the allotment.

(4) A ratepayer designated under subsection (1) or (2) as the principal ratepayer for an allotment is the principal ratepayer to the exclusion of others.

(5) 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

230 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 different 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 must be kept in an electronic form.

(4) A person with sufficient interest in the assessment record may inspect or copy the assessment record, at a fee fixed by the council, at the council's public office.

(5) A council may, by resolution, adopt a policy to provide for what constitutes a sufficient interest in the assessment record.

(6) However, the following may inspect or copy the assessment record free of charge:

(a) in relation to the part of the record for particular land – an owner, occupier or lessee of the land or the adjoining land or an agent of the owner, occupier or lessee of the land or the adjoining land;

(b) the CEO of an Agency.

(7) The CEO must, at the request of a person to whom an entry in the assessment record relates, suppress the person's contact details from the publicly accessible copy of the record.

231 Notifications to be given by ratepayers

(1) A person commits an offence if:

(a) the person becomes the principal ratepayer for a particular allotment within a council area; and

(b) the person does not, 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) A person commits an offence if:

(a) the person is the principal ratepayer for a particular allotment within a council area; and

(b) the person's postal address changes; and

(c) the person does not, within 28 days of the change, give the CEO written notice of the new address.

Maximum penalty: 20 penalty units.

(3) A person commits an offence if:

(a) the person ceases to be the principal ratepayer for a particular allotment within a council area; and

(b) the person does not, 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.

232 Correction of record by council

(1) The council may, on its own initiative, change an entry in the assessment record.

(2) If the council changes an entry under subsection (1), the council must give a decision notice to the person to whom the entry relates within 14 days of changing the entry.

(3) Subsection (2) does not apply if the council changes the entry to correct a typographical error.

(4) A decision under subsection (1) is reviewable.

233 Correction of record by application

(1) A person may apply to the council, free of charge, 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 takes effect from the wrong date;

(h) 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, including when the effect of the amendment should take place.

(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 decided by the council or a council committee.

(5) The CEO, council or council committee (the ***decision maker***) may, in writing, request further information from the applicant in relation to the application.

(6) The request under subsection (5) must be made as soon as practicable but no later than 90 days of receiving the application.

(7) The CEO must give the applicant a decision notice for the application and notify the applicant of the date the decision takes effect:

(a) as soon as practicable but no later than 90 days after receiving the application; or

(b) if the decision maker has requested further information under subsection (5) – as soon as practicable but no later than 90 days after receiving the information or notification that the applicant cannot provide the information.

(8) A decision under subsection (7) is reviewable.

234 Liability for rates

A principal ratepayer for a particular allotment in a council area continues to be liable for the payment of rates for the allotment despite the lodging of the following:

(a) an application for a correction of the assessment record under section 233(1);

(b) an application for review of the decision under section 323;

(c) an application for review of the decision by NTCAT under section 327;

(d) any other application for review or appeal available to the principal ratepayer.

235 Correction of record for misclassification

(1) This section applies if:

(a) a person makes an application to the council for a correction to an entry in the assessment record on the grounds that the entry contains a misclassification of an allotment; and

(b) the decision maker or NTCAT decides to correct the record.

(2) The correction of the record must not take effect from a retrospective date if the correction results in the ratepayer for the allotment being liable for a higher amount of rates or charges.

236 Entitlement to difference in rates

(1) This section applies if an entry on the assessment record is corrected and the correction takes effect from a retrospective date.

(2) The person to whom the entry relates, as a result of the correction:

(a) if the difference in rates amounts to an entitlement – is entitled to the difference in rates; and

(b) may be entitled to interest on the difference.

(3) The person is entitled to interest on the difference only if the person commenced proceedings to review an original decision of the council (whether the review was by the council or by NTCAT) to change an entry in the assessment record and the proceedings resulted in the revocation or amendment of the decision of the council.

(4) If a person is entitled to interest on the difference, the interest:

(a) accrues on any overpayments; and

(b) accrues:

(i) if the original decision being reviewed was a decision of the council under section 232 – from the date the council changed the entry; or

(ii) if the original decision being reviewed was a decision of the council under section 233 – from the date the person made the application under section 233; and

(c) is subject to the relevant interest rate (or rates if the relevant interest rate changes during the period when the interest accrues under paragraph (b)).

(5) A person's entitlement, and any interest on the entitlement, is immediately payable on the date the entry in the assessment record is corrected.

(6) In this section:

review includes the making of a decision by NTCAT because section 326 applies.

Part 11.5 Imposition of rates, charges and parking rates

Division 1 General and special rates

237 General rates

(1) A council must, on or before 30 June in the financial year preceding the financial year for which the rates are imposed, 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:

(i) to be raised for general purposes; and

(ii) if an amount is to be raised for a special purpose – 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 the instalments are payable; and

(d) the relevant interest rate that accrues on any unpaid rates for the financial year.

238 Special rates

(1) Subject to this section, a council may, on or before 30 June in the financial year preceding the financial year for which the rates are imposed, declare rates for a particular purpose (***special rates***).

(2) Before declaring special rates under this section, the council must:

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

(b) give the principal ratepayer for each allotment to which the special rates are proposed to be imposed a notice of intention to declare special rates; and

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

(3) The notice under subsection (2)(a) must contain the following particulars:

(a) the purpose for which the council proposes to impose the special rates;

(b) the total amount that is proposed to be raised by the special rates;

(c) the basis of the proposed special rates;

(d) whether the proposed special rates would be imposed on rateable property generally or on rateable property in a particular part of the council area and an identification of the particular part;

(e) that a person may make submissions to the council about the proposed special rates before the date of the meeting in relation to the special rates specified in the notice;

(f) how a person can obtain further information about the proposed special rates from the council.

(4) After considering any submissions made, the council may:

(a) by special resolution, declare special rates that are:

(i) consistent with the proposed special rates specified in the notices under subsection (2); or

(ii) reduced for one or more of the allotments for which the special rates were proposed; or

(iii) reduced for all of the allotments for which the special rates were proposed; or

(b) not declare special rates.

(5) If special rates are imposed for the benefit of a particular part of the area, the special rates may be limited to allotments within the relevant part of the area.

(6) 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:

(i) whether the special rates are imposed on rateable property generally or on rateable property within a particular part of the area; and

(ii) if the special rates are limited to a particular part of the area – identify the relevant part.

Division 2 Charges

239 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) The declaration of the charge does not cease to have effect only because the occupier of the land does not accept the work or services.

(3) A declaration of a charge must:

(a) state the amount or basis of the charge; and

(b) identify the land to which the charge applies; and

(c) state the purpose of the charge.

(4) The amount of a charge need not be limited to the cost of providing the service, however the amount of the charge must not exceed a reasonable expectation of the cost of service.

(5) Subject to subsections (6) and (7), the provisions of this Chapter applicable to rates apply with necessary adaptations and modifications to charges imposed under this section.

(6) A charge:

(a) may be imposed on land that is not liable to rates, including land that is exempt from rates; and

(b) may have a reasonable basis that differs from rates; and

(c) may only consist of payments that are compulsory in respect of an allotment and its improvements; and

(d) must not consist of any payments for an optional service.

Example for subsection (6)(b)

A charge to recover the cost of kerbing might consist of an amount per metre of the frontage of an allotment.

Examples for subsection (6)(c) and (d)

1 A council that provides sewerage services to an allotment may impose a charge for this service, and may impose different charges with reference to the number of toilets installed at the allotment. However, if the council provided the service of connecting a toilet to a sewerage network, it could impose a fee for service but not a charge for the work.

2 A council may impose a charge for rubbish bin collection that provides for an allotment to receive a specified number of rubbish bin collections. However, if the council provided the service of additional rubbish bin collections, it could impose a fee for service but not a charge for the work.

(7) The provisions for rate concessions do not apply to charges.

Division 3 Parking rate for council for municipality

240 Imposition of parking rate

(1) Subject to subsection (3), a council for a municipality may, by resolution, impose a parking rate for the municipality (a ***municipal parking rate***) in accordance with any requirements prescribed by regulation.

(2) A municipal parking rate imposed is notified in a rates declaration on or before 30 June and applies for the next financial year.

(3) The regulations may prescribe the municipalities for which a municipal parking rate may be imposed.

Part 11.6 General and particular notice

241 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, including the relevant interest rate that accrues on any unpaid rates for the financial year; and

(b) state the date on which payment of the rates fall due; and

(c) if the council has resolved to allow payment by instalment – state the date on which each instalment falls due for payment; and

(d) 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.

242 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;

(b) if payment by instalment is allowed – state the due date for payment of each instalment; and

(c) 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)(c) does not invalidate the rates notice.

243 Discount for prompt payment

(1) A council may, by resolution, 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, or some other concession or benefit, for prompt payment of rates in full, the rates notice must:

(a) state the amount of the discount, concession or benefit; and

(b) the conditions on which the discount, concession or benefit is to be allowed, and

(c) both the discounted and the undiscounted amount payable; and

(d) the date for which payment of the rates in full must be made in order to be entitled to the discount, concession or benefit.

244 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) If a ratepayer defaults in payment of an instalment by the due date, all remaining instalments become immediately due and payable.

(3) However, a council may relieve a ratepayer, or ratepayers generally, from the consequences of default to an extent decided by the council.

(4) At least 28 days before the payment of the second and subsequent instalments falls due, the council must issue a notice for the payment of the instalment (a ***reminder notice***), if practicable, to the principal ratepayer or, if it is not practicable to do so, to any other ratepayer for the allotment.

(5) The reminder notice must:

(a) state the due date for payment of the instalment; and

(b) be given at least 28 days before the due date for payment of the instalment.

Part 11.7 Interest on unpaid rates

245 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 for subsection (1)

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 244(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) A council may fix a rate of interest as the relevant interest rate for a financial year.

(4) However, a council must not vary a rate of interest previously fixed as the relevant interest rate.

246 Remission of interest

A council may remit interest wholly or in part.

Part 11.8 Rate concessions

247 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 must, by resolution, adopt a policy for rate concessions and publish the policy on its website.

(3) A council may grant a rate concession under section 248, 249 or 250:

(a) in accordance with this Part and the council's policy for rate concessions; and

(b) on any conditions the council considers appropriate.

(4) If a council grants a rate concession under section 248, 249 or 250 on any conditions the council considers appropriate 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.

248 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.

249 Correction of anomalies in operation of rating system

(1) A council may grant a rate concession to a particular ratepayer or to 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:

(a) the council's own initiative; or

(b) application by an affected ratepayer.

250 Public benefit concessions

(1) A council may grant a rate concession if satisfied that the concession would 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) A council may grant a rate concession under this section on:

(a) the council's own initiative; or

(b) application by an affected ratepayer.

251 Rate concession not to exceed term of council

A council must not agree to grant a rate concession for a financial year that does not fall wholly or partly within the current term of the council.

Part 11.9 Recovery of rates

Division 1 Application of this Part

252 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, the rates (or charge).

Division 2 Application of payments

253 Application of payments

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

Division 3 Recovery by action

254 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) A proceeding may be commenced at any time within 6 years after the rates are imposed.

Division 4 Overriding statutory charge

255 Overdue rates to be charge on land

(1) Subject to subsection (2), if rates are not paid by the due date, the rates become a charge on the land to which the rates relate.

(2) Rates do not become a charge over land:

(a) unless the owner of the land is a ratepayer who is liable for the rates that are in arrears; or

(b) within an Aboriginal community living area.

256 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 the registration of a charge if the council applies for the cancellation.

(5) The council:

(a) if the liability to which the charge relates is fully satisfied – must apply for the cancellation of the registration of the charge; and

(b) may apply for a cancellation for any other reason.

257 Effect of registered charge

If 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 5 Sale of land

258 Power to sell land for non-payment of rates

The council may sell the land if:

(a) rates have been in arrears for at least 3 years; and

(b) an overriding statutory charge securing liability for the rates has been registered for at least 6 months.

259 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 intends to 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 lease 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 not ascertained by the council after reasonable inquiries, 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.

260 Sale of land

(1) If the full amount of the outstanding rates is not paid within the time allowed in the warning notice given under section 259(1), the council may sell the land.

(2) Subject to subsection (3), the sale must be by public auction.

(3) If the land is:

(a) a pastoral lease 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; and

(b) a leasehold estate granted by a Land Trust, the sale must be made as approved by the relevant Land Council.

(4) 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.

(5) If before the date of the sale, the outstanding rates (including costs incurred by the council with a view to the sale of the land) are paid, the council must cancel the sale.

(6) If an auction fails, the council may sell the land by private contract for the best price that it can reasonably obtain.

(7) If a council sells land under this section, the council may execute a conveyance of the land under its common seal.

(8) 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.

261 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) second – in the payment of all liabilities secured on the land (including the liability to the council) in the order of their priority;

(c) third – in payment to the person who owned the land prior to the sale 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 1979*.

Part 11.10 Correction of errors

262 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 the rates purported declaration.

Chapter 12 Council property

Part 12.1 Property generally

263 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 1978* 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.

264 Assumption of care, control and management of land

(1) A council may, at the request or with the consent of each interested person, assume the care, control and management of land within its area.

(2) However, if the land is subject to a trust, the consent of the trustee is required, but the consent of the equitable owners is not required.

(3) The consent of the following is not required:

(a) a person who cannot be found after reasonable inquiry;

(b) 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.

(5) In this section:

interested person means any of the following:

(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.

265 Power to develop and improve land

A council may develop and improve land in its ownership or under its care, control and management.

266 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.

(3) Subsection (2) does not prevent a council from accepting a gift on conditions requiring the council to maintain a particular portion of a cemetery set apart for the members or adherents of a particular religious or cultural group.

(4) A council may apply to the Supreme Court for an order varying the terms of a trust of which the council is a trustee.

(5) 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.

(6) 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.

(7) The council must publish notice of the making and effect of the order on its website.

267 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 contravention of trust or in contravention of conditions on which the property was accepted by the council.

Part 12.2 Reserves, cemeteries and facilities

268 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 1992*.

269 Public cemeteries, community cemeteries and facilities

(1) A council is the responsible entity for a public cemetery or a community cemetery that is located in the council's area.

(2) If a council is the responsible entity for a public cemetery or a community cemetery, the council may make by-laws for the management and control of that cemetery.

(3) A council is the responsible entity for a facility that is located in a public cemetery in the council's area.

Part 12.3 Roads

270 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 another 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 Act or another Act.

271 Care, control and management of roads

(1) Subject to this section, all roads within a council 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 care, 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.

272 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;

(ii) the Minister responsible for the administration of the *Control of Roads Act 1953*.

(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.

273 Establishment of new road

(1) Before a council establishes a new road in its area, it must give public notice of the proposal to do so.

(2) The proposal (which must include a plan delineating the proposed new road with reasonable accuracy and detail):

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

(b) must be available for inspection by interested members of the public at the council's public office.

(3) The notice must include an invitation to any person who may object to the proposal to lodge a written objection to the proposal within a reasonable period (at least 28 days) stated in the notice.

(4) The council must consider any written objections lodged in accordance with the invitation in subsection (3).

(5) If, after publishing a notice under this section, the council substantially modifies its proposal, either as a result of objections or for some other reason, the council must publish a fresh notice under this section of the modified proposal.

(6) This section does not apply to the establishment of a road on a temporary basis.

274 Substantial temporary road closure

(1) If a council proposes to close a road temporarily but for a substantial period (at least 1 month), the council must, before proceeding with its proposal, consult with the Minister (or the Minister's nominee) and the MLA for the electoral division in which the road is situated.

(2) The council:

(a) must carefully consider written submissions made by the Minister (or the Minister's nominee) and the MLA in the course of the consultation; and

(b) must not proceed with the closure unless satisfied that the reasons for the closure justify the disruption to traffic resulting from the closure.

(3) Subsections (1) and (2) do not apply in relation to the following:

(a) the closure of a road that is a laneway;

(b) the closure of a newly created road that has not yet been opened to the public;

(c) a road closure that is urgently necessary in the interests of public safety;

(d) any other road closure prescribed by regulation.

Chapter 13 Regulatory powers

Part 13.1 By-laws

275 Power to make by-laws

(1) Subject to this Part, a council may make by-laws for the good governance of its area.

(2) The regulations may:

(a) prescribe the subject matter that falls within the ambit of a council's power to make by-laws; or

(b) exclude subject matter 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.

276 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:

(i) operate retrospectively; or

(ii) impose a tax;

(c) a by-law must not shift the legal or evidential burden 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;

(e) a by-law must be consistent with basic principles of justice and fairness.

(2) A by-law should reflect the following principles:

(a) a by-law should not impose unreasonable burdens on the community;

(b) a by-law should not restrict competition unless the benefits of the restriction clearly outweigh the detriments;

(c) a by-law should be expressed in plain language as far as possible (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) A by-law should be consistent with other legislation applying in the council's area.

(5) A by-law should avoid duplication of, or overlap with, other legislation.

(6) This section does not affect the validity of a by-law made before the commencement of this Act.

277 By-laws for animal management

Without limiting section 275, the power of a council to make by-laws extends to the making of by-laws providing for:

(a) the seizure of an apparently diseased, injured, savage, destructive, stray or unregistered animal or an animal at large; and

(b) the destruction of a diseased, injured, savage, destructive, unclaimed, unregistered or unwanted animal.

278 Making by-laws

(1) Before a council makes a by-law:

(a) the council must, at least 28 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 fee, at the council's public 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 allow at least 21 days for members of the public to make written submissions to the council about the by-law; and

(c) the council must consider the submissions; and

(d) the council must obtain a certificate from the CEO of the Agency, which specifies that the by-law is consistent with the principles in this Part.

(2) A special resolution of the council is required for making a by-law.

Notes for section 278

1 Sections 63A to 63C of the Interpretation Act 1978 are relevant to the making of by-laws.

2 Section 63A(1)(a)(ii) provides that by-laws must be signed by a person authorised by the council to sign them and forwarded to the Minister.

3 Section 63A(2) 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 6 sitting days after the Gazette notification. By-laws are then liable to disallowance by the Legislative Assembly under section 63C.

279 Accessibility of by-laws

(1) A council must keep a copy of all by-laws made or adopted by the council.

(2) The copy 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) Each by-law made or adopted by the council must be:

(a) accessible on or from the council's website; and

(b) available for inspection, free of charge, 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.

280 Matters of evidence for entries in register

A statement signed by the CEO in relation to the details contained in an entry in a register established by a by-law, including the following, is evidence of those details without requiring production of the register, unless a court otherwise orders:

(a) whether the name of a person was entered in a register in relation to an animal, matter or thing;

(b) whether a licence or registration had been issued in relation to an animal or premises.

281 Determinations to be published

If a council makes a determination of general application under a by-law, the council must publish the determination on its website.

Part 13.2 Regulatory orders

Division 1 Categories of regulatory order

282 Regulatory order

An order made under this Division is a ***regulatory order***.

283 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 requiring the owner or occupier of the land to take specified action to remove, 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.

284 Mitigation of hazard or nuisance

A council may make an order requiring the owner or occupier of land to remove or mitigate a hazard or nuisance or potential hazard or nuisance.

Examples for section 284

1 *The council may require the owner to construct drains to prevent water from the land draining across an adjoining road.*

2 *The council may require the owner or occupier to cut back overhanging vegetation.*

3 *The council may require the owner or occupier to fence the land to prevent animals from running out from the land across a road.*

4 *The council may require the owner or occupier to clear away objects or materials that could prove hazardous to neighbours during a cyclone.*

285 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 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 for section 285

1 *The council may require relocation 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 may require action to reduce the number of cats kept on a property.*

3 *The council may require action to reduce noise or odours.*

4 *The council may require the destruction of a dangerous animal that cannot be adequately controlled in its current location.*

Division 2 Regulatory orders generally

286 Review of orders

A regulatory order is reviewable.

287 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 extend the time for compliance with the order on application by the person required to comply.

288 Non-compliance with order

(1) A person commits an offence if:

(a) the person is subject to a regulatory order; and

(b) the person fails to comply with the order.

Maximum penalty: 100 penalty units.

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

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

(4) If a person fails to comply with a regulatory order, a person authorised by the council may, after reasonable notice to the owner or occupier of the land, enter the land and carry out work, or take other action, required under the order.

(5) The council may recover the cost of the work, or other action, as unpaid rates.

Part 13.3 Fees for services

289 Fees for services

(1) A council may, by resolution, impose a fee to be charged for a service.

Note for subsection (1)

A council, as the responsible entity for a public cemetery or a community cemetery, may charge fees in relation to cemetery services under section 26 of the Burial and Cremation Act 2022.

(2) The amount of the fee may be fixed in revenue units, however the council must show the equivalent dollar value in any publication of the fee on its website or any other material published by the council.

(3) Any service for which a fee is charged must be an optional service or a service provided on request.

(4) A council that imposes a fee under subsection (1) may, by resolution, provide for the following:

(a) the exemption from payment of the fee;

(b) the waiver (wholly or partly) of the fee;

(c) the refund (wholly or partly) of the fee.

Chapter 14 Reporting and public disclosure

Part 14.1 Annual reports

290 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) As soon as practicable after the annual 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; and

(c) provide a copy of the report to the Agency.

291 Content of annual report

(1) The annual report of a council must include:

(a) a copy of the council's audited financial statement for the relevant financial year; and

(b) an assessment of:

(i) the council's performance against the objectives stated in the relevant municipal, regional or shire plan adopted for the relevant financial year (applying indicators of performance set in the plan); and

(ii) for a council for a region – the activities of any local authority within the council's area for the relevant financial year; and

(c) an itemisation of any shared services the council has been involved with for the relevant financial year; and

(d) details in relation to any delegations of the council's functions and powers to a council committee, local authority or local government subsidiary in force for the relevant financial year; and

(e) an itemisation of any amounts of fees or allowances paid to committee members in the relevant financial year; and

(f) a report on the consultations undertaken by the council in the relevant financial year; and

(g) an assessment of the council's performance of service delivery and projects for the relevant financial year, with reference to the advice and recommendations of a local authority or authorities; and

(h) any other information prescribed by regulation or in accordance with guidelines made by the Minister.

(2) The annual report must be in the approved form.

Note for section 291

The annual report of a constituent council of a local government subsidiary has additional requirements mentioned in section 70(2).

Part 14.2 Public access to information

292 Information to be publicly available

The material specified in Schedule 3 is to be available on the council's website and at the council's public office, subject to the corresponding conditions specified in Schedule 3.

293 Suppression of certain information

(1) The CEO must suppress from publicly available material the information prescribed by regulation as confidential.

(2) A person may, in writing, request the CEO to suppress any of the following from any publicly available material:

(a) the person's name;

(b) the person's address;

(c) the person's telephone number;

(d) the person's email address;

(e) any other personal details.

(3) The CEO must comply with a request under subsection (2) unless the CEO considers there is good reason for not doing so.

(4) The CEO must, in writing, notify the person who made the request of the result of the request.

(5) A decision to refuse suppression under subsection (4) 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

294 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 for subsection (3)

If an inspector's field of expertise lies in auditing financial records, the appointment could limit the inspector to that field.

295 Identity card

(1) The Agency must give an inspector an identity card stating the person's name and that the person is an inspector.

(2) The identity card must:

(a) display a recent photograph of the inspector; and

(b) state the card's date of issue and expiry; and

(c) be signed by the inspector.

(3) This section does not prevent the issue of a single identity card to a person for this and another Act.

296 Return of identity card

(1) A person who ceases to be an inspector must return the person's identity card to the Agency within 21 days after the cessation.

Maximum penalty: 20 penalty units.

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

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

297 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 or local government subsidiary's affairs.

Part 15.2 Compliance review

298 Program of compliance reviews

(1) The Agency must establish a program of compliance reviews for councils and local government subsidiaries.

(2) The purpose of a compliance review is to ensure that councils and local government subsidiaries conduct their business lawfully.

(3) A local government subsidiary may be subject to a separate compliance review to the compliance review of its constituent council or councils.

299 Carrying out of compliance review

A compliance review is to be carried out by one or more inspectors assigned to the review by the Agency.

300 Agency must report on results of compliance review

(1) The Agency must:

(a) for a compliance review of a council – report to the council on the results of the compliance review; and

(b) for a compliance review of a local government subsidiary – report to the local government subsidiary and the constituent council or councils on the results of the compliance review.

(2) The report may contain recommendations for administrative or regulatory change.

(3) A copy of the report must be provided to the CEO of the council or the chief executive of a local government subsidiary.

(4) As soon as practicable after receiving the report:

(a) the CEO must provide a copy of the report to all council members; and

(b) the chief executive of the local government subsidiary must provide a copy of the report to the constituent council or councils.

Part 15.3 Investigations

301 Investigations

(1) The Agency may, at any time, direct an investigation into the affairs of a council or a local government subsidiary.

(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

302 Power of entry

(1) For the purposes of a compliance review or an investigation, an inspector may:

(a) enter, examine and search land and premises of the council or local government subsidiary; and

(b) examine and take copies of any records or other documents of the council or local government subsidiary.

(2) The CEO, chief executive, or any other member of the council's staff or local government subsidiary's staff must, at the request of an inspector, do the following:

(a) anything reasonably necessary to facilitate the exercise of powers under subsection (1);

(b) answer any question relevant to the compliance review or the investigation asked by the inspector;

(c) produce any specified record or documentary material relevant to the compliance review or the investigation;

(d) give any other assistance the inspector reasonably requires;

(e) any combination of the above.

(3) A request under subsection (2) may be made orally or in writing.

(4) A person commits an offence if the person fails to comply with a request under subsection (2).

Maximum penalty: 100 penalty units.

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

(6) Subsection (4) does not apply if the request was not given in writing to the person.

(7) It is a defence to a prosecution for an offence against subsection (4) if the defendant took reasonable steps to comply with the request.

303 Power of formal questioning

(1) For the purposes of a compliance review or investigation, an inspector may, by written notice, require a person:

(a) within the time allowed in the notice, to provide written answers to specific 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) within the time allowed in the notice, to produce specified records or documents; or

(d) within the time allowed in the notice, to produce records or documents of a specified kind.

(2) A person required under subsection (1)(a) to provide written answers to questions or other written information must verify the answers or information by statutory declaration.

(3) A person who attends for examination before an inspector must:

(a) if the inspector so requires – take an oath to answer truthfully all questions put to the person by the inspector; and

(b) answer questions put to the person at the examination.

(4) A person commits an offence if the person fails to comply with a requirement under this section.

Maximum penalty: 100 penalty units.

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

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant took reasonable steps to comply with the requirement under this section.

304 Self-incrimination

(1) A person required to answer a question, give information or produce a document under this Act is not excused from doing so on the ground that the answer, information or document might tend to incriminate the person or make the person liable to a penalty.

(2) However, the answer, information or document is not admissible in evidence against the person in a civil or criminal proceeding except a proceeding for an offence in which the falsity or misleading nature of the answer, information or document is relevant.

305 Confidential matters

(1) A person must not refuse to comply with a requirement under section 302 or 303 because the answer, information, record or document is confidential.

(2) However, the person is not required to comply with the requirement if it requires the person to disclose legally privileged information.

306 Inspector's report

(1) If an inspector finds evidence of an irregularity in the conduct of a council's or local government subsidiary's affairs, the inspector must report the matter to:

(a) the Agency; and

(b) the council or constituent council or councils.

(2) If the irregularity appears to involve improper conduct the inspector must also report the matter to the Minister and the ICAC.

(3) In this section:

improper conduct, see section 4 of the *Independent Commissioner Against Corruption Act 2017*.

Part 15.5 NTCAT's power to remedy irregularity

307 Power to impose surcharge

(1) If a council has suffered loss as a result of dishonesty or serious illegality, the council may apply to NTCAT to impose a surcharge on a person whose dishonest or illegal act gave rise to the loss.

(2) If NTCAT imposes a surcharge on a person, the amount of the surcharge must not exceed the total of the following amounts:

(a) the amount of the loss suffered by the council;

(b) the amount incurred by the council to recover the surcharge.

(3) The surcharge is imposed by giving the person a decision notice.

308 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

309 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) the affairs of a particular local government subsidiary, either as part of an inquiry into its constituent council or councils or separately; or

(c) any other question relevant to local government in the Territory.

(2) The Minister may appoint a person to be a commissioner to constitute the commission of inquiry.

(3) A commission of inquiry may be constituted by more than one commissioner.

(4) 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.

310 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 the same privileges and immunities as a Supreme Court Judge in relation to the performance of official functions.

Part 16.2 Conduct of inquiry

311 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 or local government subsidiary, it must allow the council or local government subsidiary a reasonable opportunity to make submissions on the subject matter of the inquiry.

312 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 is required to comply with a requirement under subsection (1); and

(b) the person intentionally engages in conduct; and

(c) the conduct results in a failure to comply with the requirement and the person is reckless in relation to the result.

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

(5) Strict liability applies to subsection (4)(a).

(6) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in the person's failure or refusal to take an oath when required to do so by the commission and the person is reckless in relation to the result.

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

(7) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in the person's failure or refusal to answer a question relevant to the subject matter of the inquiry when required to do so by the commission.

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

(8) It is a defence to a prosecution for an offence against subsection (4), (6) or (7) if the defendant has a reasonable excuse.

(9) 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.

313 Legal representation

A council, local government subsidiary 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.

314 Reopening of inquiry

The Minister may direct a commission of inquiry to reopen the inquiry if fresh evidence comes to light or it appears desirable for some other reason to reopen the inquiry.

315 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 Required remedial action

316 Minister may 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) The remedial action referred to in subsection (1) must be specified in writing and the notice must refer to the offence and maximum penalty in subsection (3).

(3) A person commits an offence if:

(a) the person is a member of a council; and

(b) the council fails to comply with a requirement under this section.

Maximum penalty: 500 penalty units.

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

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant acted with reasonable diligence to secure compliance by the council.

Part 17.2 Financial controller

317 Financial controller

(1) The CEO of the Agency may, by *Gazette* notice, appoint a financial controller for a council or a local government subsidiary if the CEO considers the council or local government subsidiary is not:

(a) performing its financial responsibilities appropriately; or

(b) complying with this Act.

(2) A financial controller is responsible for:

(a) implementing financial controls as directed by the CEO of the Agency; and

(b) performing other related duties as directed by the CEO of the Agency.

(3) The council or local government subsidiary must cooperate fully with the financial controller.

(4) If a financial controller is appointed, the council or local government subsidiary must obtain the financial controller's authorisation before undertaking any of the following:

(a) a transaction from an account kept by the council or local government subsidiary with a financial institution;

(b) any other type of expenditure;

(c) any future financial commitments.

(5) If the financial controller believes on reasonable grounds that a decision, resolution or order to make a payment is financially unsound, the financial controller must:

(a) refuse to make a payment; and

(b) advise the CEO of the Agency and the council about why the decision, resolution or order is financially unsound.

(6) In this section:

financially unsound, in relation to a decision, resolution or order, means the decision, resolution or order:

(a) may cause the council or local government subsidiary to become insolvent; or

(b) would result in unlawful expenditure by the council or local government subsidiary; or

(c) would result in a disbursement from a fund that is not provided for in the council's or local government subsidiary's budget; or

(d) would result in expenditure from grant moneys for a purpose other than the purpose for which the grant was given.

Part 17.3 Official management

318 Official management of councils

(1) If the Minister is satisfied that there are or there may be serious deficiencies 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) despite section 135, if a periodic general election is scheduled to be held for the period of official management – the council does not participate in the election; and

(c) the Minister:

(i) must appoint a suitable person to manage the affairs of the council (the ***official manager***); and

(ii) must appoint a suitable person (who may – but need not – be the official 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 (the ***investigator***).

(3) The investigator has the powers of an inspector.

(4) The Minister may extend the time allowed for the investigator's report.

(5) When the Minister receives the investigator's report, the Minister must invite written submissions from the following within a reasonable period (of at least 21 days) specified in the invitation:

(a) the suspended members;

(b) any other person against whom the investigator has made a significant adverse finding in the report.

(6) No later than 12 months after placing the council under official management, and after considering any submissions made in response to an invitation under subsection (5), the Minister must, by *Gazette* notice:

(a) reinstate all of the suspended members; or

(b) dismiss all of the suspended members from office.

(7) The investigator ceases to hold office when the Minister reinstates or dismisses all of the suspended members under subsection (6).

319 General election for council under official management

(1) The Minister must, by *Gazette* notice, immediately call a general election for the council if:

(a) the Minister dismisses all of the suspended members from office under section 318(6)(b); or

(b) both of the following apply:

(i) the Minister reinstates all of the suspended members under section 318(6)(a);

(ii) a periodic general election was scheduled to be held during the period of official management in which the council did not participate.

(2) If the Minister does not make a decision mentioned in section 318(6) within 12 months after placing the council under official management, the Minister must, by *Gazette* notice, call a general election for the council within 90 days of the expiry of the 12 month period.

(3) If a general election for a council is called by the Minister and is held within 1 year before the date for a periodic general election under section 135:

(a) no further periodic general election for the area is to be held on the later date; and

(b) the next periodic general election for the area is to be held on the date on which it is scheduled to be held under section 135(1), as if the general election for the council had not been called by the Minister and a periodic general election had been held in the ordinary course.

Note for section 319

Under section 90(3) the first ordinary meeting of a council must be held within 21 days after the conclusion of the general election.

320 Resignation of suspended member

If a suspended member resigns during the suspension, the resignation:

(a) if the member is reinstated – takes effect at the time of the reinstatement; or

(b) if the member is dismissed – has no effect; or

(c) if a general election is called by the Minister under section 319(2) – takes effect at the conclusion of the general election.

321 Official manager

(1) The official 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 official 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 official manager's remuneration and terms and conditions of office are determined by the Minister.

(4) The official manager's remuneration is payable from the funds of the council.

(5) The official manager ceases to hold office:

(a) if the members of the council are reinstated; or

(b) if the members of the council are dismissed from office – at the conclusion of the general election for the council held under section 319(1)(a); or

(c) if a general election is called by the Minister under section 319(2) – at the conclusion of the general election.

Chapter 18 Review of decisions

Part 18.1 Internal review

322 Reviewable decisions

(1) A ***reviewable decision*** is a decision 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 for section 322

The following are designated by this Act as reviewable:

(a) a decision in relation to the correction of an entry in the assessment record under section 232(1) or 233(7);

(b) a regulatory order under section 286;

(c) a decision to refuse to suppress a person's details in publicly available material under section 293(5).

323 Right to apply for review

(1) A person who is adversely affected by a reviewable decision may, within 28 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 reconsidered.

(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.

324 Consideration of application by administrative review committee

(1) The CEO must, on receiving an application for review, refer the application to a committee (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) If the administrative review committee summarily rejects an application under subsection (2), the committee must give a decision notice to the applicant as soon as practicable after making the decision.

(4) 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.

(5) The recommendation may be:

(a) to confirm the decision; or

(b) to amend the decision; or

(c) to revoke the decision; or

(d) to make some further decision to mitigate the effect of the decision.

325 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 give a decision notice to the applicant as soon as practicable after the council makes a final decision on the application, but no later than 90 days after receiving the application for review under section 324(1).

326 No decision by council

If the CEO does not give a decision notice to the applicant in accordance with section 325(3), the applicant may refer the application to NTCAT.

Part 18.2 Jurisdiction of NTCAT

327 Review by NTCAT

(1) NTCAT has jurisdiction to review a decision (an ***NTCAT reviewable decision***) specified in Schedule 2.

(2) An ***affected person***, for an NTCAT reviewable decision, is a person specified in Schedule 2 for the decision.

(3) An affected person for an NTCAT reviewable decision may apply to NTCAT for review of the decision.

Note for section 327

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.

328 Review does not affect decisions and orders

(1) An application for review of an NTCAT reviewable decision to NTCAT does not suspend the operation of the decision.

(2) However, NTCAT may make an order suspending an obligation arising from a decision to which a review relates, or prohibiting action to give effect to the decision, until NTCAT makes its decision on the matter.

(3) Section 44(2) of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a review of a decision made under this Act.

Chapter 19 Miscellaneous

Part 19.1 Legal proceedings

329 Commencement of legal proceedings on behalf of council

(1) Subject to subsection (2), a council must not commence legal proceedings (including proceedings for an offence) unless as authorised by resolution.

(2) Legal proceedings may be commenced under subsection (1) in the name of a council by the CEO or some other person authorised by the council to bring the proceedings on its behalf.

(3) The following legal proceedings may be commenced in the absence of a resolution of the council:

(a) prosecution of an offence against a by-law;

(b) debt recovery;

(c) any other legal proceeding prescribed by regulation.

(4) 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.

Part 19.2 Service of documents

330 Service of documents on council or local government subsidiary

A document may be served on a council or a local government subsidiary:

(a) by handing it to the CEO or chief executive personally; or

(b) by emailing it to the CEO or chief executive; or

(c) by leaving it at the council office or local government subsidiary office with a member of the council's staff or local government subsidiary's staff; or

(d) by posting it to the council's postal address or local government subsidiary's postal address; or

(e) by serving the document in any other way notified on the council's website or local government subsidiary's website as a permissible way to serve the document.

331 Service of documents by council or local government subsidiary

(1) A notice, order or other document the council or local government subsidiary 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.

(2) If a council or local government subsidiary 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 19.3 Evidence

332 Judicial notice to be taken of certain facts

A court is to take judicial notice of the following:

(a) the existence of a municipality, shire or region and its boundaries;

(b) the division of a municipality, shire or region into wards and the boundaries of each ward;

(c) the existence and membership of the council for each municipality, shire or region;

(d) the election of members of the council;

(e) the appointment and signature of the CEO.

333 Certified copies of minutes

The following extracts are admissible in legal proceedings as evidence of proceedings and decisions to which the extract relates:

(a) an extract from the minutes of a council or council committee certified by the CEO;

(b) an extract from the minutes of a local government subsidiary certified by the chief executive.

334 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 19.4 Offences for unauthorised disclosure and misleading information

335 Offence to disclose certain information

(1) A person commits an offence if:

(a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and

(b) the information is confidential and the person is reckless in relation to that circumstance; and

(c) the person intentionally engages in conduct; and

(d) the conduct results in the disclosure of the information and the disclosure is not:

(i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or

(ii) to a person who is otherwise entitled to the information; and

(e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

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

(2) Strict liability applies to subsection (1)(a).

(3) If the information mentioned in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for section 335

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

336 Misleading information

(1) A person commits an offence if:

(a) the person intentionally gives information to another person (the ***local government officer***); and

(b) the information is misleading and the person has knowledge of that circumstance; and

(c) the local government officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person intentionally gives a document to the local government officer; and

(b) the document contains misleading information and the person has knowledge of that circumstance; and

(c) the local government officer is acting in an official capacity and the person has knowledge of that circumstance.

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

(3) It is a defence to a prosecution for an offence against subsection (2) if the person, when giving the document:

(a) draws the misleading aspect of the document to the local government officer's attention; and

(b) to the extent to which the person can reasonably do so – gives the local government officer the information necessary to remedy the misleading aspect of the document.

(4) In this section:

local government officer means:

(a) a member of an audit committee, a council, a council committee or a local authority; or

(b) a staff member of a council or a local government subsidiary; or

(c) a CEO or a chief executive; or

(d) an inspector; or

(e) an official manager or investigator; or

(f) an authorised person; or

(g) a financial controller.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

staff member includes:

(a) a person who is not a member of the staff of, but works for, or provides services to, the council or local government subsidiary on a contract basis; or

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

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

Part 19.5 Carrying out work on land

337 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 subsection (1), 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.

338 Owner entitled to enter land to carry out work

(1) An owner may, after reasonable notice to the occupier, enter land to carry out the work 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.

(2) A person commits an offence if:

(a) the person is an occupier of the land; and

(b) the occupier intentionally engages in conduct; and

(c) the conduct results in the owner being obstructed from entering the land to carry out work required under this Act and the person is reckless in relation to the result.

Maximum penalty: 100 penalty units.

(3) Strict liability applies to subsection (2)(a).

Part 19.6 Certificates of liabilities

339 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 19.7 Acquisition on just terms

340 Acquisition on just terms

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

(a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and

(b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

Part 19.8 Forms, guidelines and regulations

341 Approved forms

The CEO of the Agency may approve forms for this Act.

342 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.

(4) The guidelines are not subordinate legislation.

343 Regulations

(1) The Administrator may make regulations under this Act.

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

(2) Without limiting subsection (1), a regulation may provide for the following:

(a) provide for an offence against a regulation to be an offence of strict or absolute liability;

(b) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;

(c) matters relating to methods or processes for determining a person's entitlement to vote at an election or a poll of electors under section 138(b);

(d) matters relating to how a person who is entitled to vote at an election or a poll of electors under section 138(b) may vote at the election or poll.

(3) The regulations may:

(a) make different provision in relation to:

(i) different persons or matters; or

(ii) different classes of persons or matters; and

(b) apply differently by reference to stated exceptions or factors.

Chapter 20 Repeals

344 Acts repealed

The Acts specified in Schedule 4 are repealed.

Chapter 21 Transitional matters

Part 1 Transitional matters for Local Government Act 2019

345 Definitions

In this Chapter:

commencement means the commencement of the new Act.

LGANT means the Local Government Association of the Northern Territory, continued under section 346.

new Act means the *Local Government Act 2019*.

former Act means the *Local Government Act 2008*, as in force immediately before the commencement.

repealed, in relation to a section, means the section of the former Act as in force immediately before the commencement.

346 Continuation of LGANT

(1) The Local Government Association of the Northern Territory continues under the new Act as if section 242 of the former Act had not been repealed:

(a) for 12 months from the commencement; or

(b) for the period prescribed by the regulations.

(2) All property, rights, liabilities and obligations of LGANT are taken to be the property, rights, liabilities and obligations of the prescribed corporation on the date specified by the Minister by *Gazette* notice.

347 LGANT in formation of local government subsidiary

(1) Subsection (2) applies if LGANT participated with a council or 2 or more councils in the formation of a local government subsidiary under repealed section 27(3) before the commencement.

(2) LGANT continues to participate with the council or councils to form the local government subsidiary after the commencement, and a reference in the new Act to a council or constituent council extends to LGANT.

(3) The prescribed corporation is to participate with the council or councils to form the local government subsidiary after the expiry of the period referred to in section 346(1) of the new Act, and a reference in the new Act to a council or constituent council extends to the prescribed corporation.

348 Continuation of existing councils and by-laws

(1) The councils and local government areas for municipalities and shires are continued, as constituted immediately before the commencement.

(2) The name of a council mentioned in subsection (1) immediately before the commencement is the same immediately after commencement.

(3) The members of the council in office immediately before the commencement continue in office until the next general election for the council.

(4) The title of the principal member of the council under repealed section 42 is the same immediately after the commencement.

(5) The by-laws of a council that continues under subsection (1) in force immediately before the commencement continue in force for the council subject to variation or revocation by by-laws made under the new Act.

(6) Anything done by a council after the enactment but before the commencement of the new Act, and in accordance with its provisions, is validly done despite any conflict with the provisions of the former Act.

(7) Subsection (2) does not prevent the Administrator or the Minister from changing the name of a council under section 16(1)(h) of the new Act.

349 Regional councils taken to be local government councils

(1) A regional council constituted for a region before the commencement is taken to be a local government council constituted for a region under section 15 of the new Act.

(2) The name of a council mentioned in subsection (1) immediately before the commencement is the same immediately after commencement.

(3) The members of the council in office immediately before the commencement continue in office until the next general election for the council.

(4) The title of the principal member of the council under repealed section 42 is the same immediately after the commencement.

(5) The by-laws of a council mentioned in subsection (1) in force immediately before the commencement continue in force for the respective local government council, subject to variation or revocation by by-laws made under the new Act.

(6) Anything done by a council after the enactment but before the commencement of the new Act, and in accordance with its provisions, is validly done despite any conflict with the provisions of the former Act.

(7) Subsection (2) does not prevent the Administrator or the Minister from changing the name of a council under section 16(1)(h) of the new Act.

350 Contents of municipal, regional or shire plan

Despite section 28 of the new Act, a municipal, regional or shire plan for a council must contain the matters mentioned in repealed section 23(1)(c) and (2) until the first general election after the commencement.

351 Local government subsidiaries

A local government subsidiary formed under repealed section 27 is taken to be a local government subsidiary under section 67 of the new Act.

352 Formation, ownership or participation in other bodies corporate before the commencement

(1) Subsection (2) applies if, before the commencement, a council formed or otherwise participated in a corporation, partnership or other trading body under the former Act.

(2) After the commencement, the council is taken to form or otherwise participate in that corporation, partnership or other trading body as if the council had approval from the Minister under section 39 of the new Act.

353 Continuation of allowances and expenses

Repealed sections 71 and 72, and the guidelines made under repealed section 71(2), continue in force after the commencement until the Remuneration Tribunal makes a determination under section 7B of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

354 Conflict of interest if interest relates to allowances or expenses

(1) Subsection (2) applies if, after the commencement:

(a) a member has a conflict of interest in a question arising for decision by the council; and

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

(c) the Remuneration Tribunal has not made a determination under section 7B of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006* in relation to the members of the council.

(2) Repealed section 73(2)(a) continues to apply to the interest until the Remuneration Tribunal makes the determination.

355 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 commencement; and

(b) the *Nhulunbuy (Animal Control) By-laws 1998* continue in force (subject to amendment or revocation under the new Act) as by-laws under the new Act; and

(c) the new Act applies to the Nhulunbuy Corporation Limited, in relation to its performance of local government functions as if it were a council for a shire constituted under the new Act.

(2) The Nhulunbuy Corporation Limited has the same functions as that of a council under the new Act.

(3) The Minister may, by *Gazette* notice:

(a) withdraw functions from, or add to or modify the local government functions of, the Nhulunbuy Corporation Limited continued under this section; or

(b) modify the operation of the new Act in its application to the Nhulunbuy Corporation Limited.

356 Annual review of plans

(1) This section applies in relation to a council's municipal, regional or shire plan.

(2) Repealed section 24 applies to the plan for the financial year in which the new Act commences.

(3) Section 35 of the new Act applies to the plan for the financial year after the commencement.

357 Local authorities

(1) This section applies to:

(a) the members of a regional council and the principal member of the council that constitute a local authority under repealed section 53C(1)(a) and (2) before the commencement; and

(b) the members of the community or communities within a local authority's area appointed by the council as members of a local authority under repealed section 53C(1)(b).

(2) The members of the local government council for the ward in which the local authority is located are taken to be appointed members of the local authority under section 77(1)(a) of the new Act after the commencement.

(3) The principal member of the local government council for the ward in which the local authority is located is taken to be an appointed member of the local authority under section 77(1)(a) of the new Act after the commencement.

(4) The members of the community or communities within the local government authority's area appointed by the council are taken to be appointed by the council as members of the local authority under section 77(1)(b) of the new Act after the commencement.

358 Complaints of breach of code of conduct

(1) This section applies if a person lodged a complaint under repealed section 79 before the commencement.

(2) Chapter 7, Part 7.4, Division 2 and Part 7.5 of the former Act continues to apply in relation to the complaint.

(3) The new Act applies if a person lodges a complaint under section 120 of the new Act after the commencement.

(4) Subsection (3) applies irrespective of whether the alleged breach of the code of conduct that is the subject of the complaint occurred before or after the commencement.

359 Eligibility requirements for CEO, Deputy CEO and chief executive

(1) This section applies if a CEO, Deputy CEO or chief executive was appointed and entered into a contract of employment before the commencement.

(2) Section 166 of the new Act does not apply to the CEO or Deputy CEO during the term of the CEO or Deputy CEO's contract of employment.

(3) Section 71 of the new Act does not apply to the chief executive during the term of the chief executive's contract of employment.

(4) However:

(a) section 166 of the new Act applies to the CEO or Deputy CEO if the CEO or Deputy CEO is reappointed and enter into a renewal of the CEO or Deputy CEO's contract of employment after the commencement; and

(b) section 71 of the new Act applies to the chief executive if the chief executive is reappointed and enters into a renewal of the chief executive's contract of employment after the commencement.

360 Long-term financial plan

(1) This section applies in relation to a council's long-term financial plan.

(2) Repealed section 126 continues to apply to the plan for the financial year in which the new Act commences.

(3) Section 200 of the new Act applies to the plan for and from the financial year after the commencement.

361 Land exempt from rates

(1) This section applies if, before the commencement, land was exempt from rates under repealed section 144(1)(f).

(2) Subject to subsection (3), the land continues to be exempt from rates under section 222 of the new Act after the commencement irrespective of whether the public benevolent institution or public charity is registered with the Australian Charities and Not-for-profits

Commission established under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

(3) Subsection (2) only applies in the financial year in which the new Act commences.

(4) Section 222 of the new Act applies to land exempt from rates for the financial year after the financial year in which the new Act commences.

362 Declaration of general rates

(1) This section applies in relation to a council's declaration of general rates.

(2) Repealed section 155 continues to apply to the declaration of general rates for the financial year in which the new Act commences.

(3) Section 237 of the new Act applies to the declaration of general rates for the financial year after the financial year in which the new Act commences.

363 Official management of councils

(1) Subsection (2) applies if a council is under official management under repealed section 224 before the commencement.

(2) The new Act applies to the official management of the council after the commencement and, for section 318(6) of the new Act, the 12 month period is taken to start from the date of the commencement.

364 Roads

(1) Any roads within the area of a council that were, immediately before the commencement, vested in or under the care, control and management of the Territory remain, at the commencement, vested in, or under the care, control and management of the Territory despite Part 12.3 of the new Act.

(2) Such a road continues to be vested in the Territory subject to:

(a) any agreement between the Territory and the council to vest the road in the council; or

(b) any other proper dealing by the Territory with the road.

365 Adoption of policies by councils

(1) Subject to this section, a council must adopt the following under the new Act not later than 12 months after the commencement:

(a) a policy for filling casual vacancies under section 54(3);

(b) a policy for gifts and benefits under section 112(1);

(c) a policy for contravention of the code of conduct under section 121;

(d) policies on human resource management under section 172;

(e) a policy for allowances and any other benefits under section 174;

(f) a code of conduct for the CEO under section 175;

(g) a policy for investment under section 194(3);

(h) a policy for shared services under section 216;

(i) a policy for the assessment record under section 230(5);

(j) a policy for rates concessions under section 247(2).

(2) However, if the council is required to act in accordance with a policy within the period mentioned in subsection (1), the council must adopt the policy before taking the action.

(3) On the commencement, a council that adopted a policy under a repealed section specified in the Table to this section before the commencement is taken to have adopted the policy under the corresponding section of the new Act if the policy has been adopted in accordance with the requirements of the new Act.

(4) On the commencement, a council that adopted a policy mentioned in subsection (1) before the commencement is taken to have adopted the policy under the section of the new Act specified if the policy has been adopted in accordance with the new Act.

Table

Repealed section	Section of new Act
Policy for co-opting a person to fill a casual vacancy under section 39(5)	Policy for filling a casual vacancy under section 54(2)
Policy for authorising a council member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 61(4)	Policy for authorising a member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 95(3)
Policy allowing the Chair of a council meeting to exercise a casting vote under section 61(6)	Policy allowing the chairperson of a meeting to exercise a casting vote under section 95(5)
Policy for authorising a local authority or council committee member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 64(4)	Policy for authorising a local authority or council committee member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 98(3)
Caretaker policy under section 96A	Caretaker policy under section 161
Privacy policy under section 130(3)	Privacy policy under section 206(3)

366 Adoption of code of conduct and policies by local government subsidiaries

A local government subsidiary must adopt the following under the new Act not later than 12 months after the commencement:

(a) policies on human resource management under section 172;

(b) a policy for allowances and any other benefits under section 174;

(c) a code of conduct for the chief executive and staff under section 175;

(d) a policy for investment under section 194(4);

(e) a privacy policy under section 206(4).

Part 2 Transitional matters for Local Government Legislation Amendment (Remuneration) Act 2022

368 Local authority guidelines

A guideline referred to in section 107 in force immediately before the commencement of section 11 of the *Local Government Legislation Amendment (Remuneration) Act 2022* continues in force as if it had been made under section 107(4) as in force after that commencement.

Schedule 1 Code of conduct

section 119

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 Prohibition on bullying

A member must not bully another person in the course of performing official functions.

5 Conduct towards council staff

A member must not direct, reprimand, or interfere in the management of, council staff.

6 Respect for cultural diversity and culture

6.1 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.

6.2 A member must act with respect for cultural beliefs and practices in relation to other members, council staff, electors and members of the public.

7 Conflict of interest

7.1 A member must avoid any conflict of interest, whether actual or perceived, when undertaking official functions and responsibilities.

7.2 If a conflict of interest exists, the member must comply with any statutory obligations of disclosure.

8 Respect for confidences

8.1 A member must respect the confidentiality of information obtained in confidence in the member's official capacity.

8.2 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.

9 Gifts

9.1 A member must not solicit, encourage or accept gifts or private benefits from any person who might have an interest in obtaining a benefit from the council.

9.2 A member must not accept a gift from a person that is given in relation to the person's interest in obtaining a benefit from the council.

10 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.

11 Interests of municipality, region or shire to be paramount

11.1 A member must act in what the member genuinely believes to be the best interests of the municipality, region or shire.

11.2 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 best advances the best interests of the municipality, region or shire.

12 Training

A member must undertake relevant training in good faith.

Schedule 2 NTCAT reviewable decisions and affected persons

section 327

NTCAT reviewable decision	Affected person
A decision of the prescribed corporation panel in relation to a contravention of the code of conduct under section 127	The complainant and the respondent mentioned in section 120(1)
A decision of the prescribed corporation panel to summarily reject a complaint or an application for consideration of a complaint under section 128(1)(b)	The complainant mentioned in section 120(1)
A decision of an administrative review committee to summarily reject an application under section 324(2)	A person adversely affected by the reviewable decision mentioned in section 323(1)
A decision from the review of a reviewable decision made by a council under section 325(1)	A person adversely affected by the reviewable decision mentioned in section 323(1)
A reviewable decision under section 326	A person adversely affected by the reviewable decision mentioned in section 323(1)

Schedule 3 Information to be publicly available

section 292

Material	Conditions
The council's draft and final municipal, regional or shire plans (section 34(2)).	A draft plan must be available on the website until the final plan is made available on the website. A final plan need not be available on the website after 3 years from the last day of the period to which the plan relates.
The constitution of a local government subsidiary for which the council is a constituent council (section 69).	The constitution need not be available if: (a) 3 years have elapsed since the day on which the subsidiary ceased to exist; and (b) during the 3 years when the material was available on the website after the subsidiary ceased to exist, the material was accompanied by a note indicating the day on which the subsidiary ceased to exist.
The notices and minutes of meetings of the council, local authorities, council committees and electors (sections 93(1), 97(3), 102(2) and 103(3)).	The material need not be available after 3 years from the day on which the meeting was scheduled, or if later, was held.
The amounts of allowances payable by the council to its members and a statement of the expenses to be paid to members under this Act (sections 106(3) and 109).	The material need not be available after 3 years from the last day of the relevant financial year.

Material	Conditions
The register of annual returns of interest, the register of declared conflicts and the register of declared gifts and benefits (section 117).	The material need not be available after 3 years from the conclusion of the next general election after the entry was made.
The council's code of conduct (section 119(2)).	
The council's budget and any amended budget (section 203(4) and (5)).	The material need not be available after 3 years from the last day of the financial year for which the budget or amended budget was adopted.
A notice in relation to conditionally rateable land (section 219(5)).	The material need not be available after 3 years from the last day of the financial year during which the notice was published.
Notice of the declaration of rates for the current financial year (section 241(1)).	The material need not be available after 3 years from the last day of the financial year during which the notice was published.
Notice of the council's intention to sell land, by auction, for non-payment of rates (section 260(4)).	The material need not be available if the land has been sold or the sale has been cancelled.
Notice of the council's assumption of the care, control and management of land (section 264(4)).	The material need not be available after 3 years from the last day of the financial year during which the council published the notice on the website.
Notice of an application by the council to the Supreme Court for variation of a trust (see section 266(5)) and notice of an order made on such an application (section 266(7)).	If an order has been made, the material need not be available after 3 years from the last day of the financial year during which the order was made.

Material	Conditions
Notice of a proposed by-law the council intends to make (section 278(1)).	The material need not be available after the by-law is made or the proposed by-law is defeated.
Each by-law made or adopted by the council (section 279(3)).	
The council's annual reports (section 290(2)).	The material need not be available after 3 years from the last day of the relevant financial year.
A list setting out each category of reviewable decisions (section 322(2)).	
An invitation notice for nominations of candidates for an election (any other material prescribed by regulation).	The material: (a) need not be available after the day that is 6 months before the election day for the periodic general election next following the election to which the material relates (see any other material prescribed by regulation); and (b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.

Material	Conditions
A declaration of the results of an election (any other material prescribed by regulation).	The material: (a) need not be available after the day that is 6 months before the election day for the periodic general election next following the election to which the material relates (see any other material prescribed by regulation); and (b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.
A declaration of the names of the duly nominated candidates for an election (any other material prescribed by regulation).	The material: (a) need not be available after the day on which the results of the election are declared; and (b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.
A public notice of voting centres for an election (any other material prescribed by regulation).	The material: (a) need not be available after the day on which the results of the election are declared; and (b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.

Schedule 4 Repealed Acts

section 344

Local Government Act 2008	Act No. 12 of 2008
Local Government (Consequential Amendments) Act 2008	Act No. 28 of 2008
Local Government Amendment Act 2013	Act No. 28 of 2013
Local Government Amendment (Restructuring) Act 2013	Act No. 34 of 2013
Local Government Amendment Act 2014	Act No. 19 of 2014
Local Government Legislation Amendment Act 2015	Act No. 8 of 2015

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 2019* (Act No. 39, 2019)**
Assent date 13 December 2019
Commenced pt 8.6: 1 July 2022; rem: 1 July 2021 (*Gaz* S27, 30 June 2021)

***Statute Law Revision Act 2020* (Act No. 26, 2020)**
Assent date 19 November 2020
Commenced 20 November 2020 (s 2)

***Local Government Amendment Act 2021* (Act No. 15, 2021)**
Assent date 25 May 2021
Commenced 26 May 2021 (s 2)

***Interpretation Amendment Act 2021* (Act No. 28, 2021)**
Assent date 15 December 2021
Commenced 1 January 2022 (s 2)

***Jabiru Town Development Repeal Act 2021* (Act No. 29, 2021)**
Assent date 15 December 2021
Commenced 16 December 2021 (s 2)

***Local Government Legislation Amendment (Remuneration) Act 2022* (Act No. 4, 2022)**
Assent date 14 April 2022
Commenced 15 April 2022 (s 2)

***Burial and Cremation Act 2022* (Act No. 16, 2022)**
Assent date 9 August 2022
Commenced 28 November 2022 (*Gaz* , 2022, p 1)

***Statute Law Revision Act 2023* (Act No. 4, 2023)**
Assent date 2 March 2023
Commenced 3 March 2023 (s 2)

Local Government and Place Names Amendment Act 2024 **(Act No. 2, 2024)**
Assent date 1 March 2024
Commenced 2 March 2024 (s 2)

3 LIST OF AMENDMENTS

s 7	amd No. 15, 2021, s 4; No. 4, 2022, s 8; No. 16, 2022, s 214; No. 4, 2023, s 23
s 30	amd No. 15, 2021, s 5
s 40	amd No. 16, 2022, s 215
s 56	amd No. 4, 2022, s 9
s 58	amd No. 4, 2023, s 23
s 78	amd No. 16, 2022, s 216
s 81	amd No. 16, 2022, s 217
s 106	amd No. 4, 2022, s 10
s 107	sub No. 4, 2022, s 11
s 108	rep No. 4, 2022, s 11
s 136	amd No. 15, 2021, s 6
s 137	amd No. 15, 2021, s 7
s 138	sub No. 15, 2021, s 8
s 147	amd No. 15, 2021, s 9
s 148	amd No. 15, 2021, s 10
s 149	sub No. 15, 2021, s 11
s 150	amd No. 15, 2021, s 12
s 151	amd No. 15, 2021, s 13
s 152	amd No. 15, 2021, s 14
s 153	amd No. 15, 2021, s 15
s 154	amd No. 15, 2021, s 16
s 168	amd No. , 2022, s 218
s 179	amd No. 15, 2021, s 17
s 186	amd No. 15, 2021, s 18
s 223	amd No. 26, 2020, s 3
ch 12	
pt 12.2	amd No. 16, 2022, s 219
s 269	sub No. 16, 2022, s 220
s 274	amd No. 2, 2024, s 4
s 278	amd No. 28, 2021, s 20
s 289	amd No. 16, 2022, s 221
s 291	amd No. 15, 2021, s 19
s 336	amd No. 15, 2021, s 20
s 343	amd No. 15, 2021, s 21
s 349	amd No. 29, 2021, s 10
s 357	amd No. 15, 2021, s 22
s 365	amd No. 15, 2021, s 23
ch 21 hdg	sub No. 4, 2022, s 12
ch 21	
pt 1 hdg	ins No. 4, 2022, s 12
s 367	rep No. 39, 2019, s 367(6)
ch 21	
pt 2 hdg	ins No. 4, 2022, s 13
s 368	exp No. 39, 2019, s 371 ins No. 4, 2022, s 13
ch 22 hdg	exp No. 39, 2019, s 371
ch 22	
pt 22.1 hdg	exp No. 39, 2019, s 371
s 369	exp No. 39, 2019, s 371

ch 22	
pt 22.2 hdg	exp No. 39, 2019, s 371
s 370	exp No. 39, 2019, s 371
ch 22	
pt 22.3 hdg	exp No. 39, 2019, s 371
s 371	exp No. 39, 2019, s 371
sch 3	amd No. 15, 2021, s 24
sch 5	amd No. 15, 2021, s 25
	exp No. 39, 2019, s 371