

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT ACT
No. 35 of 1985
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SCHEDULE 1

SCHEDULE 2



NORTHERN TERRITORY OF AUSTRALIA

No. 35 of 1985

AN ACT

To provide for the constitution of municipalities and community government areas, for the election of self-governing authorities to control municipalities and community government areas, and for other purposes

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

[Assented to 19 August 1985]

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Local Government Act 1985*.

2. COMMENCEMENT

This Act shall come into operation on 1 July 1986.

3. REPEAL

The Acts listed in Schedule 1 are repealed.

4. DEFINITIONS

In this Act, unless the contrary intention appears -

"acting clerk", in relation to a municipality, means the deputy clerk or other person when, under section 77(4) or (5) respectively, the deputy clerk or other person is acting as the clerk;

"acting mayor", in relation to a municipality, means the member whom the council has, under section 20(3)(b), appointed as acting mayor;

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"alderman" means a person who is appointed or elected to the office of alderman for a municipality or ward and who holds office as an alderman under this Act and includes an alderman who continues under Part IX to be an alderman under this Act;

"Appeal Tribunal" means the Local Government Appeal Tribunal established under section 199;

"Association" means the Northern Territory Local Government Association constituted by section 83(1);

"auditor", in relation to a municipality, means a person appointed under section 166(1), 169(2) or 170 as the auditor for the municipality and who holds office as the auditor under this Act and includes an auditor who continues under Part IX to be an auditor under this Act;

"by-election" means an election held under section 46;

"by-law" means a by-law made under Part VII Division 1 and includes a by-law which continues under Part IX to be a by-law under this Act;

"Chief Electoral Officer" means the Chief Electoral Officer within the meaning of the *Electoral Act*;

"clerk", in relation to a council or municipality, means the person who is appointed under section 77(1) as the clerk of the council and includes an acting clerk and a clerk who continues under Part IX to be a clerk under this Act;

"Commissioner" means a person appointed under section 27 as a Commissioner to conduct an inquiry under Part II Division 6;

"committee" means a committee of a council, established under section 61, 62 or 63 and includes a committee which continues under Part IX to be a committee under this Act;

"council" means a body corporate which, under section 11, exists as a result of the constitution of a municipality and consists of the mayor and aldermen elected or appointed, under this Act, to the council and includes a council which continues under Part IX to be a council under this Act;

"council office" means the office of a municipality, established and maintained in accordance with this Act and includes a council office which continues under Part IX to be a council office under this Act;

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"deputy clerk" means the person appointed under section 77(3) to be the deputy clerk;

"deputy mayor" means a member who is appointed -

(a) under section 20(1), to be the deputy mayor; or

(b) under section 20(2), to fill the vacancy in the office of deputy mayor,

and includes a deputy mayor who continues under Part IX to be a deputy mayor under this Act;

"election" means a general election or by-election;

"elector" means a person who, under section 47, is entitled to be enrolled for, and to vote at, an election in relation to a municipality or ward;

"general election" means an election under section 43(6)(b), 44 or 45;

"inspector" means a person appointed under section 174(1);

"mayor", in relation to a council or municipality, means the person who is elected under this Act and declared under section 53(2), or appointed, as the mayor of the municipality and includes an acting mayor and the mayor who continues under Part IX to be the mayor under this Act;

"member", in relation to a council, means the mayor or an alderman of the council;

"municipality" means a part of the Territory constituted under section 6 or 7(1)(c)(iii) as a municipality and in existence under this Act and includes a municipality which continues under Part IX to be a municipality under this Act;

"nomination day", in relation to an election, is the day calculated under section 51 in relation to the election;

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

"officer" means a person who is appointed by a council to an office of the council and who holds that office;

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"ordinary meeting", in relation to a council, means the meeting which is held by the council to comply with section 58;

"owner", in relation to land, includes -

- (a) the registered proprietor under *The Real Property Act, 1886* of the State of South Australia in its application to the Territory, as amended by the *Real Property Act*, of an estate of freehold in possession;
- (b) as regards land not under that Act, a person who is seized of an estate of freehold in possession or, if that estate is subject to a redemption under mortgage, the person who upon payment of the mortgage, would be entitled to a conveyance of such an estate;
- (c) a person who has agreed to purchase an estate of the nature mentioned in paragraph (a) or (b) and is, under the terms of the agreement for purchase, entitled to possession of, or to receive the rents and profits from, the land; and
- (d) a person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits from the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise;

"President" means the President of the Tribunal;

"ratable land" means all land which, under section 97, a council shall rate;

"rate" means a rate declared under this Act by a council and includes a penalty rate under section 127;

"rate book" means the record kept under section 103 and includes a rate book which continues under Part IX to be a rate book under this Act;

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

"Register of Interests" means the register kept by a clerk for the purposes of section 24(4)(b);

"Registrar-General" means the Registrar-General appointed under the *Registration Act*;

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"returning officer", in relation to an election in a municipality, means the person appointed under section 44(1), 50(1) or 50(2) as the returning officer for the election in that municipality;

"road", in relation to a municipality, means land which -

- (a) at the date when this Act comes into operation is a road within the meaning of the *Control of Roads Act*;
- (b) is proclaimed, dedicated, resumed or otherwise established as a public street, road or thoroughfare;
- (c) comprises a street, road, court, alley, thoroughfare or cul-de-sac of which the public has had uninterrupted use, whether before or after the date when this Act comes into operation, or partly before and partly after that date, for at least 5 years and which the council, by notice in the *Gazette*, declares to be a public road;
- (d) is reserved or left as a road in a subdivision of Crown lands; or
- (e) is conveyed or transferred to a council in fee simple and is accepted by the council as a road;

"special meeting" means a meeting of a council summoned under section 59;

"Tribunal" means the Local Government Tribunal established under section 185;

"ward" means a part of a municipality as it has been divided or redivided under section 7(1)(d) and includes a ward which continues under Part IX to be a ward under this Act.

5. DELEGATIONS

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

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

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

PART II - MUNICIPALITIES

Division 1 - Constitution of Municipality

6. CONSTITUTION OF MUNICIPALITY

The Administrator may, by notice in the *Gazette*, constitute a part of the Territory as a municipality and, subject to section 11, assign a name to the municipality so constituted.

7. FURTHER POWERS OF ADMINISTRATOR IN RELATION TO MUNICIPALITIES

(1) The Administrator may, by notice in the *Gazette* -

- (a) determine or alter the boundaries of a municipality;
- (b) annex a part of the Territory to a municipality;
- (c) sever a part of a municipality and declare that the part severed -
 - (i) ceases to be part of the municipality;
 - (ii) is annexed to and forms part of another municipality to which the severed part is contiguous; or
 - (iii) constitutes, by itself or with another part of the Territory, a new municipality;
- (d) divide or re-divide a municipality into wards;
- (e) determine or alter the boundaries of a ward within a municipality;
- (f) alter the name of a municipality or assign a name to, or alter the name of, a ward within it;
- (g) abolish wards within a municipality;
- (h) subject to section 14, determine or alter the maximum number of aldermen to be elected to the council of a municipality; or
- (j) abolish a municipality.

(2) Where, in relation to a municipality, the Administrator exercises a power under sub-section (1)(d), (g) or (h), it shall not affect the council of the municipality or the filling of a vacancy on the council until immediately before the next general election.

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8. FAILURE TO PUBLISH NOTICE

An error in, or omission from, a notice under section 6 or 7 may be rectified or supplied by the Administrator by a subsequent notice in the *Gazette*.

9. APPLICATION FOR EXERCISE OF POWERS

(1) Subject to sub-section (3), a council, electors or persons who, if an area were a municipality, would be qualified as electors for it, may apply to the Minister for him to request the Administrator to exercise a power under section 6 or 7.

(2) An application under sub-section (1) shall -

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

(b) in the case of an application -

(i) by electors; or

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

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

(3) An application under sub-section (1) shall -

(a) specify the power which the Minister should request the Administrator to exercise; and

(b) where it asks the Minister to request the Administrator to constitute a municipality or alter the boundaries of a municipality or ward - contain sufficient information to enable all the boundaries of the new municipality, or altered boundaries, to be determined.

(4) An application under sub-section (1) shall -

(a) be addressed to the Minister;

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

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

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(5) Where the Minister receives an application under sub-section (1), he may, by notice served on the person nominated under sub-section (4)(c), request further information in relation to the application.

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

(7) Where, under sub-section (6), the Minister determines to proceed, he shall -

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

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

(8) Where, under sub-section (6), the Minister determines to decline to proceed, he shall, as soon as practicable, advise the applicant of his decision.

(9) Where, under sub-section (7)(a), a notice has been published twice, a person who is affected by the application to which the notice relates may, before the expiration of 6 weeks after the date of the second publication, make written submissions in relation to the application to the Minister by posting or delivering the submission to him.

(10) Where in the opinion of the Minister an inquiry should be held in relation to an application under sub-section (1), he may, under Division 6, appoint a person to conduct the inquiry and refer the application to that person.

(11) After considering -

(a) an application under sub-section (1);

(b) submissions, if any, under sub-section (9) in relation to the application; and

(c) where an inquiry under Division 6 is held in relation to the application, the report of the person appointed to conduct the inquiry,

the Minister may, in his discretion, request the Administrator to -

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- (d) exercise his powers under section 6 or 7 in accordance with the application; or
- (e) exercise those powers to the extent specified in the request.

10. CONSEQUENCES WHERE ALTERATION OF BOUNDARY

(1) Where the Administrator exercises a power under section 7, he may, by notice in the *Gazette*, direct an adjustment of all property rights, liabilities and other matters or things which may arise as a result of his exercise of the power and those rights, liabilities and matters shall, on the publication of that notice, be adjusted accordingly.

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

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

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

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

Division 2 - Councils of Municipalities

11. COUNCILS OF MUNICIPALITIES AND TITLES

There shall be a council for each municipality constituted under this Act and the council shall, subject to section 310(2)(a), be known by one of the following names:

- (a) the City Council;
- (b) the Town Council; or
- (c) the Shire Council.

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12. COUNCIL: A BODY CORPORATE, &c.

A council shall be a body corporate with perpetual succession and a common seal and shall be capable -

- (a) of suing and being sued;
- (b) of purchasing, holding and alienating real or personal property; and
- (c) subject to this Act, of doing and suffering all such other acts and things as a natural person may do and suffer.

13. COMMON SEAL OF COUNCIL

- (1) A council shall have a common seal which shall -
 - (a) bear the title of the council together with such other words, letters, signs and devices as it thinks fit;
 - (b) be kept at the council office; and
 - (c) be used only by resolution of the council.

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

Division 3 - Council Membership

14. COMPOSITION OF COUNCILS

Subject to section 43, a council shall consist of -

- (a) a mayor; and
- (b) not less than 4 aldermen,

elected or appointed in accordance with this Act.

15. QUALIFICATION FOR ELECTION AS MAYOR OR ALDERMAN

(1) Subject to sub-section (2), in relation to a municipality, a person who -

- (a) is not validly enrolled as an elector for the municipality;
- (b) holds a judicial office, other than as a justice of the peace;
- (c) is an undischarged bankrupt;

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- (d) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors, has compounded with his creditors or has made an assignment of his remuneration for their benefit;
- (e) has been sentenced to a term of imprisonment for 12 months or more for an offence and that term has not expired;
- (f) holds an office of profit under, or at the disposal of, the council;
- (g) in relation to land within the municipality, owes the council rates or charges which have been due and payable for more than 6 months; or
- (h) is or becomes mentally ill within the meaning of the *Mental Health Act*,

shall not hold, or continue to hold, office as a member for that municipality.

(2) A person is not disqualified from holding or continuing to hold office as a member for a municipality by reason only that he receives or is entitled to receive an allowance fixed or paid under section 22 or 23.

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

16. DECLARATION AND TERM OF OFFICE

(1) A person elected or appointed to be a mayor of, or alderman for, a municipality shall not act in that office until he has made a prescribed declaration and lodged it with the clerk.

(2) Subject to section 17, the term of office of the mayor of, or alderman for, a municipality commences from the declaration under section 53(2) of the election at which he was elected until the declaration under section 53(2) of the next succeeding general election.

17. VACANCY IN OFFICE OF MAYOR OR ALDERMAN

(1) The office of the mayor of, or an alderman for, a municipality becomes vacant where -

- (a) he dies;
- (b) he is disqualified under section 15 from continuing to hold office;
- (c) he is absent, without leave of the council, from all council meetings held during a continuous period of 3 months;

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- (d) he fails to complete a prescribed declaration under section 16, or lodge it with the clerk, before the expiration of 3 months after his election or appointment as mayor or alderman;
- (e) a notice of resignation signed by him is received by the clerk; or
- (f) the Tribunal determines, under section 26, that he is disqualified from holding or continuing to hold office.

(2) In addition to sub-section (1), the office of an alderman becomes vacant where the alderman is -

- (a) at a by-election, elected mayor; or
- (b) under section 18(2), appointed by the council to be the mayor.

(3) Where, under sub-section (1) or (2), the office of the mayor or of, or an alderman for, a municipality becomes vacant, the clerk shall, as soon as practicable, notify -

- (a) the council; and
- (b) the returning officer,

of the occurrence of the vacancy.

18. APPOINTMENTS TO FILL CERTAIN VACANCIES

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

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

19. PERIODIC REVIEW OF ELECTORAL REPRESENTATION BY COUNCIL

(1) At least once in every continuous period of 5 years, a council shall undertake a review to determine -

- (a) whether the existing number of aldermen for the municipality provides a fair and equitable representation for the electors;

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(b) where the municipality is divided into wards, whether the existing boundaries of the wards are a fair and equitable division of the municipality into wards; and

(c) where the municipality is not divided into wards, whether it should be so divided.

(2) As soon as practicable after a review under sub-section (1) has been completed and the council has determined that an alteration of its boundaries or the boundaries of its wards, or a division of the municipality into wards, is -

(a) desirable, it shall, under section 9(1), apply to the Minister for him to request the Administrator to exercise a power under section 7; or

(b) not desirable, it shall notify the Minister and, by notice in a newspaper circulating in the municipality, the electors, of its determination.

(3) Where a council fails to comply with sub-section (1), the Minister may, under Division 6, appoint a person as a Commissioner to conduct an inquiry into the matters specified in sub-section (1)(a), (b) and (c) and refer those matters to that person.

20. DEPUTY MAYOR

(1) At its first meeting after a general election, a council shall appoint a member to be the deputy mayor.

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

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

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

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

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

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21. VALIDITY OF ACTION OF COUNCIL

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

- (a) there being a vacancy in the office of a member;
- (b) there being a defect in the appointment or election of a member; or
- (c) a member having acted in his office while disqualified from holding the office.

Division 4 - Allowances

22. ALLOWANCES

(1) At its first meeting in each financial year, a council may, by resolution, fix allowances to be paid for the financial year to the mayor, deputy mayor and aldermen.

(2) Where, under sub-section (1), a council fixes an allowance, it shall determine the method, conditions and intervals of payment of that allowance and, subject to sub-section (3), that allowance shall be paid accordingly.

(3) In a financial year in which a general election is to be held, no more than eleven-twelfths of the amount to be paid under this section to a member for the whole of the financial year may be paid before the declaration of the poll at that general election.

(4) A council may, by resolution, fix an allowance to be paid to a person while the person is, under section 20(3), the acting mayor.

23. TRAVELLING ALLOWANCES

A council may pay to or on behalf of members reasonable allowances towards their necessary out-of-pocket expenses for conveyance and subsistence in travelling -

- (a) to and from a meeting of the council, or a meeting of a committee of the council; or
- (b) on business of the council in compliance with a prior resolution of the council.

Division 5 - Financial Interest of Members

24. INTERESTS OF MEMBERS

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

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

- (a) he, or one of his nominees, is a member of a company or other body with which a contract is made or proposed to be made, or which has a direct or indirect interest in a matter under consideration, by the council;
- (b) he is a partner with, or an agent, servant or consultant, or is in the employment of, a person with whom a contract is made or is proposed to be made, or who has a direct or indirect interest in a matter under consideration, by the council;
- (c) he is a member of an incorporated company which consists of not more than 25 persons, or a director, manager, or servant of, or agent for, such a company, which has an interest in a matter before the council; or
- (d) the spouse of the member (including a person to whom the member is not legally married but who is living with him as a spouse on a bona fide domestic basis) has an interest of a kind referred to in paragraph (a), (b) or (c) and the member is aware of that interest.

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

- (a) only as an elector or ratepayer and in common with, and to the same extent as, other such electors or ratepayers;
- (b) only because a matter, contract or proposed contract entails expenditure from moneys of or held by the council, and he is, as an elector or ratepayer, a contributor to those moneys;
- (c) in relation to the declaration of rates and charges or the fixing of a fee which may be prescribed by the council;
- (d) in relation to the terms and conditions on which the right to participate in services, including the supply of goods, is offered to the public;
- (e) only as a consumer of gas, electricity or water supplied to him by the council in like manner, and subject to the same terms and conditions as are applicable to persons who are not members;

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- (f) only in planning and development matters which have a general application throughout the municipality or where the interest of the member or his spouse is an interest in common with a large number of electors within the part of the municipality affected by the matter;
 - (g) in relation to the consideration of an application or request for a consent, permission, approval, authorization, licence, permit, exemption or other right or privilege under this or any other Act, provided that the extent of the interest of the member or his spouse, as the case may be, is the same as other persons who are not members;
 - (h) only through service on local community bodies or membership of clubs, unions or other organizations which are non-profit organizations and where no personal gain to the member or his spouse is involved;
 - (j) by reason of the member or his spouse being insured by the council in pursuance of this Act;
 - (k) by reason of the receipt by the member of a travelling allowance under section 23 or other allowances or in pursuance of a resolution of the council;
 - (m) as a member of a body or institution, whether incorporated or not, resulting from an appointment or nomination for appointment made by the council or as a result of receiving fees or expenses in relation to that membership; or
 - (n) in relation to a question as to whether an application should be made to the Minister for the suspension, under sub-section (6), of the application of sub-section (5) to or in relation to the member.
- (4) Where, under sub-section (1), a member declares an interest, the clerk shall record the declaration in -
- (a) the minutes of the meeting; and
 - (b) a Register of Interests, which he shall keep, in the prescribed form, for that purpose.
- (5) Subject to sub-section (7), after a member has, under sub-section (1), declared an interest, he shall not remain at the meeting during consideration or discussion of, or the taking of a vote on, a question in relation to the matter in which the member has declared an interest.

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(6) Where the Minister is of the opinion that the business of a council may be or has been impeded by sub-section (5), he may, by notice to the council, suspend the application of that sub-section.

(7) Where, under sub-section (6), the Minister suspends the application of sub-section (5), a member who has, under sub-section (1), declared an interest in a matter before the council may remain at the meeting during consideration of, and take part in the discussion on, that matter, to the extent permitted by the suspension, but shall not vote on the matter.

(8) A member shall not make use of information acquired by virtue of his position as a member which might lead to him gaining, directly or indirectly, an advantage for himself or for another person or cause detriment to the council.

(9) A member who contravenes or fails to comply with sub-section (1), (5) or (8) is guilty of an offence.

Penalty: \$10,000.

(10) It is a defence to a prosecution for an offence against sub-section (9) if the defendant proves that he did not know that -

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

(11) A person convicted of an offence against sub-section (9) is disqualified from holding, and shall not hold, office as a member of a council during the period of 7 years after his conviction.

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

25. PROTECTION OF MEMBERS AGAINST LEGAL PROCEEDINGS

Subject to section 24(9), no action or proceeding, civil or criminal, shall lie against a person who is, or who has been, a member of a council or a committee for or in relation to an act or thing done in good faith by the person in his capacity as a member of the council or committee.

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26. DISQUALIFICATION AS MEMBER

(1) Where the clerk or another person has reason to believe that the mayor or an alderman is not qualified to hold, or continue to hold, office as a member, the clerk shall, as soon as practicable, and the person may, apply to the Tribunal for a determination as to whether the mayor or alderman is so qualified.

(2) The Tribunal has jurisdiction -

(a) to hear and determine an application under sub-section (1); and

(b) to make such order as to the costs of the application as it thinks fit.

(3) Where, under sub-section (2), the Tribunal determines an application, the Registrar of the Tribunal shall, if the application for the determination was made by a person other than the clerk of the municipality, as soon as practicable, in writing, notify the clerk of the determination.

Division 6 - Inquiries

27. MINISTER MAY ESTABLISH INQUIRY

The Minister may appoint a person as a Commissioner to conduct an inquiry into or in relation to the affairs of a council or a matter which may be referred under this Act to a Commissioner and to report, in writing, to the Minister on the affairs of the council or matter referred to him.

28. PROTECTION OF PERSONS APPOINTED

A Commissioner shall, in the exercise of his powers or performance of his functions under this Act, have the same protection and immunity as a Judge of the Supreme Court.

29. NOT BOUND BY RULES OF EVIDENCE

A Commissioner shall make a thorough investigation of the affairs of the council, or other matter into which he is appointed to inquire, without regard to legal forms and solemnities and shall not be bound by the rules of evidence, but may inform himself on any matter in such manner as he thinks fit.

30. WITNESSES MAY BE REPRESENTED BY COUNSEL

A person summoned to attend before a Commissioner may, with the approval of the Commissioner, be represented by a legal practitioner or agent, who may examine witnesses and address the Commissioner on behalf of the person.

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31. ACCESS TO BOOKS, &c.

(1) A Commissioner, or a person authorized in that behalf by a Commissioner, shall at all times have full and free access to all buildings, places, goods, books, documents and other writings for the purposes of the inquiry in relation to which he is appointed, and for that purpose may make extracts from or copies of those books, documents or writings.

(2) A person authorized under sub-section (1) shall not communicate any information acquired by him in the performance of his duty under this section to a person other than the Commissioner by whom he was so authorized, or a person to whom he is authorized by the Commissioner to communicate it.

(3) A Commissioner shall not, except in the exercise of his powers or performance of his functions under this Act, communicate information acquired by him in the exercise of those powers or performance of those functions.

(4) A person shall not obstruct or hinder a Commissioner, or a person authorized under sub-section (1), in the exercise of a power or performance of a function under this section.

32. POWER TO SEND FOR WITNESSES AND DOCUMENTS

(1) A Commissioner may, by writing under his hand, summon a person to attend before him at a time and place mentioned in the summons and then and there to give evidence and to produce any books, documents and writings in his custody or control which he is required by the summons to produce.

(2) A summons under this section shall be served personally or by leaving it at the usual place of residence or business of the person to whom it is addressed.

33. EXAMINATION UPON OATH OR AFFIRMATION

A Commissioner may administer an oath or affirmation to a person appearing as a witness before him, whether the witness has been summoned or appears without being summoned, and may examine the witness on oath.

34. FAILURE TO ATTEND OR PRODUCE DOCUMENTS

(1) A person served with a summons to attend before a Commissioner who fails, without reasonable excuse, to so attend or to produce a book, document or writing in his custody or control which he was required by the summons to produce, is guilty of an offence.

Penalty: \$100.

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(2) It shall be a defence to a prosecution for an offence against sub-section (1) for failing without reasonable excuse to produce a book, document or writing, if the defendant proves that the book, document or writing was not relevant to the inquiry.

35. REFUSAL TO BE SWORN OR GIVE EVIDENCE

Where a person is appearing as a witness before a Commissioner and the person refuses to be sworn or to make an affirmation or to answer a question relevant to the inquiry put to him by the Commissioner, the person is guilty of an offence.

Penalty: \$100.

36. STATEMENTS MADE BY WITNESS NOT ADMISSIBLE IN EVIDENCE AGAINST HIM

A statement or disclosure made by a witness to a Commissioner shall not, except in proceedings for an offence against this Act, the Regulations or By-laws of a council, be admissible in evidence against him in any civil or criminal proceedings in a court.

37. PROTECTION AND LIABILITY OF WITNESSES

Subject to section 36, a person appearing as a witness before a Commissioner shall have the same protection and shall, in addition to the penalties provided by this Act, be subject to the same liabilities in a civil or criminal proceeding as a witness in a matter before the Supreme Court.

38. INQUIRY MAY BE HELD *IN CAMERA*

A Commissioner may hold the whole or any part of the proceedings on an inquiry under this Act *in camera* if he considers that it is desirable, in the public interest, to do so.

39. PRODUCTION OF REPORTS OF PROCEEDINGS

(1) No action or proceeding, civil or criminal shall lie against a person for publishing in good faith, for the information of the public -

(a) a copy of, a fair extract from or a fair abstract of a report made by a Commissioner; or

(b) a fair and accurate report of the proceedings before a Commissioner, not being proceedings held *in camera*.

(2) For the purposes of sub-section (1), a publication shall be deemed to be made in good faith for the information of the public where the person by whom it is made is not actuated in making it by ill-will to a person

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defamed by the publication or by any other improper motive.

40. MINISTER TO NOTIFY MAYOR AND CLERK

Where, under section 27, the Minister appoints a Commissioner to conduct an inquiry into or in relation to the affairs of a council or other matter referred to the Commissioner, he shall give notice to the mayor and clerk of the relevant municipality of the reason for, and the subject of, the inquiry.

41. MINISTER MAY REDIRECT INQUIRY

Where the Minister is satisfied that a report made by a Commissioner -

- (a) was made as a result of an inquiry conducted contrary to law;
- (b) indicates that the opinion of the Commissioner was unjust, oppressive, improperly discriminatory or unreasonable (whether because it has been made for an improper purpose, is based on irrelevant considerations or otherwise);
- (c) is based, wholly or partly, on a mistake of law or fact; or
- (d) is, for any other reason, incorrect,

he may direct the Commissioner to reconsider the matter.

42. OUTCOME OF INQUIRY

(1) After a report into or in relation to the affairs of a council has been received by the Minister from the Commissioner and the Minister is of the opinion that -

- (a) the matter should be referred to the council;
- (b) action should and could be taken to rectify, mitigate or alter the effects of the council's action or omission which was the cause of the inquiry;
- (c) the council's action which was the cause of the inquiry was a common practice which should be abandoned or varied;
- (d) a by-law in accordance with which, or on the basis of which, an action was taken should be reconsidered;
- (e) reasons should be given for the action of the council; or
- (f) other steps should be taken,

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the Minister shall report his opinion, and his reasons for that opinion, to the mayor and may make such recommendations as he thinks fit.

(2) Where, under sub-section (1), the Minister reports his opinions or makes a recommendation to a mayor, the Minister shall send a copy of the report or recommendation to the clerk.

(3) Where, under sub-section (1), the Minister makes a recommendation to a mayor he may request the mayor to notify him, within a specified period, of the steps that have been, or are proposed to be, taken to give effect to the recommendation or, if no steps have been or are proposed to be taken, the reasons why no steps have been or are proposed to be taken.

Division 7 - Dismissal of Members of Councils

43. DISMISSAL OF MEMBERS OF COUNCIL

(1) Where, in the opinion of the Minister, a council has failed -

- (a) to provide for the good government of its municipality in relation to the functions vested in it;
- (b) to perform a function which it is required to perform under this or another Act;
- (c) to exercise a power which it may exercise under this or another Act; or

(d) to comply with a law in force in the Territory, the Minister -

(e) may recommend to the Administrator that all the members of the council be suspended; and

(f) shall, within 28 days after the members are so suspended, appoint, under Division 6, a person to be a Commissioner and to inquire into and investigate the affairs of the council which caused the Minister to form his opinion and refer the matter to the Commissioner so appointed.

(2) After a Commissioner has, under section 27, reported to the Minister, the Minister shall, within 28 days after receiving the report, recommend to the Administrator that all members of the council be dismissed or the suspended members be reinstated.

(3) Where the Minister has made a recommendation under sub-section (1)(e) or (2), the Administrator shall, by notice in the Gazette -

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- (a) in the case of a recommendation under sub-section (1)(e) - suspend all the members from office;
 - (b) in the case of a recommendation under sub-section (2) -
 - (i) dismiss all the members and declare all offices vacant; or
 - (ii) reinstate the suspended members to their respective offices; and
 - (c) in a case referred to in paragraph (a) or (b)(i) or in the case of a dismissal under sub-section (6)(a) of members - appoint a person to be the manager of the council.
- (4) Where, under sub-section (3), a person is appointed as the manager of a council -
- (a) for the purposes of this Act, he shall constitute the council and, subject to the conditions, if any, of his appointment, perform the functions and exercise the powers of the council;
 - (b) his appointment shall not be invalid by reason of a defect in or in relation to the appointment; and
 - (c) his remuneration and other terms and conditions of appointment shall be fixed by the Minister and paid for out of the income of the council.
- (5) Where, under sub-section (3), the members of a council are dismissed, the Minister shall, within 5 sitting days of the Legislative Assembly after the day of the dismissal, set out the circumstances giving rise to the dismissal in a report to the Assembly.
- (6) Before the expiration of 12 months after the suspension or dismissal under sub-section (3) of members -
- (a) in the case of a suspension of members - the Administrator may reinstate the members to their respective offices or dismiss them; and
 - (b) in the case of members dismissed under sub-section (3)(b) or under paragraph (a) - the Minister shall fix a date for the holding of a general election to fill the vacancies created by the dismissal.
- (7) An election in pursuance of sub-section (6)(b) shall be held in accordance with the procedures for a by-election.

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(8) Where, under sub-section (6)(b), an election is held -

(a) the manager shall cease to hold office on; and

(b) the clerk shall summon a meeting of the council within 14 days after,

the declaration of the poll at that election.

(9) Where, under sub-section (6)(a), the Administrator reinstates the members to their respective offices, the manager appointed under sub-section (3)(c) shall cease to hold office on the date on which the members are so reinstated.

(10) All actions taken and things done by a manager appointed under sub-section (3)(c) shall be deemed to have been taken or done by the council for which he was appointed manager.

Division 8 - Elections

44. FIRST GENERAL ELECTION

(1) As soon as practicable after the Administrator constitutes a municipality under section 6 or 7(1)(c)(iii), the Minister shall, for the purposes of the first general election, appoint a person as the returning officer for the municipality.

(2) A returning officer, appointed under sub-section (1), shall conduct the first general election within 28 days after he is so appointed.

(3) For the purposes of the first general election referred to in sub-section (1), the Minister shall perform the functions, exercise the powers and discharge the duties of the council and clerk.

45. GENERAL ELECTION IN LEAP YEARS

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

(2) Where an election under section 43(6)(b) or 44 has been held for a council within 12 months before the last Saturday in May in a leap year, an election under sub-section (1) shall not be held for the council in the immediately ensuing leap year.

46. BY-ELECTIONS

Where, under section 17, a vacancy occurs in the office of a member earlier than within 12 months before the day on which the next election under section 45(1) is to be held, a by-election shall be held to fill that vacancy.

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47. ENROLMENT

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

48. ELECTORS SHALL VOTE

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

Penalty: \$100.

49. ROLL OF ELECTORS

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

50. RETURNING OFFICER

(1) Subject to section 44(1) and sub-section (2), for the purposes of an election, a council shall, by notice in the *Gazette*, appoint a person to be the returning officer for its municipality.

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

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

51. NOMINATION DAY

Nomination day, in the case of -

- (a) an election under section 45, is the last Friday, which is not a public holiday, in April of the leap year in which the election is to be held; and
- (b) an election, other than an election under section 45, is the first Friday, which is not a public holiday, after the expiration of 10 days after the date of the last publication, under this Act, of the notice inviting nominations for the election.

52. NOMINATION

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

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

53. CONDUCT OF ELECTIONS

(1) Subject to this Division and the Regulations, a returning officer shall cause elections (including voting by post) to be conducted in the same manner, except for necessary changes, as elections under the *Electoral Act*.

(2) Where a returning officer has conducted, in accordance with sub-section (1), an election he shall declare, in the case of -

- (a) a general election, the names of the mayor of and aldermen for the municipality; and
- (b) a by-election, the name of the person who is to fill the office of a member which became vacant.

54. MINISTER MAY DO OR CAUSE CERTAIN THINGS TO BE DONE IN RELATION TO ELECTIONS

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

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

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

Division 9 - Polling of Electors

55. POLLING

A council may, for its information and guidance on a matter under this or another Act, cause a poll of electors to be taken in the prescribed manner.

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Division 10 - Meetings and Administration

56. COUNCIL OFFICES

A council shall establish and maintain an office in its municipality which shall be open, as the council determines, to the public.

57. FIRST MEETING OF COUNCIL

Within 14 days after the declaration of a poll at a general election, the clerk or, in the case of the first meeting of a council elected after the Administrator constitutes the municipality under section 6 or 7(1)(c)(iii), the Minister, shall summon an ordinary meeting of the council.

58. ORDINARY MEETINGS

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

59. SPECIAL MEETINGS

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

(2) Where the clerk is served with a notice under sub-section (1), he shall summon a special meeting of the council in accordance with the notice.

(3) Where, under sub-section (2), a special meeting is summoned -

(a) it shall, subject to section 66(2), be held at the council offices; and

(b) the only business which may be transacted at it is the business set out in the notice under sub-section (1), unless all members of the council are present and agree to deal with a matter which was not set out in the notice.

60. MAYOR TO PRESIDE

The mayor shall preside at all meetings of a council.

61. COMMITTEES OF COUNCIL

(1) A council may -

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

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- (b) appoint members to, and remove members from, a committee; and
- (c) as it thinks fit, but subject to sub-section (6), delegate such of its powers and functions under this or another Act to the members constituting a committee.

(2) The mayor shall, by virtue of his office, be a member of each committee of the council.

(3) At the first meeting of a committee (other than the management committee established under section 62(1) or an advisory committee established under section 63(1)), the members present shall appoint one of their number to be its chairman but where the chairman so appointed is not present at a meeting, the members present shall appoint another of their number to be the acting chairman.

(4) Subject to sub-section (5), meetings of a committee shall be held at times and places determined by the committee.

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

(6) A council shall not delegate to a committee the power to -

- (a) declare a rate or fix a charge;
- (b) borrow money;
- (c) enter into contracts; or
- (d) incur an expenditure exceeding an amount previously determined by the council.

(7) A decision of a committee, other than a decision in relation to a matter delegated by the council to the committee, shall not be given effect to until approved by the council.

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

62. MANAGEMENT COMMITTEES

(1) Without limiting the generality of section 61(1), a council may establish a management committee and may appoint such members, officers and other persons as it thinks fit, for the purpose of exercising a power or performing a function of the council.

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(2) Where, under sub-section (1), a council establishes a management committee, it shall appoint a person to be the chairman of the committee.

63. ADVISORY COMMITTEES

(1) Without limiting the generality of section 61(1), a council may establish an advisory committee and may appoint such members, officers and other persons as it thinks fit, for the purpose of advising the council on the exercise of a power or the performance of a function of the council.

(2) Where, under sub-section (1), a council establishes an advisory committee, it shall appoint a person to be the chairman of the committee.

64. PLACE OF COUNCIL AND COMMITTEE MEETINGS

Subject to section 59(3), each meeting of a council and its committees shall be held at the council office or other place as the council or committee thinks fit.

65. NOTICE OF MEETING

(1) A notice summoning a meeting of a council or committee shall be given to each member of the council or committee, as the case may be, and shall -

- (a) be in writing signed by the clerk or, in the case of a notice in relation to a first meeting referred to in section 57, by or on behalf of the Minister;
- (b) state the date, time and place of the meeting;
- (c) in the case of a special meeting of the council, set out the business to be transacted at the meeting; and
- (d) give not less than -
 - (i) 3 clear days notice of the meeting in the case of an ordinary meeting of the council or committee; or
 - (ii) 4 hours notice in the case of a special meeting of the council or committee.

(2) Each member shall provide the clerk with an address for service and, for the purposes of this Division, a notice summoning an ordinary meeting is served on a member where it is posted to him at that address or is served personally on him.

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66. QUORUM

- (1) Subject to this Act, a quorum at a meeting of -
 - (a) a council shall be a majority of the members of the council then in office; or
 - (b) a committee shall be a majority of the members appointed to the committee.

(2) Where, at the expiration of 30 minutes after the time fixed for a meeting of a council or committee, a quorum is not present, the mayor or chairman, or in his absence the clerk, shall, without the need for further notice under section 65, postpone the meeting to a date, time and place within the municipality, as he thinks fit.

67. VOTING

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

- (a) each member or member of the committee, as the case may be, present is entitled to one vote and the question shall be decided by a majority of votes of the members present;
- (b) voting shall be by a show of hands;
- (c) where a person abstains from voting, his abstention shall be recorded; and
- (d) in the case of an equality of votes, the question is resolved in the negative.

68. CONDUCT OF MEETINGS

Subject to this Act, the procedures for the conduct of meetings of a council or committee shall be as prescribed.

69. MEETINGS OPEN EXCEPT AS PRESCRIBED

Meetings of a council shall be open to the public except where a matter prescribed as confidential is being considered or voted on.

70. MINUTES

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

(2) For the purposes of sub-section (1), minutes shall set out -

- (a) the proceedings of the meeting;

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

(c) other prescribed matters.

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

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

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

71. PROOF OF MINUTES

Minutes of a meeting of a council or committee, or a document purporting to be a true copy of, or extract from, the minutes signed by the clerk, shall be received in a court, the Tribunal, the Appeal Tribunal or by a person acting judicially, as evidence of the matters stated in those minutes, or that copy or extract, without further proof of those matters.

Division 11 - Meetings of Electors

72. CALLING OF MEETING OF ELECTORS

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

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

(3) Where a meeting under sub-section (2) is to be held, the clerk shall, in a newspaper circulating in the municipality, give notice of the meeting by setting out in the notice the date (being not earlier than 7 clear days

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after the date on which the newspaper was published), time and place in the municipality where the meeting will be held and the purpose for which it has been requested under sub-section (2).

73. CHAIRMAN OF MEETING

(1) The mayor or, in his absence, the deputy mayor, shall be chairman of a meeting of electors.

(2) At a meeting of electors, the decision of the chairman as to whether a person is an elector for the municipality or ward is final.

(3) The mayor or deputy mayor of a municipality shall attend every meeting of electors, under this Division, for their municipality.

74. VOTING

An elector for a municipality or ward at a meeting of electors for the municipality or ward, as the case may be, shall be entitled to one vote on each motion put to the meeting and voting shall be by show of hands.

75. CONDUCT OF PROCEEDINGS AT MEETINGS

Subject to section 74, the procedure to be followed at a meeting of electors shall be as prescribed or, in the absence of a prescribed procedure, as the chairman thinks fit.

76. RESOLUTIONS OF MEETINGS OF ELECTORS

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

Division 12 - Officers

77. CLERK

(1) A council shall, at its first meeting or as soon as practicable thereafter, appoint a person who -

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

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

as the clerk of the council and cause notice of that appointment to be published in the *Gazette*.

(2) A person appointed under sub-section (1) is the chief executive officer of the council and is responsible to it for -

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- (a) the control and direction of officers and employees of the council;
- (b) giving effect to this and all other Acts in relation to duties imposed on the council;
- (c) implementing the council's policy and decisions; and
- (d) the carrying out of such other functions as are prescribed or imposed on him by the council.

(3) Where a council has appointed a clerk, it may appoint a person who is qualified, under sub-section (1) to be appointed as a clerk, to be the deputy clerk of the council.

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

(5) Where there is no deputy clerk appointed under sub-section (3) or the deputy clerk so appointed is not available to be the acting clerk under sub-section (4), during the illness or absence from duty or from the municipality of the clerk, the council shall appoint a person to be the acting clerk for the period during which the clerk is prevented from performing his duties or the office is vacant.

78. OTHER OFFICERS

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

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

79. DELEGATIONS TO OFFICERS

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

- (a) make or fix rates, valuations, charges or fees;
- (b) borrow money;
- (c) approve an expenditure of money on the works, services or operations of the council not set out in a budget approved by the council;
- (d) pay travelling allowances;

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

(f) do other prescribed things.

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

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

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

80. DISMISSAL OF OFFICERS AND EMPLOYEES

(1) A council may suspend or dismiss an officer or employee of the council.

(2) An action, under this Division, of a council in relation to an officer or employee is subject to an award relevant to, or contract with, the officer or employee.

81. INTERESTS OF OFFICERS AND EMPLOYEES

(1) An officer or employee of a council shall not have an interest in a contract made by the council.

(2) An officer or employee of a council who is exercising a delegated authority and has an interest in a matter coming before him while exercising that authority, shall refer the matter to the council for determination.

(3) For the purposes of determining whether an officer or employee has an interest for the purposes of this section, section 24(2) and (3), with the necessary changes, shall apply.

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

(5) A person who contravenes or fails to comply with sub-section (1), (2) or (4) is guilty of an offence.

Penalty: \$10,000.

(6) A conviction for an offence against sub-section (5) shall not prejudice other remedies available to the council in relation to the matter out of which the conviction arose.

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(7) Subject to sub-section (5), an action or proceeding, civil or criminal, shall not lie against a person who is, or who has been, an officer or employee of a council for or in relation to an act or thing done in good faith by the person in his capacity as such an officer or employee.

(8) The Regulations may provide for -

(a) the reduction in status of officers and employees and prescribe rights of appeal against such reduction in status;

(b) the purpose of determining entitlements of officers or employees dependent on length of service, that service with one or more councils shall be deemed continuous and prescribe the method of determining the amount of payment of contribution by former employing councils to the council granting the entitlement; and

(c) the establishment and operation of superannuation funds for officers and employees and prescribe the rates of benefits and contributions.

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

82. AUTHORIZED PERSON

(1) For the purpose of enforcing this Act, the Regulations or By-laws, and another Act the enforcement of which is vested in a council, the council may appoint a person, not being a member, to be an authorized person.

(2) An appointment under sub-section (1) shall be notified in the Gazette.

(3) The clerk shall issue to each authorized person appointed under sub-section (1) an identity card containing a passport-type photograph and the signature of the authorized person verified by the clerk.

(4) Before, under sub-section (6), an authorized person demands the name and address of a person or on entering land or a building he shall, on demand, produce the identity card issued to him under sub-section (3) to the person required to give his name and address to the authorized person or a person claiming to be the owner or occupier of the land or building which the authorized person is entering.

(5) The failure of an authorized person to produce his identity card as required by sub-section (4) does not

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invalidate an action taken or thing done by him in pursuance of his powers under this section.

(6) A person appointed under sub-section (1) as an authorized person may -

- (a) demand the name and address of a person whom he reasonably suspects of having committed an offence against this Act, the Regulations, By-laws or another Act in relation to which he is appointed an authorized person;
- (b) with the consent of the occupier of land or a building, or in pursuance of a search warrant issued by a Justice, enter land or a building where he has reasonable grounds to believe an offence has been, is being or is about to be, committed against an Act, regulation or by-law he is empowered to enforce; or
- (c) call on a member of the Police Force for assistance.

(7) A person who -

- (a) after a demand under sub-section (6)(a) has been made of him, refuses to give his name and address;
- (b) obstructs or hinders an authorized person in the execution of his duty; or
- (c) falsely represents himself to be an authorized person,

is guilty of an offence.

Penalty: \$500.

PART III - LOCAL GOVERNMENT ASSOCIATION

83. INCORPORATION OF NORTHERN TERRITORY LOCAL GOVERNMENT ASSOCIATION

(1) The Northern Territory Local Government Association is hereby constituted a body corporate by the name "Northern Territory Local Government Association".

(2) The Association -

- (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

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

(4) The first members of the Association shall be the councils which, immediately before the commencement of this Act, were members of the Northern Territory Local Government Association.

(5) The Constitution of the Association is, subject to this Part, the Constitution of the Northern Territory Local Government Association as in force immediately before the commencement of this Act.

(6) An amendment of the Constitution of the Association shall not take effect unless it is approved by the Minister.

(7) An amendment of the Constitution of the Association that is approved by the Minister takes effect -

- (a) where the amendment specifies a day on which it is to take effect, being a day not earlier than the day on which the Minister approves the amendment - on the day so specified; and
- (b) in any other case - on the day on which the Minister approves the amendment.

(8) All property held, immediately before the commencement of this Act, by a person, in trust or otherwise, for or on behalf of the Northern Territory Local Government Association is, subject to any charge or liability affecting the property, vested in the Association.

PART IV - FUNCTIONS AND POWERS OF LOCAL GOVERNMENT

Division 1 - Functions

84. FUNCTIONS OF LOCAL GOVERNMENT

(1) In relation to the functions of local government specified in Schedule 2, the Administrator shall, as soon as practicable after a municipality is constituted under section 6 or 7(1)(c)(iii), by notice in the Gazette, declare that the council of the municipality has -

- (a) only those functions of local government specified in the notice; or
- (b) all the functions of local government other than those specified in the notice,

and, subject to sub-section (2), the council has those functions accordingly.

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(2) A function of local government referred to in sub-section (1) may be subject to such conditions, if any, as the Administrator thinks fit and specifies in the notice under that sub-section or in a subsequent notice in the *Gazette*.

(3) In relation to the functions of local government which a council has by virtue of sub-section (1), the council is charged with the peace, order and good government of the municipality and has the control of the working of that good government.

(4) The mayor and clerk of a council shall perform their functions and exercise their powers under this Act only in relation to the functions of local government which the council has by virtue of sub-section (1).

85. FUNCTION UNDER ANOTHER ACT

Where, by or under an Act other than this Act, a council has a function, it -

- (a) may perform that function; and
- (b) has the same powers under section 87 in relation to the function as if it were a function which the council has under this Act.

86. FUNCTION PERFORMED OUTSIDE MUNICIPALITY

(1) Where, in relation to a proposed performance of a council's function outside its municipality (including the exercise of a power for the purposes of the performance of a function), the Minister is satisfied that -

- (a) the proposed performance is not detrimental to the municipality or Territory; and
- (b) in the case of the proposed performance within another municipality, the council of the other municipality has consented to the performance,

he may consent to the proposed performance.

(2) Where, under sub-section (1), the Minister consents to the performance of a function outside a municipality by a council, the council may perform that function accordingly and for that purpose may exercise, under section 87, powers in relation to that function and other powers under this Part (including a power under section 94 or 95) outside its municipality.

87. POWERS OF LOCAL GOVERNMENT

Subject to this Act, a council -

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

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

the purpose of performing its functions.

Division 2 - Specific Powers

88. COUNCIL MAY CARRY OUT WORK FOR OTHER PERSONS

A council may -

- (a) at the request of a person, carry out work for, or provide goods or services of any nature to or on behalf of, the person and may charge the person the cost to the council of so doing;
- (b) carry out, on behalf of a person, work required under a by-law to be carried out by the person and recover from that person, in accordance with the By-laws, the expense of so doing, or such proportion of that expense as it thinks fit; and
- (c) let or hire out its machinery and appliances.

89. CONTRACTS

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

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

- (a) is required by law to be in writing and under seal, or to be proved by writing under seal, may be made by the council in writing and under its common seal;
- (b) is required by law to be in writing signed by or on behalf of the party to be charged, or to be proved by writing so signed, may be made in writing -
 - (i) under the common seal of the council; or
 - (ii) signed by the mayor and clerk, or by 2 or more aldermen, acting by direction and on behalf of the council; or
- (c) would be valid although not reduced to writing or could be proved without writing, may be made -
 - (i) in writing under the common seal of the council;
 - (ii) in writing signed by the mayor and clerk, or by 2 or more aldermen, acting by direction and on behalf of the council; or

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

and may be varied or discharged in the same manner.

90. COUNCIL MAY COMPOUND

A council may compound with a person -

- (a) who has entered into a contract with the council;
- (b) by whom an action or proceeding has been brought or is threatened to be brought; or
- (c) against whom an action or proceeding has been brought or is contemplated by the council,

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

Division 3 - Roads

91. CONTROL OF ROADS

(1) Notwithstanding another Act but subject to sub-section (4), all roads within a municipality, except those roads in relation to which the Minister has made a declaration under sub-section (2), are under the control and management of the council of the municipality.

(2) The Minister may, by notice in the *Gazette*, declare that the control and management of a road within a municipality is vested in the Territory.

(3) Notwithstanding a declaration under sub-section (2) relating to a road within a municipality, a by-law made by the council relating to the use of roads by persons, with or without a motor vehicle within the meaning of the *Motor Vehicles Act*, applies to and in relation to the road and all persons using it.

(4) The Regulations may prescribe the procedures for the opening and closing of all roads in a municipality or the roads within a municipality under the control and management of the council.

92. THINGS GROWING OR ERECTED ON, OR AFFIXED TO, ROADS

(1) All things growing or erected on or affixed to a road within a municipality are the property of, and are under the control and management of, the council except for such things as are under the control or management of the Commonwealth or Territory or a statutory authority of the Commonwealth or Territory or are used in connection with a trading undertaking or public utility conducted or maintained by the Commonwealth, Territory or such statutory authority.

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(2) Notwithstanding section 91(3) and sub-section (1) of this section, a council shall not erect or affix a sign or post on or near, or mark, a road vested in the Territory, which sign, post or mark relates to the movement of traffic, whether vehicular or pedestrian, without an approval under sub-clause (3).

(3) For the purposes of sub-section (2), the Minister responsible for the administration of the *Traffic Act*, or a person whom he authorizes to give approvals under this sub-section, may approve of a council erecting or affixing a sign or post on or near, or marking, a road vested in the Territory.

93. TITLE NOT AFFECTED

Nothing in this Division affects the title to land comprising a road.

Division 4 - Council Property

94. PROPERTY

(1) A council may -

- (a) purchase or otherwise acquire real or personal property for the public benefit of its municipality and the purpose of performing its functions;
- (b) accept a gift, conveyance or assignment of real or personal property for a charitable or public purpose and hold that property on trust, or for a purpose, declared by the donor;
- (c) accept a gift, conveyance or assignment of real or personal property absolutely without any limitations of trusts or otherwise; and
- (d) accept a gift, conveyance or assignment of real or personal property subject to conditions, other than conditions in relation to religious worship.

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

- (a) where property is held in trust by the council or is placed under its care, control or management for a purpose, it shall be dealt with in a manner consistent with the trust or purpose; and
- (b) the council shall not grant a lease of that property for a term exceeding 50 years.

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(3) A council may sell or exchange real or personal property acquired by it -

- (a) except where the sale or exchange is inconsistent with a trust under, or a purpose for, which it was acquired; and
- (b) where the property was acquired with the assistance of a monetary grant or subsidy from the Territory or was granted or given to the council by the Territory - with the consent, in writing, of the Minister.

(4) In addition to the powers set out in section 103C of the *Crown Lands Act*, by-laws of a council shall apply to a reserve or a reserve under section 99 of the *Planning Act*.

(5) Subject to -

- (a) sub-section (2)(b);
- (b) the Regulations; and
- (c) the approval of the Minister,

a council may grant a lease of the whole or a part of a reserve in its municipality which has been leased to it.

(6) Subject to the conditions by which a reserve is placed under the care, control and management of a council, the council may deal with a reserve placed under its care, control and management as if it was the owner of it.

(7) In this section, unless the contrary intention appears, "reserve" means a reserve under section 103 of the *Crown Lands Act*.

95. COMPULSORY ACQUISITION OF PROPERTY

A council may, for a public purpose, compulsorily acquire land on just terms and in accordance with the prescribed procedures.

PART V - RATES AND FINANCES

Division 1 - General

96. DEFINITIONS

In this Part, unless the contrary intention appears -

"land" means a parcel of land registered under the *Real Property Act* and includes a unit within the meaning of the *Unit Titles Act*;

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"urban farm land" means a parcel of land which is more than 0.8 hectare in area and which is wholly or mainly used for the time being by the occupier for carrying on a prescribed business or industry and from which business or industry the occupier derives the whole or a substantial part of his livelihood;

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

Division 2 - Liability for Rates

97. RATABLE LAND

(1) For the purposes of raising money to be expended by the council for or in relation to the performance of its functions, but subject to this Part, a council shall rate all land within its municipality but may not rate the following:

- (a) Crown land occupied by the Territory (not being land occupied for the purpose of an industrial or commercial undertaking conducted by or on behalf of the Territory) or land owned by the Commonwealth;
- (b) a reserve, park, sports ground, playground, garden, cemetery or road, which is a public place;
- (c) land on which is built a church, chapel or building used for public worship or a building used solely for the accommodation of the official head of a religious denomination or order in the Territory or minister of religion in charge of a parish;
- (d) land used or occupied for the purposes of a public hospital, benevolent institution or charity;
- (e) land used or occupied solely in connection with a kindergarten, pre-school or school or an institution declared by a council to be a youth centre;
- (f) common property in a units plan registered under the *Real Property (Unit Titles) Act*; and
- (g) land used or occupied solely for the purposes of a public library or public museum.

(2) For the purposes of sub-section (1), where there is a dispute as to whether land is a public place, used for a particular activity or owned or occupied by a particular person, the Tribunal has, on the application of a person or a council, the power to determine whether the land is a public place or so used, owned or occupied.

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(3) Land in a municipality is not ratable land if it is land which is exempt from payment of rates by reason of an Act other than this Act.

98. WHERE LAND BECOMES RATABLE

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

99. WHERE LAND CEASES TO BE RATABLE

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

- (a) has been paid in relation to that land - refund to the person who paid the rate; or
- (b) has not been paid in relation to that land - grant a rebate to the person who is liable for payment of the rate equal to,

that portion of the rate which is proportionate to that part of the financial year remaining after the land ceased to be ratable.

100. NOTICE OF CHANGE OF OWNERSHIP OF LAND

(1) A person who disposes of or acquires an estate or interest in land in a municipality shall, within 28 days from and including the date when he so disposes of or acquires the estate or interest, give notice in writing to the council of -

- (a) the prescribed particulars of the land; and
- (b) the name and address of the person to whom he disposed of or from whom he acquired, as the case may be, the estate or interest.

Penalty: \$500.

(2) This section does not apply to the granting or discharge of a mortgage or the granting or acceptance of a tenancy.

101. LAND HELD JOINTLY OR IN COMMON

Where ratable land is owned or held jointly or in common by 2 or more persons, those persons are jointly and severally liable for payment of the rate or a charge in relation to the land.

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102. PERSON ACQUIRING LAND LIABLE FOR OUTSTANDING RATES AND CHARGES

(1) A person who acquires an estate or interest, other than a tenancy, in ratable land is liable for payment of both current rates and charges and all arrears of rates and charges owing, at the time he acquired that estate or interest, in relation to the land.

(2) Sub-section (1) does not apply where the land is purchased by a bona fide purchaser for value who, not earlier than 7 days before the date on which he acquired the relevant estate or interest in the land, obtained a certificate under section 137 from the clerk that no rates or charges were, at that date, owing in relation to the land.

Division 3 - Rate Book

103. RATE BOOK

A council shall cause to be kept a record, to be known as the rate book, in which -

- (a) prescribed information; and
- (b) such other particulars relating to land in its municipality and the ownership of an estate or interest in such land as it thinks fit,

shall be entered.

104. MAINTENANCE OF RATE BOOK

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

(2) For the purposes of sub-section (1), the clerk shall -

- (a) correct errors in the rate book and shall maintain a record of such corrections;
- (b) include in the rate book particulars of land which becomes ratable;
- (c) delete from the rate book particulars of land which has ceased to be ratable; and
- (d) alter a value of land in the rate book so that the value is in accordance with the value in the valuation roll.

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105. URBAN FARM LAND

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

(2) A council shall, where it considers that ratable land stated in the rate book to be urban farm land has ceased to be urban farm land, by resolution, direct the clerk to make the necessary alteration in the rate book.

(3) For the purposes of this section, a council or a person authorized by resolution of a council may, by notice in writing, require a person who is the owner or occupier of land -

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

(b) which is the subject of a notice under sub-section (1),

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

(4) Where, without lawful excuse, a person fails, before the expiration of 28 days after the date of a notice under sub-section (3), to furnish the information requested in the notice to be furnished, he is guilty of an offence.

Penalty for an offence against this sub-section: \$200.

106. INSPECTION OF RATE BOOK

(1) A council shall ensure that an owner, occupier or mortgagee of land in the municipality, or an agent of such a person, may at all reasonable times during which the council office is open inspect and, on payment of a fee determined by the council, obtain an extract from, the rate book.

(2) An extract under sub-section (1) shall be certified by the clerk, or an officer authorized in writing by him, as a true copy.

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Division 4 - Appeals

107. APPEALS IN RELATION TO ENTRY IN RATE BOOK

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

- (a) there is an error in or omission from the entry;
- (b) he is not the owner or occupier so indicated; or
- (c) the land is not ratable land or is urban farm land.

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

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

108. APPEAL HEARD BY COUNCIL IN FIRST INSTANCE

(1) Where the clerk has been served with a notice under section 107(3), he shall -

- (a) give to the appellant notice of the council meeting at which the appeal will be considered; and
- (b) cause the notice to be laid before the council at its next ordinary meeting.

(2) Where the clerk causes a notice under section 107(3) to be laid before a council, the council shall at its next ordinary meeting allow or disallow the appeal and, where it allows the appeal, the clerk shall, as soon as practicable, cause an appropriate alteration to be made in the rate book.

(3) An appellant may appear before, and make submissions to, the council at the meeting of the council at which his appeal is to be allowed or disallowed.

109. REFERRAL OF APPEAL TO TRIBUNAL

Where a council, at its meeting at which the clerk causes a notice under section 107(3) to be laid before it, disallows an appeal, the clerk shall, as soon as practicable, refer the appeal to the Tribunal by serving the notice of the appeal on the Registrar of the Tribunal and shall notify the appellant, in writing, that he has done so.

Local Government

Division 5 - Rates and Charges

110. DEFINITIONS

In this Division -

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

"differential rates" means the percentages specified under section 114;

"general rates", in relation to a parcel of land, means the amount raised by a council as rates for general purposes by applying a uniform rate or differential rate to the assessed value of the parcel;

"local rate" means a rate imposed for a specific purpose in relation to a part of a municipality;

"uniform rate" means the percentage specified under section 113.

111. DECLARATION OF RATES

(1) A council shall, not less than 10 days after publication of the estimates under section 150(2), and before 30 September of each financial year or such later date as the Minister allows, by resolution at a meeting, declare for that financial year -

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

(b) whether general rates will be raised by the application of -

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

(ii) differential rates with or without minimum amounts being payable in the application of those different rates.

(2) A council, at the meeting referred to in sub-section (1), in addition to general rates -

(a) may declare a local rate;

(b) may declare an urban farm land rate; and

(c) shall declare charges under section 118 payable in relation to all ratable land,

for the financial year.

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112. ASSESSED VALUE AS BASIS OF VALUATION

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

- (a) the unimproved capital value;
- (b) the improved capital value; or
- (c) the annual value,

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

(2) Where a council has, under sub-section (1), adopted a method of determining the assessed value of land, it shall not, before the expiration of 3 years after the previous adoption, vary that method or adopt another method, unless the Valuer-General for the Territory appointed under the *Valuation of Land Act* has, in writing, advised the council that he no longer proposes to prepare valuations of the kind used by the council in determining that assessed value.

(3) A council shall, at the meeting referred to in section 111(1), adopt an amount as the total of the assessed value of all land within its municipality, as calculated from the valuation roll.

113. UNIFORM RATE

Where, under section 111(1)(b)(i), a council declares that general rates will be raised by the application of a uniform rate, it shall specify a percentage as the uniform rate and the general rates for each parcel of ratable land shall be calculated by multiplying the assessed value of that parcel by the percentage so specified.

114. DIFFERENTIAL RATES

(1) Where, under section 111(1)(b)(ii), a council declares that general rates will be raised by the application of differential rates, it shall specify -

- (a) the different percentages; and
- (b) the conditions upon which each percentage shall be applied,

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

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(2) For the purposes of sub-section (1), the specified conditions shall be that a parcel of land is within a specified -

- (a) ward;
- (b) town within the meaning of the *Crown Lands Act*;
- (c) part of a municipality; or
- (d) zone, within the meaning of a relevant planning instrument under the *Planning Act*,

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

115. MINIMUM AMOUNT PAYABLE

Where -

- (a) under section 111(1)(b), a council declares a minimum amount or amounts payable; and
- (b) on the application of the uniform rate or differential rates, as the case may be, to the assessed value of a parcel of land, the rates payable in relation to the parcel of land would, but for this section, be less than the amount declared as the minimum amount payable in relation to that parcel of land,

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

116. LOCAL RATE

(1) Subject to this section, where, under section 111(2)(a), a council has declared a local rate, it may declare that rate based on the assessed value of the ratable land within -

- (a) a specified part of its municipality for the purpose of -
 - (i) defraying the expense in relation to the performance of a function of the council within that part of its municipality; or
 - (ii) repaying, with interest, an advance made to, or debt incurred or loan raised by, the council in relation to the performance of a function of the council within that part of its municipality where, in the opinion of the council, the performance of that function is, or would be, of special benefit to the ratepayers of that part; or

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- (b) a part of its municipality which, in pursuance of section 7(1), has been annexed to the municipality, for the purpose of meeting a debt or liability for which the council has become liable as a consequence of that part being so annexed.

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

(3) The resolution in which a local rate referred to in sub-section (2) is declared shall specify -

- (a) the part of the municipality in relation to which the local rate is declared;
- (b) the class of owner or occupier on which the local rate is levied;
- (c) the fund (which may include a trading fund) to which the proceeds of the local rate apply;
- (d) the manner in which the local rate shall be assessed and levied; and
- (e) the manner in which an appeal, if made, may be made against an assessment.

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

117. URBAN FARM LAND RATE

Where, under section 111(2)(b), a council declares an urban farm land rate, it shall declare a proportion by which the amount, otherwise payable by the application of the uniform rate or a differential rate, in relation to those parcels of ratable land at that time shown in the rate book as urban farm land shall be reduced.

118. CHARGES FOR SERVICES

Where, in relation to a function of a council, the council provides or is willing and able to provide a service in relation to land, it may make a charge for the service.

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Division 6 - Payment of Rates and Charges

119. PUBLIC NOTICE OF RATES AND CHARGES

Before the expiration of 10 days after the declaration, under section 111, of rates and charges, a council shall give public notice of the rates and charges by publishing in the *Gazette* and in a newspaper circulating in the municipality, in a prescribed form, details of those rates and charges.

120. COUNCIL LEVYING RATES

(1) A council may levy rates and charges in relation to land by causing a notice to be served on the person liable under section 122 to pay those rates and charges.

(2) A notice under sub-section (1) shall contain -

(a) the prescribed information; and

(b) a statement as to whether the rates and charges may be paid on an annual, half-yearly or quarterly basis.

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

(a) personally;

(b) by prepaid post; or

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

(4) Where, under section 111, a council has declared more than one rate in a financial year, it may levy the rates as a combined rate.

(5) A council shall, whenever possible, levy in the financial year in which they are declared all rates and charges declared under section 111.

121. PROOF OF DECLARATION OF RATE

(1) The production of the *Gazette* in which a notice is given under section 119 is conclusive evidence of the rates and charges to which the notice relates having been duly declared by the council.

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

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

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- (b) showing an amount to be owing for rates or charges levied on land; and
- (c) an affidavit of service under section 120(3), shall be prima facie evidence that -
 - (d) the amount is owing to the council; and
 - (e) this Act has been complied with in relation to the declaration and levying of the rate or charge and the service of the notice of the rate or charge.

122. LIABILITY TO PAY RATES AND CHARGES

(1) Subject to section 137(4), the owner of land in relation to which a rate is levied or charge is made is liable for the payment of all rates and charges in relation to that land.

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

(3) Where there is, on ratable land, a dwelling house which is -

- (a) the property of the Territory; and
- (b) leased by the Territory to a person for residential purposes,

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

(4) Where the Territory pays rates to a council pursuant to sub-section (3), the amount of the rates so paid, or such portion of that amount as is proportionate to the part of the year to which the rate applies during which the person so occupies the land, is recoverable by the Territory as a debt due and payable to the Territory by that person.

(5) For the purposes of this section -

- (a) a dwelling house shall be deemed to be leased to a person if the land on which the dwelling house is situated is deemed to be leased to the person by virtue of section 6A of the *Crown Lands Act*; and
- (b) "dwelling house" includes a flat and any other portion of a building that constitutes a residential unit.

(6) Where land is held under lease from the Territory by 2 or more persons separately in any one

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year, whether with or without an interval between those persons so holding, the council may if it thinks fit -

- (a) adjust the rate between those persons, whether the rate is paid or unpaid, in such manner as it thinks fit;
- (b) if the rate is unpaid, recover from each of those persons the proportion of the rate so adjusted;
- (c) make a refund in accordance with the adjustment; or
- (d) write off a proportion of the amount owing in relation to an interval between those persons holding the lease.

123. RATES AND CHARGES A CHARGE ON LAND, &c.

Subject to this Act, a rate or charge which is due and unpaid, and costs awarded to a council by a court or the Tribunal in proceedings in relation to a rate or charge, are and remain -

- (a) in the case of a rate or charge levied in relation to land leased from the Crown - a first charge on the interest in the land of the person liable to pay the rates, charges or costs; and
- (b) in all other cases - a first charge on the land in relation to which the rate or charge was levied.

124. LIABILITY FOR ONE LEVY ONLY

Where a person was liable to pay rates or charges which were levied in relation to land and he has discharged that liability, he is not liable for further rates or charges in the same financial year in relation to the land, except those resulting from the correction of an error, whether or not the land was part of the municipality at the time that the rates or charges were levied.

125. PAYMENT OF RATES AND CHARGES

Rates and charges are due and payable, where they are to be paid -

- (a) annually - on the expiration of 28 days after the date on which a notice under section 120(1) in relation to the rates and charges is served on the person liable to pay them; or
- (b) other than annually - on the dates specified in the notice under section 120(1) as the due dates.

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126. DISCOUNT FOR PROMPT PAYMENT

(1) For each financial year a council may, by resolution at the meeting referred to in section 111(1), declare that a discount shall be given for the prompt payment of rates and charges.

(2) A discount declared under sub-section (1) shall be calculated at the prescribed rate on a monthly basis and shall be rounded up to the nearest dollar.

127. PENALTY FOR LATE PAYMENT

(1) For each financial year a council may, by resolution at the meeting referred to in section 111(1), determine a penalty for the late payment of rates and charges.

(2) A penalty under sub-section (1) shall be calculated at the prescribed rate on a monthly basis from the date that the rates and charges were declared until the date payment in full is made and the amount of the rates and charges together with penalty calculated to that second-mentioned date, shall be rounded down to the nearest dollar.

(3) Where a rate or charge in relation to which a penalty has been declared under sub-section (1) is overdue, the council may remit all or a part of the penalty otherwise payable under this section where it is of the opinion that there was a satisfactory reason for payment of the rates or charges being overdue.

128. PAYMENTS TO BE APPROPRIATED TO RATES IN ORDER OF RATES BECOMING DUE

Where money is paid to a council for rates or charges, the council shall, notwithstanding a direction to the contrary by the person paying that money, apply the money -

- (a) where rates or charges are due and payable for more than one financial year, for or towards the payment, in accordance with paragraph (b), of the rates and charges which have been due and payable for the greatest period; and
- (b) in relation to rates and charges due and payable in relation to each financial year, for or towards the payment of rates and, where a surplus remains after the payment of the rates, to the payment of charges, due and payable in the order in which they became due and payable.

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129. COMBINED RATES OR CHARGES TO BE APPORTIONED AND PAID TO SEPARATE ACCOUNTS

Where money is paid to a council in payment of several rates which have been levied as a combined rate, the council shall apportion that money between, and credit it to, the several accounts of the council in the proportion to which the several rates bear to the combined rate.

130. RATE CONCESSIONS

(1) Where, in the opinion of a council, it is necessary or expedient for the purpose of securing the proper development of a part of its municipality or preserving buildings or places of historical interest, the council may grant to a ratepayer a rebate or concession in relation to the rates and charges payable on ratable land.

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

- (a) a cultural purpose;
- (b) for the promotion of the welfare or health of members of the public;
- (c) for the advancement or encouragement of agriculture; or
- (d) for the provision of recreation or amusement for members of the public,

the council may, in its discretion, remit payment of the rates and charges, or a specified percentage of them, in relation to the ratable land of the association.

(3) Where a council has, under sub-section (1), granted a rebate or concession in relation to the payment of rates or charges and the ratepayer has failed to carry out the development in accordance with his previous undertaking to the council, the council may, by notice served on him, require him to pay the whole, or a further part, of the rates or charges before a date specified in the notice.

(4) Where, under sub-section (3), a council requires a ratepayer to pay rates or charges which were previously the subject of a rebate or concession, it may require a further payment of so much of the penalty under section 127 in relation to the late payment of the rates or charges as it thinks fit as if the relevant rebate or concession under this section had never been granted, and the ratepayer shall be liable accordingly.

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131. DEFERMENT OF PAYMENT OF RATES

(1) Where a council is satisfied, on the application of a ratepayer who is the occupier of ratable land, that payment of rates or charges due and payable by him in relation to the ratable land would cause hardship to him, it may, by resolution, defer payment of the whole or part of the rates or charges for such period as it thinks fit.

(2) Where a council has, under sub-section (1), deferred payment of rates or charges, a ratepayer who would, but for this section, be liable to pay the rates or charges is not so liable until the expiration of the period of the deferment.

(3) Where a council has, under sub-section (1), deferred payment of rates or charges and -

- (a) it is of the opinion that the circumstances of the ratepayer have changed and that payment of rates or charges previously deferred would no longer result in hardship to him; or
- (b) the ratepayer has ceased to occupy the ratable land the subject of the deferment,

the council may, by notice to the ratepayer, require him to pay the whole or part of the rates or charges before a date specified in the notice.

(4) Where, under sub-section (3), a council requires a ratepayer to pay rates or charges previously deferred, it may require the further payment of so much of the penalty under section 127 in respect of the late payment of the rates or charges as it thinks fit as if the relevant deferment under this section had never been granted, and the ratepayer shall be liable accordingly.

132. RATES AND CHARGES MAY BE WAIVED IN CASES OF HARDSHIP

- (1) A person who is -
 - (a) a prescribed person; or
 - (b) suffering financial hardship or, if he pays the full amount of rates or charges he would but for this section be liable to pay, likely to suffer financial hardship,

may apply to the council for it to waive the whole or part of his rates and charges or a penalty imposed in relation to them.

(2) A person or body who provides a home for persons suffering financial hardship or for aged persons may apply to the council for the council to waive the whole or part of that first-mentioned person's or body's rates and charges or a penalty imposed in relation to them.

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(3) Where a council receives an application under sub-section (1) or (2), it may require the applicant -

- (a) to give further particulars in relation to the application as the council thinks fit; and
- (b) verify particulars supplied in relation to the application.

(4) Where a council receives an application under sub-section (1) or (2) and it is satisfied that it should waive the whole or part of rates and charges, or a penalty imposed in relation to them, it may, as it thinks fit, so waive the rates, charges or penalties and the person or body is, accordingly, no longer liable to pay those rates, charges or penalties, as the case may be.

133. COUNCIL MAY REQUIRE OCCUPIER TO PAY RENT IN PAYMENT OF RATES OR CHARGES IN CERTAIN CIRCUMSTANCES

(1) Where a rate or charge in relation to ratable land is due and unpaid, the clerk may serve notice on the person liable for its payment stating that, after the expiration of 7 days from the date of service of the notice, the clerk may serve notice on the occupier of the ratable land in relation to which the rate or charge is due, requiring the occupier to pay rent then due or becoming due by him in relation to the land, as it falls due, to the council until the amount of the rate or charge is paid in full.

(2) After the expiration of 7 days from the date of service of a notice under sub-section (1), the clerk may serve a notice on the occupier of the ratable land in relation to which the rate or charge is due and payable, requiring the occupier to pay rent then due or becoming due by him in relation to the land, as it falls due, to the council until the amount of the rate or charge is paid in full.

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

134. RIGHTS OF COUNCIL WHERE OCCUPIER FAILS TO PAY RENT

Where a person who has been served with a notice under section 133 fails to pay the rent in accordance with the notice, the council may recover the amount required by the notice to be paid, or such portion as remains unpaid, as a debt due and payable to the council by that person.

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135. COUNCIL MAY SUE FOR RATES OR CHARGES

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

136. POWER TO SELL LAND

(1) Where a rate or charge payable under this or another Act to a council in relation to ratable land has remained unpaid for not less than 5 years, the council has, by virtue of this section, power -

- (a) to sell the land; and
- (b) to transfer the land sold.

(2) A power under sub-section (1) -

- (a) shall not be exercised unless, in the 5 year period, the council exercised its rights under section 135; and
- (b) shall be exercised as prescribed by the Regulations.

(3) The Regulations may prescribe, in addition to the procedures to be followed in relation to the sale of land by a council exercising a power under sub-section (1) -

- (a) additional powers necessary or convenient for the exercise of that power;
- (b) rights, obligations and liabilities in relation to the sale;
- (c) how the purchase money for the sale of the land is to be applied; and
- (d) remedies in the case of default, including the conferring of jurisdiction on a court in relation to those remedies.

Division 7 - Certificates as to Liabilities

137. CERTIFICATES AS TO RATES, CHARGES, ORDERS, &c.

(1) An owner, occupier or mortgagee of land or a person authorized in writing by an owner, occupier or mortgagee may apply to a council for a certificate as to -

- (a) the amount, if any, due and payable to the council for rates, charges or otherwise; and

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- (b) the notices or orders issued by the council for work to be carried out in relation to the land, under this or another Act.

(2) An application under sub-section (1) shall be in writing addressed to the clerk and shall state the name and address of the applicant and the purpose for which, and the particulars of the land in relation to which, the information is required.

(3) The clerk, or an officer of the council authorized in writing by him, shall, on payment of the prescribed fee, give or post to an applicant under sub-section (1) a certificate in writing signed by the clerk or authorized officer, stating -

- (a) the details of the rates, charges or amounts of money (if any) due and payable to the council in relation to the land or that no such rates, charges or amounts are then due or payable, as the case may be;
- (b) the work (if any), the cost or part of the cost of which may be recovered under this or another Act by the council from the owner or occupier of the land, which has been carried out by the council, or that no such work has been carried out; or
- (c) the details of current notices or orders issued in relation to the land by the council, under this or another Act,

as the applicant requires.

(4) A certificate under sub-section (3) is, for all purposes, conclusive evidence in favour of a bona fide purchaser for value of the information stated in it as at the date of the certificate and in relation to the 7 days immediately after that date.

(5) For the purposes of this section, rates, charges or amounts of money shall be deemed to be due and payable, notwithstanding that the requisite period after service of a notice under this Act in relation to them has not expired.

Division 8 - Financial Administration

Sub-division A - Accounts, Estimates, &c.

138. COUNCIL ACCOUNTS

(1) A council shall establish and keep, or cause to be established and kept, in the prescribed manner accounts of the income and expenditure of the council.

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(2) This Act applies to the accounts of a council in relation to a reserve under section 103 of the *Crown Lands Act*, a cemetery within the meaning of the *Cemeteries Act* or other land vested in the council.

139. SEVERAL FUNDS OF COUNCIL

(1) A council shall establish or cause to be established -

- (a) a general fund;
- (b) a trading fund in relation to each trading undertaking of the council; and
- (c) a trust fund.

(2) A council shall keep its several funds separate and distinct from each other.

(3) For the purposes of sub-section (1), the Minister may, by notice in the *Gazette*, declare whether an undertaking of a council is a trading undertaking.

140. BANK ACCOUNTS

(1) Except as otherwise provided by or under this or another Act, a council's money shall be kept, as prescribed, at a bank.

(2) A person shall not, except with the authority of a council, open an account with a bank for the deposit or withdrawal of the council's money.

141. INCOME

The income of a council shall comprise all moneys received or receivable by the council.

142. CLASSIFICATION OF INCOME AND EXPENDITURE

A council shall allocate its income and expenditure to the respective funds to which the income or expenditure relates.

143. GENERAL FUND

The income of a council relating to its general fund shall consist of all moneys received or receivable by it other than moneys required or permitted by or under this or another Act to be credited to a trading fund or trust fund.

144. EXPENDITURE FROM GENERAL FUND

A council may expend moneys from its general fund for a purpose authorized by or under this or another Act and in accordance with its approved annual estimates.

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145. INCOME OF TRADING FUND

The income of a council relating to its trading fund shall consist of all moneys -

- (a) required by or under this or another Act to be paid into the fund; and
- (b) received or receivable for the purpose for which the fund is established.

146. EXPENDITURE FROM TRADING FUND

A council may expend money from a trading fund for a purpose for which the fund is established or for another purpose authorized by or under this or another Act.

147. BALANCE REMAINING WHEN TRADING FUND CLOSED

Where a trading fund in which a credit balance remains is closed, the council shall transfer the balance to its general fund.

148. INCOME OF TRUST FUND

(1) The trust fund of a council shall consist of the trust accounts established under this or another Act or as accounts forming part of the trust fund.

(2) A council shall credit to each account of a trust fund -

- (a) moneys granted by the Territory to the council on the condition that they shall be used for a specified purpose;
- (b) moneys, and moneys received as income from property, held by the council by way of deposit or in trust for a person; and
- (c) moneys given or bequeathed, and moneys received as income from property assigned, conveyed, bequeathed or devised, to the council in trust for a charitable or public purpose.

149. EXPENDITURE FROM TRUST FUND

(1) No person shall withdraw money from an account of a trust fund except for the purpose for which the account is established or for another purpose authorized by or under this Act or another Act.

(2) A council may -

- (a) open a trust account to form part of a trust fund and specify the purpose for which the account is opened; or

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- (b) close a trust account, not being a trust account authorized or required by or under this or another Act to be opened or kept.

(3) Subject to this or another Act, where a council is satisfied at any time that there is available in a trust account a credit balance in excess of the amount reasonably required for the purposes of the account, it may direct that the whole or a part of that excess be transferred from the trust account to the general fund.

(4) Where a council holds money or property by way of deposit or in trust for a person, it shall pay the money or transfer the property to or on behalf of the person in accordance with his directions but, if moneys have remained in a trust account for more than 10 years, the council may, in pursuance of section 44 of the *Trustee Act*, pay those moneys into the Supreme Court.

150. ADOPTION OF ESTIMATES

(1) A clerk shall in each financial year, before the declaration of a rate or charge under this Act, cause to be prepared in the prescribed manner and submitted to the council, estimates of income and expenditure for that financial year in relation to the general fund and each trading undertaking of the council.

(2) Subject to such variation as the council thinks fit, estimates under sub-section (1) shall be adopted by the council and published, as prescribed.

151. BALANCED ESTIMATES

Where, under section 150, a council, within the prescribed time, adopts estimates, it shall ensure that, as far as practicable, the estimated expenditure balances with the estimated income.

152. STATEMENTS OF INCOME AND EXPENDITURE

At the prescribed times in each year, a clerk shall cause to be prepared and submitted to the council a statement comparing the actual income and expenditure of the council with the estimated income and expenditure.

153. ANNUAL FINANCIAL STATEMENT

A council shall cause to be prepared, in the prescribed manner, annual financial statements in relation to each fund of the council.

154. INVESTMENT OF SURPLUS MONEY

Where a council has money surplus to its immediate requirements, it may, as it thinks fit, invest that money in prescribed securities or investments.

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155. RESERVES

(1) A council may expend the income of the council relating to a fund in providing a reserve account for a purpose authorized or prescribed by or under this Act.

(2) Payments from a reserve account shall not, without the approval of the Minister, be made for a purpose other than that for which the reserve was established.

156. LONG SERVICE LEAVE RESERVE

A council shall, unless otherwise approved by the Minister, for the purpose of complying with the requirements of the *Long Service Leave Act* applicable to it, establish and maintain a reserve account, to be known as "The Long Service Leave Reserve", so that the amount in that account is, on 30 June of each year, not less than the amount that is necessary to comply with those requirements as on that date.

157. LOAN REPAYMENT RESERVE

(1) Where the principal and interest on a loan to a council are not repayable by periodical instalments of principal and interest during the term of the loan, the council shall establish and maintain a reserve account for the repayment of the loan.

(2) Where -

(a) a council has, under sub-section (1), established and maintained a loan repayment reserve account; and

(b) after the loan has been repaid a credit balance remains in the reserve account,

the council shall transfer that balance to the fund in relation to which the reserve account was established and maintained.

Sub-division B - Loans, &c.

158. OVERDRAFT

(1) Subject to sub-section (2), for the purposes of the temporary accommodation of a council in relation to its general fund or a trading fund, the council may obtain advances from a bank, by overdraft, on the security of the income of that general fund or trading fund.

(2) A council shall not obtain an advance under sub-section (1) where the total amount of the overdraft exceeds one-half of the income of the fund for which the advance is obtained.

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(3) For the purposes of this section, the auditor for a municipality shall certify, in the prescribed form, the overdraft limit for the council.

159. ORDINARY LOANS

For the purpose of performing a function under this or another Act, a council may borrow money -

- (a) in the case of money borrowed in relation to the general fund - on the security of the rates; and
- (b) in the case of money borrowed in relation to a trading fund - on the security, including by way of mortgage, of the assets of the undertaking.

160. LIMIT ON BORROWING FOR GENERAL FUND

A council shall not borrow moneys in relation to its general fund unless it has obtained the approval, in writing, of the Minister.

161. USE OF LOAN MONEY RESTRICTED

(1) Where a council raises money by borrowing, the money from the loan shall not be used except -

- (a) for a purpose for which the loan was raised;
- (b) where the council, in anticipation of raising a loan for a specific purpose, used money from its general fund - to recoup its general fund to the extent to which it has so used moneys from that fund;
- (c) to repay the principal amount of the loan; or
- (d) where the Minister has, under sub-section (2), approved the use of the money for a purpose other than for the purpose for which it was borrowed - for that other purpose in accordance with the Minister's approval.

(2) The Minister may, in writing, approve the use of loan money for a purpose other than for the purpose for which the money was borrowed.

162. RENEWAL LOAN

A council may raise a renewal loan for the purpose of repaying the balance outstanding on an existing loan.

163. SALE OF ASSETS PROVIDED FROM OUTSTANDING LOANS

Where a loan was raised by a council to obtain an asset and the loan is unpaid when the asset is sold, the council shall first apply the proceeds of the sale to the repayment of the loan.

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164. COUNCIL MAY ISSUE DEBENTURES, &c., AS SECURITY

(1) A council may, in the prescribed form, issue debentures or grant mortgages for the purpose of securing the repayment of the principal and interest of moneys borrowed in pursuance of this Act.

(2) Subject to sub-section (3), a debenture issued or a mortgage granted under sub-section (1) by a council -

(a) shall be under the common seal of the council; and

(b) shall, subject to the *Companies Act*, have priority as against other debentures, bonds or mortgages according to its date of execution.

(3) Debentures under sub-section (1), by which a particular loan is raised, rank equally with each other.

165. TERRITORY GRANTS AND SUBSIDIES

The Minister may withhold from a council money payable by way of a subsidy or grant by the Territory, until he is satisfied that the council has -

(a) discharged a duty imposed on it by this or another Act; or

(b) fulfilled conditions imposed on it by the Minister in relation to a previous subsidy or grant.

Sub-division C - Auditor and Audits, &c.

166. COUNCIL TO APPOINT AUDITOR EACH ALTERNATE YEAR

(1) A council shall, in November in each alternate year -

(a) appoint the Auditor-General, or a person who holds prescribed qualifications, to be the auditor for its municipality; and

(b) determine the amount of the fee to be paid to the auditor in accordance with the prescribed scale.

(2) Subject to this sub-division, a person appointed as auditor shall hold office for 2 years commencing on 1 January next following his appointment.

(3) Subject to section 168, an auditor is eligible for re-appointment.

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167. NOTICE OF APPOINTMENT

The clerk shall cause a notice of the appointment under section 166 of an auditor to be published in the Gazette within 14 days after the appointment.

168. PERSON DISQUALIFIED FROM BEING AUDITOR

A person appointed as an auditor is disqualified from holding office as the auditor for a municipality where he -

- (a) is or becomes a member of the council;
- (b) holds an office of profit under, or at the disposal of, the council other than as auditor;
- (c) is directly or indirectly interested in a contract with, or employment under, the council;
- (d) becomes mentally ill within the meaning of the *Mental Health Act*;
- (e) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (f) is convicted of an indictable offence or is sentenced to a term of imprisonment for not less than 12 months for an offence against a law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth; or
- (g) fails to comply with a prescribed requirement.

169. VACANCY IN OFFICE OF AUDITOR

(1) The office of the auditor for a municipality becomes vacant where he resigns, dies or is disqualified, under section 168, from holding office.

(2) Where a vacancy occurs in the office of auditor, a council shall, within 28 days after the date on which the vacancy occurred, appoint another person who is qualified to be an auditor to that office.

(3) A person appointed under sub-section (2) holds office until the expiration of the 2 year period for which the auditor, in whose stead he is appointed, was appointed.

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170. MINISTER MAY APPOINT AUDITOR IN CERTAIN CIRCUMSTANCES

Where a council fails to appoint an auditor in accordance with this sub-division, the Minister may, by notice in the Gazette, appoint an auditor for the municipality.

171. TERM OF OFFICE OF AUDITOR APPOINTED BY MINISTER

An auditor appointed under section 170 shall -

- (a) subject to this Act, hold office for the period specified in the instrument of his appointment; and
- (b) be paid by the council such fees and allowances as are fixed by the Minister.

172. POWERS AND DUTIES OF AUDITOR

An auditor for a municipality -

- (a) shall, at least once each financial year, and at such other times as is, in his opinion, necessary to satisfy prescribed requirements, audit the accounts and records of the municipality and report to the council in relation to each audit;
- (b) shall be entitled, at all reasonable times, to full and free access to all accounts and records of the municipality and to make copies of, or take extracts from, those accounts and records;
- (c) shall certify, in the prescribed form, the amount which the council may borrow by way of limited overdraft in relation to each fund of the council in pursuance of section 158; and
- (d) may, at the request of the council, perform additional audits, as specified in the request.

173. SPECIAL REPORT

Where an auditor, in the course of the performance of his duties as the auditor for a municipality, is satisfied that -

- (a) there has been a breach or non-observance of this Act or the Regulations; and
- (b) the circumstances are such that, in his opinion, the matter has not been or will not be adequately dealt with by comment in his report on the accounts or by bringing the matter to the notice of the council,

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he shall, as soon as practicable, in writing, report the matter to the Minister.

Sub-division D - Inspectors and Inspections, &c.

174. APPOINTMENT OF INSPECTORS OF LOCAL GOVERNMENT AND COMMUNITY GOVERNMENT

(1) The Minister may, by notice in the *Gazette*, appoint such persons to be -

- (a) inspectors of local government; or
- (b) inspectors of community government,

as he thinks fit.

(2) An inspector of local government may exercise his powers under this sub-division as if the reference to "council" in the sub-division included a community government council.

(3) An inspector of community government may exercise his powers under this sub-division as if the reference to "council" in the sub-division was a reference to a community government council.

175. POWERS AND DUTIES OF INSPECTORS

An inspector -

- (a) may inspect the accounts, books and records of a council and the organization and management of the council's activities;
- (b) shall, where during an inspection he has observed an irregularity, dishonesty or breach of a law in force in the Territory (including the By-laws of a council), report it to the Minister and the council;
- (c) may report on such other matters as, in his opinion, call for special notice or are prescribed; and
- (d) shall inquire into and report on matters which the Minister requires him to investigate.

176. PROCEDURE WHERE INSPECTOR CONSIDERS EXPENDITURE, &c., SHOULD BE DISALLOWED

Where an inspector considers that -

- (a) an expenditure, transfer or entry in the accounting records of a council has been incurred or made in contravention of a law in force in the Territory (including the By-laws of the council);

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(b) a deficiency or loss has been incurred by the negligence or misconduct of a member, officer or employee of the council; or

(c) money which ought to have been brought into account has not been brought into account,

he shall call on the person -

(d) by whom the expenditure, transfer or entry was made or caused to be made;

(e) by whose negligence or misconduct the inspector believes the deficiency or loss has been incurred; or

(f) who has failed to bring into account money which ought to have been brought into account,

to show cause why the inspector should not cause a surcharge to be made against that person.

177. INSPECTOR TO MAKE SURCHARGE IN CERTAIN CIRCUMSTANCES

(1) Where a person, who has been called on to show cause under section 176, does not satisfy the inspector that a surcharge should not be made against him, the inspector shall cause a surcharge to be made against that person by giving him notice, in the prescribed form and manner, of the amount of the surcharge.

(2) A surcharge made under this section shall not exceed the amount of the expenditure, transfer, entry, deficiency or loss or the amount which has not been brought into account, as the case may be, in relation to which the action of the inspector relates.

178. PERSON SURCHARGED MAY APPLY TO TRIBUNAL

(1) A person to whom notice is given under section 177(1) may, within 28 days after and including the date on which he receives the notice, apply to the Tribunal against the imposition or the amount of the surcharge and the Tribunal has jurisdiction to hear and determine the application.

(2) The Tribunal may, upon hearing an application under this section, confirm, reduce or annul a surcharge and make such order, as to costs or otherwise, as it thinks fit.

179. SURCHARGE A DEBT DUE TO COUNCIL

Where a person against whom a surcharge is made -

(a) does not, in accordance with section 178, apply against the imposition of that surcharge;

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- (b) applies in accordance with section 178, but the Tribunal does not reduce or annul the amount of the surcharge; or
- (c) applies in accordance with section 178 and the Tribunal reduces the amount of the surcharge,

the amount of the surcharge, or the amount to which the Tribunal reduces it, as the case may be, is a debt due and payable by that person to the council.

180. COUNCIL MAY APPROPRIATE CERTAIN MONEYS, &c., IN SATISFACTION OF SURCHARGE

(1) Where a surcharge imposed in accordance with this Act is due and payable to a council and the council holds money or property of the person who owes the surcharge, the council may -

- (a) appropriate so much of that money as is necessary to satisfy the amount of the surcharge; and
- (b) retain the property as security for the payment of the surcharge.

(2) A portion of a surcharge not satisfied under sub-section (1) remains a debt due and payable to the council.

(3) Where, under sub-section (1)(b), a council retains property as security for payment of a surcharge and 6 months have expired since the surcharge was imposed, the council may sell the property, as it thinks fit.

(4) Where, under sub-section (3), a council sells property, it may deduct from the proceeds of the sale costs and expenses incurred by it in relation to the sale as well as other amounts due and payable under this Act.

(5) No action shall lie against a council by a person in relation to the council's actions under this section (including a person claiming through the person upon whom the surcharge was imposed in relation to the sale of property under sub-section (3)).

(6) Where, after all proceeds of a sale have been used under sub-section (4) to pay amounts due and payable to the council, the council shall pay the balance, if any, of the proceeds to the person on whom the surcharge was imposed.

181. MEMBERS OF COUNCIL OWING SURCHARGE FOR 6 MONTHS DISQUALIFIED

Where a surcharge, or a part of a surcharge, owing to a council by a member, remains unpaid -

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- (a) where the member does not apply to the Tribunal against the imposition of the surcharge - for 6 months after the last date on which he could have so applied; or
- (b) where the member applies against the imposition of the surcharge but the Tribunal does not annul the surcharge - for 6 months after the date on which the Tribunal hands down its determination,

the person by whom the surcharge is owing is, by force of this section, disqualified from holding office as a member of the council until the amount owing has been paid.

Sub-division E - General

182. AUDITOR, &c., MAY SUMMON WITNESS

(1) For the purposes of this Act, an auditor or an inspector may, by notice in writing in the prescribed form, summon a person to attend before him, at a time and place specified in the notice, and then and there to give evidence and to produce such books, documents and other writings in his custody or control as are likely to be relevant for the purposes of the investigation by that auditor or inspector or as are specified in the notice.

(2) A notice under this section may be served personally or by registered post.

(3) A person who has been served with a notice under sub-section (1) shall attend before the auditor or inspector at the time and place specified in the notice and produce such books, documents and other writings in his custody or control as he is required by the notice to produce.

Penalty: \$1,000.

183. AUDITOR, &c., MAY ADMINISTER OATH TO WITNESS

(1) An auditor or inspector may administer an oath to a person appearing as a witness before him, whether the witness has been summoned or appears without being summoned, and may examine the witness on oath.

(2) A person who appears as a witness before an auditor or inspector shall not refuse or fail -

- (a) to take an oath in accordance with this section; or
- (b) to answer a question put to him by the auditor or inspector relating to matters which the auditor or inspector is authorized or required

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by or under this Act to inquire into, investigate or determine.

Penalty: \$1,000.

184. DISCLOSURE OF INFORMATION

A member, officer or employee of a council who refuses or fails, without lawful excuse, to allow an auditor or an inspector access to accounting or other records, including registers, of the council in his custody or control or to give information or explanation as and when required under section 172 or 176 or otherwise hinders, obstructs or delays an auditor or inspector in the performance of his duties or the exercise of his powers, is guilty of an offence.

Penalty: \$2,000.

PART VI - LOCAL GOVERNMENT TRIBUNAL AND LOCAL GOVERNMENT APPEAL TRIBUNAL

Division 1 - Local Government Tribunal

185. LOCAL GOVERNMENT TRIBUNAL

(1) There shall be a Tribunal to be known as the Local Government Tribunal.

(2) Each Magistrate appointed or holding office under the *Magistrates Act* shall, by virtue of his office, be a member of the Tribunal.

(3) The Chief Magistrate appointed under the *Magistrates Act* shall, by virtue of his office, be the President of the Tribunal.

186. POWERS OF TRIBUNAL

(1) The Tribunal has power to hear and determine an application made, or a matter referred, to it under this Act.

(2) The Tribunal may, in writing under the hand of a member of the Tribunal, summon a person to attend before it, at a time and place specified in the summons, and then and there to give evidence and to produce books, documents and other writings in his custody or control as he is required by the summons to produce.

(3) A summons under sub-section (2) may be served on the person to whom it is addressed -

(a) personally; or

(b) by delivering it to a person, who has apparently attained the age of 16 years, and is apparently residing or employed, at the premises at which

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the person to be served resides or carries on business.

(4) Where a matter has been referred, or an application has been made, to the Tribunal and it has heard and determined the matter, it may order the clerk to make an alteration to the rate book as a consequence of the determination of the Tribunal.

187. SITTINGS OF TRIBUNAL

(1) The Tribunal may sit at such times as are necessary to conduct the business of the Tribunal and shall be constituted for the purposes of a hearing by one or more members.

(2) A member of the Tribunal may sit and perform the functions and exercise the powers of the Tribunal notwithstanding that another member of the Tribunal is at that time sitting and performing those functions and exercising those powers.

188. PROCEDURE OF TRIBUNAL

(1) At the hearing of an application or matter -

(a) the practice and procedures of the Tribunal are, subject to this Act, as determined by it;

(b) the Tribunal is not bound to act in a formal manner and is not bound by rules of evidence but may inform itself on any matter in such manner as it thinks fit; and

(c) the Tribunal shall act without regard to technicalities or legal form.

(2) Where the Tribunal is hearing an application or before an application is commenced, the Tribunal may refer the application or a part of the application to the Appeal Tribunal.

189. REPRESENTATION OF PARTIES

At the hearing of an application or matter by the Tribunal, a party may appear personally or may be represented by a legal practitioner or by another person authorized in writing by the party.

190. ADMISSION OF EVIDENCE

The Tribunal may receive such evidence, including hearsay evidence, in such manner and in such form as it thinks fit.

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191. REGISTRAR OF TRIBUNAL

(1) The Clerk of each Local Court shall be a Registrar of the Tribunal and his office shall be a registry of the Tribunal.

(2) The Clerk of the Local Court situated at Darwin shall be the Principal Registrar of the Tribunal.

192. REGISTRAR TO ACT AS SECRETARY

(1) The Clerk of the Local Court situated nearest to a place where the Tribunal sits shall act as secretary to the Tribunal for the purpose of that sitting.

(2) Each Registrar shall keep and maintain a register, in a form approved by the President, in which the Registrar shall cause to be entered particulars of applications or matters referred to his registry.

(3) Each Registrar of the Tribunal, other than the Principal Registrar, shall, as soon as practicable, forward to the Principal Registrar a copy of each entry made in the register kept and maintained, in pursuance of sub-section (2), by him.

(4) The Principal Registrar shall keep and maintain a register, in a form approved by the President, in which the Principal Registrar shall cause to be entered particulars of all applications and matters referred to each registry, compiled from -

- (a) entries made in the register kept and maintained in pursuance of sub-section (2) by him; and
- (b) copies of entries forwarded to him in pursuance of sub-section (3).

193. RECORDING OF ORDERS

Where the Tribunal makes an order under this Act, the Registrar of the Tribunal in whose registry the application or matter was instituted shall, on application by or on behalf of a party to the proceeding and on payment of the prescribed fee (if any), issue to or for that person a certificate, in the prescribed form, of the order and shall make a minute or memorandum of the issue in the register.

194. PERSONS SUMMONED TO ATTEND

A person served with a summons to attend at a sitting of the Tribunal shall not, after a reasonable amount for his expenses of attendance has been paid or tendered to him, without reasonable excuse, fail to attend the Tribunal or fail to produce books, documents or other writings in his custody or control that he is required by the summons to produce.

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Penalty: \$500.

195. WITNESS TO GIVE SWORN EVIDENCE

(1) Subject to sub-section (2), a person appearing as a witness before the Tribunal shall not refuse to be sworn or to make an affirmation or to answer a question, relevant to the proceeding put to him by the Tribunal.

Penalty: \$500.

(2) A person appearing as a witness before the Tribunal shall not be compellable to answer a question tending to criminate himself.

196. TRIBUNAL MAY ORDER COSTS

(1) The Tribunal may make such orders as to costs in an application or matter before it as it thinks fit.

(2) Where a Tribunal makes an order as to costs and the costs are to be taxed by a Registrar, the costs to be applied shall be in accordance with the prescribed scale.

(3) Costs awarded by the Tribunal shall be a debt due and payable by the person ordered to pay them to the person in whose favour they are awarded.

197. OBLIGATION TO PAY RATE OR CHARGE NOT SUSPENDED

Subject to an order made by the Tribunal, the obligation to pay and the right to recover a rate or charge is not suspended by an application to the Tribunal, but where an amount has been paid to a council by an appellant, which the Tribunal subsequently holds not to have been properly payable by him, the council shall, as soon as practicable, refund that amount to the appellant.

198. TRIBUNAL'S DECISION REFERRED TO APPEAL TRIBUNAL

(1) Where the Tribunal hears and determines an application or matter, a person aggrieved by the decision of the Tribunal may appeal to the Appeal Tribunal against an order or decision of the Tribunal on a question of law.

(2) Subject to an appeal under sub-section (1) or a reference under section 188(2), the decision of the Tribunal is final and shall not be capable of being reviewed in a court of law by prerogative writ or otherwise.

Division 2 - Local Government Appeal Tribunal

199. LOCAL GOVERNMENT APPEAL TRIBUNAL

There is hereby established a Local Government Appeal Tribunal which shall be constituted by a Judge of the Supreme Court appointed by the Chief Justice.

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200. APPEALS TO APPEAL TRIBUNAL

(1) Where an application, or part of an application, is referred under section 188(2) to the Appeal Tribunal, it shall accept the reference and may make orders and give directions as it thinks proper in relation to, and to the procedure to be followed in, the further conduct of the application or part, as the case may be, including in a case where evidence was received before the reference, orders and directions in relation to the use, if any, to be made of that evidence.

(2) Where an appeal under section 198 is made to the Appeal Tribunal, it shall hear the appeal and -

- (a) remit the matter to the Tribunal for determination by the Tribunal in accordance with the decision of the Appeal Tribunal; or
- (b) make such order in relation to the appeal as it sees fit.

201. APPEAL TRIBUNAL'S DECISION FINAL

A decision of the Appeal Tribunal is final and shall not be capable of being reviewed in any court of law by prerogative writ or otherwise.

202. RULES AND PROCEDURE OF TRIBUNALS

(1) The Judges appointed under section 32(1) of the *Supreme Court Act* who are not additional Judges, or a majority of them, may make rules, not inconsistent with this Act -

- (a) regulating the practice and procedures of the Appeal Tribunal and, subject to section 188(1), the Tribunal;
- (b) providing for the awarding of costs in matters before the Appeal Tribunal;
- (c) regulating the referral of matters to the Appeal Tribunal; and
- (d) conferring on the Tribunal or Appeal Tribunal additional powers which are necessary or convenient for carrying out functions under this Act, including powers to impose and enforce penalties for a contravention of or failure to comply with the rules.

(2) The rules made under sub-section (1) may confer on the Master of the Supreme Court powers and functions in relation to the Tribunal or Appeal Tribunal and applications and matters referred to the Tribunal or Appeal Tribunal, as the case may be, and the Master may exercise those powers and shall perform those functions accordingly.

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(3) Subject to sub-section (1), the practice and procedures of the Appeal Tribunal in relation to an application or matter referred to it are as determined by it.

PART VII - REGULATORY

Division 1 - By-laws

203. POWER TO MAKE BY-LAWS

(1) A council may make by-laws, not inconsistent with this Act, the Regulations, another Act or, subject to sub-section (2), regulations other than regulations under this Act, for or in relation to the performance of a function vested in it.

(2) Where a council proposes to make by-laws which are inconsistent with a regulation, other than a regulation under this Act -

(a) the council may apply to the Minister to suspend the application of the regulation within the municipality; and

(b) after consultation with the minister responsible for the administration of the Act under which the regulation is made, the Minister may, by notice in the *Gazette*, suspend the application of that regulation within the municipality.

(3) Where, under sub-section (2)(b), the Minister suspends the application of a regulation within a municipality -

(a) the council may, under sub-section (1), make by-laws notwithstanding that those by-laws are inconsistent with that regulation; and

(b) the suspension comes into operation immediately before the By-laws take effect and the regulation does not apply to or in relation to the municipality, the council or persons within the municipality to the extent of the terms of the suspension.

204. MAKING BY-LAWS

(1) By-laws made under this Part may be expressed to bind the Crown in right of the Territory, but no such by-laws shall take effect before the expiration of 12 sitting days of the Legislative Assembly after they have been laid before the Assembly in accordance with section 63(3)(c) of the *Interpretation Act* and, if no later date for the commencement of the By-laws is provided for in the By-laws, they shall take effect on the day immediately following that expiration as if, for the purposes of section 63(3)(b) of the *Interpretation Act*,

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that date was expressly provided for in the By-laws as the date of commencement.

(2) Subject to sub-section (3), by-laws shall be made by a council at a meeting at which not less than two-thirds of the members then in office are present, by resolution carried by a majority of the members then in office.

(3) By-laws shall not be made by a council unless the council has obtained from the person occupying the Public Service designation "Parliamentary Counsel", or a person authorized by him, a certification that the proposed By-laws will be, when made, within the powers of the council to so make them.

(4) The common seal of a council shall be affixed to by-laws made by it.

205. REGULATIONS TO PREVAIL OVER EXISTING BY-LAWS

Subject to an express provision to the contrary in those regulations, where regulations are made under an Act, other than this Act, and they are inconsistent with a by-law previously made under this Act, the by-law to the extent of that inconsistency is of no force or effect.

206. PENALTIES AND RECOVERY OF EXPENSES

(1) By-laws may prescribe penalties, not exceeding \$2,000 or imprisonment for 6 months, for a failure to comply with, or a contravention of, the By-laws and, in addition, may prescribe a penalty, not exceeding \$100, for each day during which the offence or contravention continues.

(2) Where no penalty is expressly prescribed in the By-laws for a failure to comply with, or a contravention of, the By-laws, a court of competent jurisdiction may impose a penalty not exceeding \$1,000 or imprisonment for 3 months in relation to the failure or contravention.

(3) By-laws may provide that, in addition to a penalty imposed in relation to a failure to comply with or a contravention of the By-laws, an expense incurred by a council in consequence of that failure or contravention, or in the execution of work required by the By-laws to be executed by a person and not executed by him, shall be recovered in whole or in part from the person failing to so comply with or contravening the By-laws or failing to execute the work, as a debt due and payable by that person to the council.

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207. PERMITS, LICENCES, FEES AND CHARGES

By-laws may -

- (a) prescribe or provide that a council may, by resolution, determine charges, dues, fares, fees and rents in relation to a property, undertaking, service, matter or thing;
- (b) prescribe, regulate or determine the purposes for which and the conditions on which a council will grant permits, licences, authorities and registrations or perform or supply a service, product or commodity or an item of information; and
- (c) prescribe the manner in which applications may be made for permits, licences and authorities and the fees payable for such permits, licences and authorities to be granted by the council and for the renewal or transfer of those permits, licences and authorities.

208. REQUIREMENTS OF BY-LAWS AS TO EXECUTION OF WORKS

(1) By-laws may -

- (a) require work to be executed or a thing to be done by a person to whom the By-laws apply -
 - (i) in or of such materials;
 - (ii) within such periods; and
 - (iii) in such manner,
as is directed in a particular case by the council, an officer or employee of the council or any other person referred to in the By-laws;
- (b) require work to be executed only by qualified and licensed persons; and
- (c) provide that the council may carry out work required by or under this Act to be executed, on default by the person required to execute the work.

(2) Without limiting the generality of the powers conferred on a council by sub-section (1), the power to direct the manner of execution of work shall include the power to require the person carrying out the work to pay to the council, or enter into a bond for payment to the council of, such amount as it thinks fit to provide security against costs which it may incur as a result of the execution of the work.

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209. APPLICABILITY OF BY-LAWS

(1) By-laws may be made to apply to the whole, or separately to a part or parts of, a municipality and may make provision in relation to prescribed matters of prohibition, restraint or regulation, either absolutely or in relation to classes, grades, situations, distances or other acts, matters or things to be laid down or referred to in general terms therein, and with or without relation to a right of approval, disapproval or inspection to be vested in a council or an officer or employee of the council.

(2) Notwithstanding that by-laws are expressed to apply to the whole, or separately to a part or parts of a municipality or to all classes or a particular class of persons, a council may, at a meeting of which not less than 14 days notice has been given, by resolution carried by not less than a majority of the members then in office, determine that the application of the By-laws be limited -

- (a) by suspending the By-laws in their entirety for such period; or
- (b) by ceasing to apply the By-laws to such part or parts of the municipality or such classes of persons or such situations,

as are specified in the resolution, and the By-laws shall be suspended or cease to apply accordingly but, in any case, for no longer than 12 months.

(3) A council shall cause a copy of a resolution made under sub-section (2) to be published in the Gazette as soon as practicable, but not later than 28 days, after the resolution is passed.

210. ENFORCEMENT

By-laws may authorize officers, employees, persons appointed by a council or, without derogating from their general power, members of the Police Force to arrest or remove persons offending against a by-law.

211. FIXED PENALTY FOR BREACH OF BY-LAWS

(1) In this section "fixed penalty" means the specified sum referred to in sub-section (2) payable in lieu of the penalty which may otherwise be imposed for an offence against a by-law.

(2) Subject to this section, by-laws may provide that a person who is alleged to have infringed those by-laws and on whom a notice of infringement has been served may pay to the council, as an alternative to prosecution, a specified sum, in lieu of the penalty by which an infringement of those by-laws is otherwise punishable.

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(3) By-laws which provide for the imposition of a fixed penalty shall specify -

- (a) the amount of the fixed penalty;
- (b) subject to sub-section (4), the form of a notice of infringement;
- (c) the person or persons who may issue a notice of infringement;
- (d) the person to whom payment of the fixed penalty may be made; and
- (e) the period within which the fixed penalty shall be paid in order to avoid prosecution.

(4) A notice of infringement shall indicate -

- (a) the name of the alleged offender;
- (b) in general terms the nature of the offence alleged to have been committed;
- (c) the date, time and place of the alleged offence;
- (d) the amount of the fixed penalty;
- (e) the period within which, and the place where, the fixed penalty may be paid; and
- (f) that the alleged offender may, if he so wishes, be dealt with by a court of competent jurisdiction.

212. BY-LAWS IN RELATION TO OFFENCES CONCERNING MOTOR VEHICLES

Where by-laws create an offence concerning a motor vehicle, the By-laws may provide that, in relation to the offence -

- (a) the owner of the vehicle shall be deemed to have committed the offence;
- (b) evidence that -
 - (i) the name and address of a person were shown painted on or affixed to the outside of a vehicle; or
 - (ii) the name and address of a person purporting to be the name and address of the registered owner of a vehicle were shown in any manner in or upon that vehicle,

is evidence that the person whose name and address were so shown was at the time they were shown the owner of that vehicle; and

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- (c) the owner of a vehicle shall not be deemed to have committed an offence if he was not in control of the vehicle at the time the offence was committed and -
 - (i) not later than 14 days after the day on which he is served with a notice of infringement in relation to the offence he furnished to the clerk a statutory declaration in which he states facts which prove to the satisfaction of the clerk -
 - (A) that some other person was in control of the vehicle at the time when the offence was committed and that the name and address of residence of that other person are as set out in the statutory declaration;
 - (B) that he sold the vehicle before the offence was committed and that the sale was made on the date specified in the statutory declaration to a person whose name and address are as set out in the statutory declaration and, if the sale was made through an agent, that the name and address of the agent are as set out in the statutory declaration; or
 - (C) that at the time when the offence was committed he was unable to exercise any control over the vehicle because it had been stolen from him or was being used unlawfully without his consent; or
 - (ii) he satisfies the court hearing a charge for the offence as to the truth of the matters as to which he has made a statutory declaration under paragraph (c).

213. DELEGATIONS

- (1) By-laws may grant or delegate to a member or an officer or employee of the council the power -
 - (a) to sign, seal, or sign and seal, notices, orders and agreements which the council is entitled to issue, sign, seal, revoke or cancel;
 - (b) to sign letters, receipts and other documents; and
 - (c) to do or perform an act, deed, or thing necessary, ancillary or incidental to the exercise of the functions of the council.

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(2) By-laws may leave a matter or thing to be determined, applied, dispensed with, prohibited or regulated by the council from time to time by resolution, either generally or for a class or classes of cases or in a particular case.

214. EVIDENCE AND JURISDICTION

By-laws may prescribe as to matters that shall be received in evidence and as to the burden of proof in relation to offences against the By-laws.

215. PROOF OF BY-LAWS

The production of -

- (a) a copy of a by-law of a council purporting to be certified as a true copy of the by-law signed by the clerk; and
- (b) the *Gazette* in which notice by the Minister of the making of the by-law is published,

is conclusive evidence of the by-law having been made and the contents of the by-law.

216. BY-LAWS TO BE MADE AVAILABLE TO PUBLIC

(1) A council shall cause printed copies of all by-laws made by it to be kept at its office where they may be inspected by members of the public during the business hours of the council.

(2) Copies of the by-laws referred to in sub-section (1) shall be made available by the council for purchase by members of the public at a reasonable cost.

217. OFFENCES UNDER BY-LAW AND ANOTHER LAW OF THE TERRITORY

Where an act or omission of a person within a municipality constitutes an offence against a by-law and also constitutes an offence against the Regulations or another Act or regulation under another Act, that person may be prosecuted and convicted under either the by-law or the Regulations or that other Act or regulation.

218. INCONSISTENCY BETWEEN BY-LAW AND TRUST

A by-law which is inconsistent with the trusts on, or the purposes for, which land or other property is held by a council, to the extent of that inconsistency, does not apply to or in relation to that land or other property.

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Division 2 - Miscellaneous

219. APPLICATION TO TRIBUNAL

(1) A person aggrieved by a decision, other than a decision to commence proceedings for an offence, of a council, made or taken under a by-law, may apply in the prescribed manner to the Tribunal against the decision.

(2) For the purposes of sub-section (1), the Tribunal has jurisdiction to hear and determine an application and may make such determination, including an order as to costs, as it thinks fit.

220. FINES, &c., TO BE PAID TO COUNCIL

Where a fine or monetary penalty is recovered by a council for offences committed in the municipality against this or another Act, or a regulation under this or another Act or against the By-laws, the fine or monetary penalty, as the case may be, shall be paid to the council.

221. FINES FOR OFFENCES WITHIN MUNICIPALITY

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

(2) Where it is provided by a law of the Territory that a function or power under that law may be performed or exercised by a council, or the Territory enters into an arrangement under sub-section (1) for the council to perform or exercise such a function or power within its municipality, all fees payable by a person under that law in respect of the performance of that function or exercise of that power, and fines or other pecuniary penalties recovered on prosecution by the council for an offence related to the performance of that function or exercise of that power, are payable to the council and may be recovered by the council as a debt due and payable to it.

222. COUNCIL MAY DIRECT INSTITUTION OF PROCEEDINGS, &c.

(1) Subject to this section, a council, or a person authorized by it, may direct, either generally or in a particular case, that proceedings be taken in the name of the council for -

- (a) the recovery of a rate, charge, fee or money under this Act;

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(b) the recovery of a penalty or surcharge in relation to an offence against this Act, the Regulations or the By-laws; or

(c) such other purpose as the council thinks fit, and those proceedings may be taken accordingly.

(2) This section does not prevent a person from taking proceedings against a council, member, officer or employee of a council or another person, for the recovery of a penalty or surcharge or in relation to an offence against this Act.

223. CLERK, &c., MAY REPRESENT COUNCIL IN PROCEEDINGS, &c.

(1) A clerk or a person authorized by a council may represent the council in all respects as though he was the party concerned in proceedings -

(a) before the Tribunal, the Appeal Tribunal, a court of summary jurisdiction or a local court;

(b) for a claim against the estate of a person who takes the benefit of an Act relating to bankruptcy or the relief of insolvent debtors; or

(c) for a claim in relation to the winding up of a company.

(2) A clerk or other person who, by reason of anything done by him in pursuance of this section, is put to or is chargeable with costs, charges, expenses or damages shall be reimbursed or indemnified, as the case may be, by the council out of its appropriate fund.

224. SERVICE OF SUMMONS, &c., ON COUNCIL

A document required or permitted by or under this or another Act to be served on or given to a council may be served or given to the council by being -

(a) handed personally to the clerk or by being left with an officer of the council at the council office; or

(b) posted to it by certified post addressed to the clerk at the council's postal address.

225. RECOVERY OF DAMAGES, &c.

(1) Whether or not a penalty imposed upon a person for a breach of this Act has been recovered, a council or community government council constituted under Part VIII may recover from that person -

(a) a sum for damage sustained by it through his act or default;

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the costs and expenses incurred by it in remedying that damage; or

(c) the value of anything wasted, misused or unlawfully consumed, diverted or taken by him.

(2) A penalty may be recovered notwithstanding that a council or community government council constituted under Part VIII has not exercised any other right of recovery.

(3) A prosecution or conviction for an offence against or under this Act does not affect a right of action of a person to recover any damage sustained by him.

226. PROOF OF PUBLIC ROAD, &c.

(1) In any prosecution or other legal proceedings under this Act, instituted by or under the direction, or on behalf of, or for the benefit of a council, in relation to an offence on a public road or footpath or in relation to an impounding, it shall not be necessary to prove the proclamation or dedication of the road or footpath, nor its alignment or measurements, but it shall be sufficient evidence of the fact that the place in which the offence was committed or from which the animal was impounded is a public road or footpath if it is proved that the place is a thoroughfare in the nature of a road or footpath and is open to, and is used by, the public.

(2) For the purposes of sub-section (1), "footpath" means that part of a road vested in a council which has been made or set apart for use otherwise than for the passage or accommodation of motor vehicles.

227. PROOF THAT PERSON OWNER, &c.

In any proceedings under this Act, a certificate signed by the Registrar-General and sealed with his official seal, that a person is an owner or lessee of a particular piece of land, is prima facie evidence that the person is the owner or lessee, as the case may be, of the land.

228. SERVICE OF NOTICES ON PERSONS

Where, under this Act (other than Part V), a notice is required or permitted to be served on a person, the notice may be served -

(a) personally on the person;

(b) by delivering it to a person who has apparently attained the age of 16 years, and is apparently residing or is employed, at the premises at which the person to be served resides or carries on business; or

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- (c) by posting it by registered post in an envelope addressed to the person at his usual or last-known place of residence or business.

229. CONTINUING EFFECT OF NOTICE SERVED ON OWNER OR OCCUPIER

A notice which is served under this Act on the owner or occupier of land is binding on a person claiming through, under, in trust for or in succession to that owner or occupier, as though the notice had been served on that person.

230. PROOF OF SERVICE OF NOTICES, &c.

In proceedings under, or arising out of, this Act, a declaration made under the *Oaths Act* by a person who has served a notice, which states the manner, place, time and date of service, shall be prima facie evidence of the service of the notice.

231. PROOF OF CERTAIN MATTERS NOT REQUIRED

In proceedings under this Act instituted by, under the direction of, on behalf of or for the benefit of, a council, proof shall not be required, until evidence is given to the contrary, of -

- (a) the constitution of its municipality;
- (b) the constitution of the council as the council for the municipality;
- (c) the election of the members;
- (d) the extent or the boundaries of the municipality;
- (e) the extent or the boundaries of a ward;
- (f) the fact that a particular place is within the municipality;
- (g) the appointment of the clerk or of another officer or employee of the council;
- (h) the particular or general appointment of the clerk, or another officer or employee of the council, as the proper person to do an act, or for a purpose under this Act;
- (j) the order in pursuance of which, or the authority under which, an officer or employee of the council initiates a prosecution;
- (k) the presence of a quorum of the council at the passing of a resolution or the making of an order by the council;

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- (m) the fact that a defendant is, or at a relevant time was -
 - (i) the owner or occupier of land in question; or
 - (ii) the owner, or in possession or charge, of a thing or animal in question; or
- (n) the signature of the clerk.

232. AVERMENTS AS TO OFFICIAL TRAFFIC SIGNS

- (1) In this section, "official traffic sign" means -
 - (a) a traffic sign within the meaning of the *Traffic Act*; or
 - (b) a notice, sign or device marked, placed or erected on or at the side of a road, or near a road, in a municipality, by authority of the council of the municipality, for the purpose of regulating traffic or guiding, directing or warning persons in charge of motor vehicles.
- (2) In any prosecution for a contravention of, or failure to comply with, a by-law, an averment of the prosecutor contained in the complaint that -
 - (a) a notice, sign or other device is, or on a specified date was, an official traffic sign;
 - (b) a space is, or on a specified date was, a parking space;
 - (c) a device is, or on a specified date was, a parking meter installed in relation to a parking space by authority of a council; or
 - (d) a parking voucher was not displayed on or in a vehicle, in such a manner as to comply with the requirements of the by-law,

is evidence of the matter averred.

(3) Sub-section (2) applies to a matter averred although evidence in support or rebuttal of the matter averred or of any other matter is given.

(4) Evidence given in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of the evidence shall be neither increased nor diminished by reason of this section.

(5) An averment shall not be evidence for the purposes of this section unless a statement of the matter contained in the averment has been served on the defendant

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in the same manner as the process requiring his attendance before the court.

(6) Service of a statement of the matter contained in the averment may be proved in the same manner as service of the process requiring the defendant's attendance before the court may be proved.

(7) Upon the hearing of proceedings in relation to a contravention, or failure to comply with, a by-law, the court may, if the amendments can be made without hardship or injustice to the defendant, allow such amendments to be made in the writing containing an averment as appear to it to be desirable or necessary to enable the real question in dispute to be determined.

(8) Where the court considers a defendant has been misled by the form of an averment, it may refuse to allow any or all of the amendments, adjourn the hearing of the case for such period as it thinks fit and make such order as to the costs of the adjournment as it thinks proper.

(9) In a prosecution for an offence under the by-law in which it is alleged that a parking voucher was not at the relevant time displayed on or in a motor vehicle in such a manner as to comply with the requirements of the By-laws, it is a defence for the defendant to establish that he had displayed a parking voucher on or in the motor vehicle in accordance with the By-laws.

233. OCCUPIER MAY CARRY OUT REQUIRED WORK IN CERTAIN CIRCUMSTANCES

(1) Where an owner of land within a municipality fails to carry out work, which he is required to carry out pursuant to this Act or a by-law of the council, in connection with that land or with a building or other erection on that land, a person who is the occupier of that land, building or erection may, subject to the approval of the council, cause the work to be done.

(2) A person who causes work to be done in pursuance of this section may recover the cost of so doing from the owner or deduct that cost from any rent from time to time becoming due from him to the owner.

234. RIGHTS OF OWNER REGARDING ENTRY TO CARRY OUT REQUIRED WORK WHERE LAND, &c., IS OCCUPIED

(1) Where an owner of land within a municipality is required, pursuant to this Act or a by-law, to carry out work in connection with that land or with a building or other erection on that land, the owner may serve written notice personally or by post on the occupier of the land, building or erection, as the case may be, stating particulars of the work required to be done and requiring the occupier to permit him to enter with or without vehicles, machinery, workmen and others for the purpose of carrying out that work.

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(2) Where an occupier, at the expiration of 7 days from and including the day upon which a notice is served under this section, prevents the owner from entering in the manner specified in that notice, a justice of the peace may make an order in writing requiring the occupier to permit the owner to enter with or without vehicles, machinery, workmen and others for the purpose of carrying out the work specified in the order.

(3) An order made under sub-section (2) may be served personally or by registered post.

(4) A person, upon whom an order made under sub-section (2) is served, shall not prevent the owner or other persons specified in that order from entering upon the land in the manner specified in the order or from carrying out the work specified in the order.

Penalty: \$100 and \$50 for every day during which the offence continues.

(5) During such time as an occupier fails to comply with the requirements of an order made under sub-section (2), the owner is excused from liability under this Act for failing to carry out the work.

235. MEMBERS AND OFFICERS OF COUNCIL MAY ENTER LAND, &c., FOR CERTAIN PURPOSES

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

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

Division 3 - Regulations

236. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular for prescribing the practice and procedure to be followed in relation to the conduct of the

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financial and business affairs, and other operations and activities, of a council and prescribing penalties not exceeding \$2,000 or imprisonment for 6 months, or both, for offences against the Regulations.

PART VIII - COMMUNITY GOVERNMENT

Division 1 - Preliminary

237. APPLICATION

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

238. DEFINITIONS

In this Part, unless the contrary intention appears -

"auditor", in relation to a community government council, means the person who is appointed and holds office under Division 10 as the auditor of the council;

"clerk", in relation to a community government council, means the person appointed under section 268 as the clerk of the council;

"community government area" means a community government area constituted and in existence under a community government scheme;

"community government council" means the community government council for a community government area elected or appointed in accordance with this Part;

"community government scheme" means a scheme which is in force for the carrying out of local government or other functions by a community government council;

"election" means an election or by-election for members of a community government council;

"member", in relation to a community government council, means a member of the community government council;

"resident", in relation to an area, means a person who has -

(a) attained the age of 18 years; and

(b) continuously lived in the area for not less than 3 months.

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Division 2 - Contents of Community Government Schemes

239. CONTENTS OF COMMUNITY GOVERNMENT SCHEMES

Subject to this Part, a community government scheme may make provision for or in relation to -

- (a) the boundaries of the community government area to which the scheme applies;
- (b) the name of the community government council;
- (c) the composition of the community government council;
- (d) the form of the common seal of the community government council;
- (e) the times at which the community government council will meet to transact its business;
- (f) the procedure for calling meetings of the community government council;
- (g) the procedure to be followed at meetings of the community government council;
- (h) the method of determining the questions arising at meetings of the community government council;
- (j) the eligibility of persons to be members;
- (k) the eligibility of persons to vote at elections;
- (m) the appointment of officers for the conduct of elections of members;
- (n) the frequency of general elections;
- (p) the procedure for calling elections and the manner in which elections shall be held;
- (q) the removal and replacement of members, whether permanently or temporarily, as a result of their unauthorized absence from council meetings;
- (r) the appointment and powers of substitutes to act for members who are absent from the community government area; and
- (s) the functions to be performed by the community government council and the manner of performance of those functions.

240. MODEL PROVISIONS

(1) The Minister may approve a set of model provisions for community government schemes.

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(2) The Minister shall cause to be published in the *Gazette* notice of the approval of a set of model provisions under sub-section (1).

(3) A community government scheme may adopt by reference, wholly or partly, a set of model provisions approved under sub-section (1) by the Minister.

241. AMENDMENT AND REPEAL

A community government scheme may amend or repeal another community government scheme.

Division 3 - Preparation and Exhibition of Draft Community Government Schemes

242. APPLICATION FOR CONSTITUTION OF COMMUNITY GOVERNMENT COUNCIL

Ten residents of an area may apply in writing signed by each of them to the Minister for the establishment of a community government council for the area.

243. EXPLANATION OF APPLICATION

(1) Where the Minister receives an application under section 242, he shall -

- (a) inform the residents of the area to which the application relates of the receipt of the application;
- (b) fix a time and place for a meeting with those residents; and
- (c) notify the residents of the time and place fixed for the meeting under paragraph (b).

(2) At a meeting referred to in sub-section (1)(b), the Minister, or a person nominated by him, shall -

- (a) explain to the residents present at the meeting -
 - (i) the purpose of the application under section 242 received by him; and
 - (ii) the functions which a community government council may perform; and
- (b) endeavour to ascertain the opinion of the residents present at the meeting in relation to -
 - (i) the proposal to establish a community government council for the area or a part of it; and

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- (ii) the functions to be conferred on such a council, if established.

(3) The applicants under section 242 may, having regard to the opinions expressed at the meeting convened under this section, vary their application as they think fit but not so as to extend the area to which the application relates.

(4) The applicants may, by notice in writing served on the Minister, withdraw an application at any time before the approval under section 250 of a community government council.

244. PREPARATION OF DRAFT COMMUNITY GOVERNMENT SCHEMES

(1) On receipt of an application under section 242, the Minister may prepare a draft community government scheme.

(2) A community government council may prepare a draft community government scheme.

(3) A person may, at the request of not less than 10 residents of an area, prepare a draft community government scheme.

245. SUBMISSION TO MINISTER

A person other than the Minister who prepares a draft community government scheme shall submit the scheme to the Minister.

246. EXHIBITION OF DRAFT COMMUNITY GOVERNMENT SCHEMES

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

(2) Where a draft community government scheme is exhibited under sub-section (1), the Minister shall cause notice of the exhibition of the scheme to be published in -

- (a) the *Gazette*; and
- (b) a newspaper circulating in the area to which the draft community government scheme relates.

247. SUBMISSIONS

A person may make a submission to the Minister in relation to a draft community government scheme exhibited under section 246(1) within such period as is specified in the notice under section 246(2).

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*Division 4 - Approval of Draft Community
Government Schemes*

248. CONSULTATION

The Minister or a person authorized for that purpose by him shall consult with the residents of the community government area, or the area which is proposed to be constituted as a community government area, to which a draft community government scheme exhibited under section 246(1) relates, in relation to the contents of that scheme.

249. MINISTER TO BE SATISFIED OF CERTAIN THINGS

The Minister shall not approve under section 250 a draft community government scheme unless, where the draft community government scheme -

- (a) makes provision for fixing the boundaries of the community government area - he is satisfied that a substantial majority of the residents of the area to which the scheme relates is in favour of the boundaries of the community government area being fixed in that manner;
- (b) makes provision in relation to -
 - (i) the composition of the council;
 - (ii) the procedure for calling elections and the manner in which elections shall be held;
 - (iii) the eligibility of persons to be members;
 - (iv) the eligibility of persons to vote at elections;
 - (v) the removal and replacement of members as a result of their unauthorized absence from the council meetings; or
 - (vi) the appointment and powers of substitutes to act for members who are absent from the community government area,

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

- (c) provides for the carrying out of a function by the community government council - he is satisfied that -

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- (i) a substantial majority of the residents of the area to which the scheme relates is in favour of the community government council's performing the function; and
- (ii) the community government council or proposed community government council is capable of effectively performing that function.

250. POWERS OF MINISTER

- (1) The Minister may -
 - (a) approve;
 - (b) subject to sub-section (2), alter and approve as so altered; or
 - (c) reject,

a draft community government scheme.

(2) Where the Minister alters under sub-section (1)(b) a draft community government scheme in relation to a matter referred to in section 249, he or a person authorized for that purpose by him shall consult with the residents, as required by that section, in relation to the alteration before he approves the draft community government scheme as so altered.

251. NOTICE OF APPROVAL OF COMMUNITY GOVERNMENT SCHEME

(1) Where the Minister approves under section 250(1)(a) or (b), a draft community government scheme, he shall cause to be published in the *Gazette* -

- (a) notice of the approval of the scheme;
- (b) where the scheme makes provision in relation to the boundaries of the community government area - a description of the boundaries of the community government area; and
- (c) where the scheme makes provision for the alteration of the boundaries of the community government area by -
 - (i) the addition of land in another community government area to the community government area; or
 - (ii) severance of land from the community government area and its addition to another community government area,

a notice apportioning, settling and adjusting all property, writs, liabilities (including a

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liability arising under or from a loan or overdraft) and all other matters requiring adjustment in consequence of the alteration of those boundaries.

(2) Subject to section 253(2), a community government council to which a notice under sub-section (1)(c) applies is deemed -

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

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

252. PUBLIC NOTICE

The Minister shall cause to be published in a newspaper circulating in the area to which the community government scheme approved under section 250 applies, in such form as he thinks fit, notice of the approval of, and details of, the scheme.

253. COMMUNITY GOVERNMENT SCHEME TO BE LAW OF TERRITORY

(1) A community government scheme has effect on and from the day on which notice of the approval of the scheme is published under section 251(1)(a) in the Gazette or, if a later date is specified in the scheme, that later date.

(2) A community government scheme shall not be expressed to take effect, or be in terms so that but for this section it would take effect, from a date before the date on which notice of the approval of the scheme was published under section 251(1)(a) in a case where, if it so took effect -

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

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

and a provision in a community government scheme which does not comply with this sub-section is void.

(3) The Minister shall, within 6 sitting days of the Legislative Assembly after the date on which notice of approval of a community government scheme was given under section 251(1)(a), table the scheme in that Assembly.

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(4) A community government scheme which is not tabled in the Assembly as required by sub-section (3) is void.

(5) Where the Legislative Assembly passes a resolution notice of which has been given within 12 sitting days after a community government scheme has been tabled in the Assembly disallowing the scheme or any provision of it, the disallowance has, subject to sub-section (6), the same effect as a repeal of the scheme or provision.

(6) The disallowance of a community government scheme or provision referred to in sub-section (5) that repeals such a scheme or provision revives the last-mentioned scheme or provision from the date of the disallowance as though the first-mentioned scheme or provision had not been made.

Division 5 - Community Government Councils

254. COMMUNITY GOVERNMENT COUNCILS

Subject to Division 12, there shall be a community government council in relation to each community government area.

255. COMMUNITY GOVERNMENT COUNCIL TO BE BODY CORPORATE

(1) A community government council shall be a body corporate with perpetual succession and a common seal and shall be capable -

- (a) of suing and being sued;
- (b) of purchasing, holding and alienating land or other property; and
- (c) subject to this Act, of doing and suffering all such other acts and things as natural persons may do and suffer.

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

Division 6 - Elections

256. FIRST ELECTION

The Minister may, after he approves under section 250(1)(a) or (b) a draft community government scheme, request the Chief Electoral Officer to conduct, in accordance with this Act and the scheme, the election of members of the first community government council for that area.

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257. APPOINTMENTS

(1) Where the Minister is satisfied that, within 2 years before he approves a community government scheme, the residents of the area which, in the Minister's opinion, is the same or similar to the community government area have elected a number of persons to carry out functions of a similar kind to the functions which the community government council may, under that community government scheme, perform, he may appoint the persons so elected to be members of the community government council.

(2) An appointment under sub-section (1) shall be notified in the *Gazette* and shall take effect from -

- (a) the date of that notification; or
- (b) where there is a later date specified in the notification - the later date.

258. ELECTIONS

A general election shall be held before 31 December of -

- (a) in the case of a community government council which consists of members appointed under section 257 - the second year after the appointment of those members; or
- (b) in all other cases - the fourth year after the general election immediately before that election.

259. BY-ELECTIONS

It shall not be necessary to hold a by-election to fill a vacancy, howsoever arising, in the membership of a community government council where such vacancy arises later than 6 months before the last day upon which a general election is required to be held in accordance with section 258.

260. CLERK TO NOTIFY MINISTER OF ELECTION RESULTS

As soon as practicable after an election, the clerk shall notify the Minister of the results of the election.

Division 7 - Members

261. FEES AND EXPENSES

The Minister may determine the maximum amount of fees, allowances and expenses payable to members in relation to their service as members.

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262. DISQUALIFICATION FROM HOLDING OFFICE

A person who is a resident of a community government area, or the clerk, may apply to the Tribunal for a determination that a member is disqualified from holding or continuing to hold office as a member.

263. NOTIFICATION OF RESULT

Where an application under section 262 has been made to the Tribunal and the Tribunal has heard and determined the application, it shall cause notice of its determination to be given, in writing, to the clerk.

264. RESIGNATION

(1) A member may resign his office by notice in writing.

(2) A notice of resignation under sub-section (1) shall be delivered to -

- (a) the clerk; and
- (b) the Minister.

265. CLERK TO INFORM OF CERTAIN MATTERS

A clerk shall inform the community government council, at the first meeting held after he becomes aware of the fact, that -

- (a) the Tribunal has made a determination under section 263 in respect of a member; or
- (b) a member has resigned or died.

266. VACANCY OF OFFICE OF MEMBER

The office of a member becomes vacant when -

- (a) the member dies;
- (b) the term for which he was elected expires;
- (c) a notice of resignation given by him under section 264 is received by the clerk;
- (d) the Tribunal makes a determination under section 263 in relation to that member;
- (e) the member no longer has the eligibility requirement as set out in the community government scheme; or
- (f) the member is, by reason of his unauthorized absence from meetings of the council, removed in accordance with the community government scheme.

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267. PERFORMANCE OF FUNCTIONS, &c., NOT AFFECTED

The performance of the functions and exercise of the powers of a community government council are not affected by reason only of -

- (a) there being a vacancy in the office of a member;
- (b) there being a defect in the election of a member; or
- (c) a member having acted in office whilst being disqualified from holding office.

*Division 8 - Officers of Community
Government Councils*

268. CLERK

(1) A community government council shall appoint a person who -

- (a) has attained the age of 18 years; and
- (b) holds prescribed qualifications or is approved by the Minister,

to be the clerk of the council.

(2) Where the clerk is on leave or is absent from the community government area for not less than 7 days, the council shall appoint an acting clerk to perform the functions and exercise the powers of the clerk.

269. OTHER OFFICERS

A community government council may appoint such officers as it thinks necessary for the performance of its functions under this or another Act.

*Division 9 - Functions and Powers of Community
Government Councils*

270. FUNCTIONS OF COMMUNITY GOVERNMENT COUNCILS

A community government scheme shall not contain a provision for or in relation to the performance of a function by a community government council unless that function is a function in relation to -

- (a) commercial development;
- (b) communications;
- (c) community amenities;
- (d) education or training;
- (e) electricity supply;

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- (f) garbage collection and disposal;
- (g) health;
- (h) housing;
- (j) relief work for unemployed persons;
- (k) roads and associated works;
- (m) sewerage;
- (n) water supply;
- (p) welfare;
- (q) raising of revenue in accordance with this Part;
or
- (r) such other matters as are approved by the Minister.

271. RATES AND CHARGES

- (1) A community government scheme may provide -
 - (a) that land within the community government area is ratable;
 - (b) that the community government council may declare rates in relation to land within the community government area;
 - (c) for the liability of a person to pay rates;
 - (d) for the imposition of charges in relation to a person who resides in or carries on business in the community government area or has an interest in ratable land in the community government area;
 - (e) for the service of notices of rates and charges; and
 - (f) that a community government council may exempt land or persons, or a class of land or persons, from all or part of the rates and charges for which they would otherwise have been liable.
- (2) Where a community government scheme provides for rates and charges, the rates or charges may -
 - (a) be declared in relation to a person, whether or not the person uses a service provided by the community government council, if any, to which it relates;
 - (b) apply in relation to a period that commenced before the date on which the rate or charge is declared; and

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- (c) be declared at different rates or amounts for different persons or classes of persons.

272. POWERS OF COMMUNITY GOVERNMENT COUNCILS

(1) A community government council has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions and the exercise of its powers.

(2) Without limiting the generality of sub-section (1), for the purpose of performing its functions, a community government council may, subject to this Act, raise revenue by rating land within its community government area and charging for work done and for services, facilities, amenities and utilities provided.

273. ADVICE AND PROPOSALS

(1) A community government council may, whether or not the Minister or some other person holding office under an Act has so requested, advise the Minister or a person holding office under an Act upon a matter relating to the control, management, government of, or welfare of the persons in, the community government area and may, in relation to the advice, prepare and transmit to the Minister or that person proposals for the implementation or amendment of a law of the Territory relating to the affairs of the community government council or the community government area.

(2) The power of a community government council under sub-section (1) includes a power to lodge with the Registrar of Liquor Licences under the *Liquor Act* an objection, complaint or application, or notice of an opinion, required or permitted under that Act to be made or lodged.

Division 10 - Financial Administration

274. BOOKS OF ACCOUNT

A community government council shall cause -

- (a) books to be provided and kept; and
- (b) true and regular accounts to be entered in those books,

in relation to the funds of the council showing -

- (c) the assets, liabilities, income and expenditure of the council; and
- (d) the sources of income and purposes for which each item of expenditure is made.

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275. METHODS OF ACCOUNTING

A community government council shall cause its accounts to be kept -

- (a) in accordance with the prescribed method of accounting; and
- (b) in the prescribed forms or books.

276. BANK ACCOUNT

A community government council shall cause one or more bank accounts to be maintained by it.

277. BANKING OF MONEYS

The officer of a community government council having the conduct of the financial affairs of that council or, where there is no such officer, the clerk, shall cause all money received by him or another officer of the council on behalf of the council to be paid to the credit of -

- (a) where the money has been received by the council in trust for a person - a bank account maintained by the council for the purpose of receiving trust moneys; or
- (b) in all other cases - a bank account (other than a bank account referred to in paragraph (a)) referred to in in section 276.

278. POWER TO BORROW

A community government council shall not -

- (a) borrow money, whether by way of overdraft or otherwise; or
- (b) expend money obtained by borrowing,

except with the prior approval of the Minister and in accordance with conditions to which that approval is subject and in accordance with approved estimates.

279. POWER TO EXPEND FUNDS

Subject to this Act, a community government council may expend its funds, in accordance with its approved estimates, in carrying out its functions under this Act.

280. ADOPTION OF ESTIMATES

(1) A clerk shall, in each financial year, cause to be prepared in the prescribed manner and laid before the community government council estimates of income and expenditure for that financial year.

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(2) Subject to such variations as the community government council thinks fit, estimates, under subsection (1), laid before the council shall be adopted by it and published, as prescribed.

281. BALANCED ESTIMATES

Where, within the prescribed time, a community government council adopts estimates, it shall ensure that, as far as practicable, the estimated expenditure balances with the estimated income.

282. TERRITORY SUBSIDIES AND GRANTS

The Minister may withhold from a community government council money payable by way of a subsidy or grant by the Territory, until he is satisfied that the council has -

- (a) discharged a duty imposed on it by this Act; or
- (b) fulfilled conditions imposed on it by the Minister in relation to a previous subsidy or grant.

283. APPOINTMENT OF AUDITOR

(1) Subject to section 284, a community government council shall, in November in each alternate year -

- (a) appoint the Auditor-General, or another person, to be its auditor; and
- (b) determine the amount of the fee to be paid to its auditor.

(2) Subject to this Division, a person appointed as auditor for a community government council shall hold office for 2 years commencing on 1 January next following his appointment.

(3) Subject to section 286, an auditor for a community government council is eligible for re-appointment.

284. APPROVAL BY MINISTER

(1) Subject to this section, a community government council shall not appoint a person as its auditor unless he is a member of an institute or association of accountants approved by the Minister as an institute or association for the purpose of this section.

(2) Where, on an application being made to him by a community government council, the Minister is satisfied that -

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- (a) no person who is a member of an institute or association of accountants approved under sub-section (1) is available for appointment as its auditor; and
- (b) a person nominated by the council is competent to carry out the duties of an auditor under this Part,

the Minister may approve of the appointment as auditor of the person nominated and the council may appoint the person accordingly.

285. AUDITOR

(1) Where a community government council fails to appoint an auditor in accordance with this Division, the Minister may, by notice in the *Gazette*, appoint the auditor for the community government council.

(2) The fees payable to an auditor appointed under sub-section (1) for a community government council shall be paid by the community government council.

286. PERSON DISQUALIFIED FROM BEING AUDITOR

A person appointed as an auditor for a community government council is disqualified from holding office as the auditor where he -

- (a) is or becomes a member of the council;
- (b) holds an office of profit under, or at the disposal of, the council other than as the auditor;
- (c) is directly or indirectly interested in a contract with, or employment under, the council;
- (d) becomes mentally ill within the meaning of the *Mental Health Act*;
- (e) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (f) is convicted of an indictable offence or is sentenced to a term of imprisonment for not less than 12 months for an offence against a law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth; or
- (g) fails to comply with a prescribed requirement.

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287. COUNCIL TO BE INFORMED OF AUDITOR'S DISQUALIFICATION

A clerk shall inform the council at the first meeting held after he becomes aware that the auditor for the community government council -

- (a) is disqualified under section 286 from holding office as auditor; or
- (b) has died,

of that fact.

288. VACANCY IN OFFICE OF AUDITOR

(1) At the meeting of the community government council at which -

- (a) the council accepts the resignation of its auditor; or
- (b) the clerk informs the council of a matter in pursuance of section 287,

the council shall declare the office of the auditor for the community government council to be vacant.

(2) The office of the auditor for a community government council becomes vacant when -

- (a) the council passes a resolution to that effect under sub-section (1); or
- (b) the term for which the auditor was appointed expires.

(3) Where a vacancy occurs in the office of the auditor for a community government council, the council shall, within 28 days after the date on which the vacancy occurred, appoint another person who is qualified to be an auditor for a community government council to that office.

289. AUDIT

(1) The auditor for a community government council shall inspect and audit the accounts of the community government council in relation to its operations during each financial year he holds the office of the auditor for the community government council.

(2) The auditor for a community government council shall report to the council the results of each inspection and audit carried out in accordance with sub-section (1) and shall forward a copy of each report to the Minister.

(3) A report under sub-section (2) shall draw the attention of the community government council and the Minister to any irregularity disclosed by the inspection

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and audit that is, in the opinion of the auditor for that council, of sufficient importance to justify his so doing.

(4) For the purposes of carrying out an inspection and audit in pursuance of this section, the auditor for a community government council is entitled at all reasonable times to full and free access to the accounts and records of the council and may make copies of, or take extracts from, those accounts and records.

290. SPECIAL REPORT

Where the auditor for a community government council, in the performance of his duties as the auditor for the council, is satisfied that -

- (a) there has been a breach or non-observance of this Act; and
- (b) the circumstances are such that, in his opinion, the matter has not been or will not be adequately dealt with by comment in his report on the accounts or by bringing the matter to the notice of the council,

he shall, as soon as practicable, in writing, report the matter to the Minister.

291. FINANCIAL STATEMENTS

(1) Each community government council shall, within 3 months after the end of a financial year, or such longer period as the Minister permits, submit, in the prescribed form, to its auditor financial statements in relation to that year.

(2) The auditor for a community government council shall, within 3 months after receiving the financial statements referred to in sub-section (1), or within such longer period as the Minister permits, forward to the council and the Minister -

- (a) those financial statements; and
- (b) a report on the statements.

(3) A report made under sub-section (2) by the auditor for a community government council shall -

- (a) state whether, in his opinion, the financial statements in relation to which the report is made -
 - (i) are based on proper accounts;
 - (ii) are in agreement with those accounts; and

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- (iii) have been drawn up so as to present a true and fair view of the transactions for the financial year of the community government council and the financial position of the council at the end of that year;
- (b) state whether, in his opinion, the receipt and expenditure of moneys and the acquisition and disposal of property by the community government council during the year have been in accordance with this Act; and
- (c) draw the attention of the Minister to such other matters and things arising out of the auditor's consideration of the statements as the auditor considers should be reported to the Minister.

Division 11 - By-laws

292. BY-LAWS

(1) Subject to this Part, a community government council may make by-laws not inconsistent with this Act, the Regulations or another Act -

- (a) for or in relation to the levying and collection of rates, fees and charges;
- (b) fixing or varying the charges that are payable to it in relation to a service provided by it;
- (c) fixing the terms and conditions of supply of a service in relation to which charges may be fixed or varied under paragraph (b);
- (d) regulating the supply of those services;
- (e) for or in relation to the sale, purchase, possession, presence and consumption of liquor within the meaning of the *Liquor Act*;
- (f) for or in relation to the sale, purchase, possession, hire, presence and use of firearms;
- (g) for or in relation to the sale, purchase, possession, display, hire, presence and use of offensive weapons;
- (h) for or in relation to the performance of its functions under its community government scheme; and
- (j) providing for a penalty not exceeding \$200 for an offence against the By-laws.

(2) A community government council shall, before it makes by-laws under sub-section (1)(e), advise the Liquor Commission of its intention to make those by-laws and the proposed contents of them.

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(3) A community government council shall, before it makes by-laws under sub-section (1)(f), advise the Commissioner of Police of its intention to make those by-laws and the proposed terms of them.

293. DEFENCE TO PROSECUTION

It is a defence to a prosecution for an offence against a by-law under section 292(1)(e) that the act or thing complained of was authorized by or under the *Liquor Act*.

294. FIXED PENALTY FOR BREACH OF BY-LAWS

(1) In this section "fixed penalty" means the specified sum referred to in sub-section (2) payable in lieu of the penalty which may otherwise be imposed for an offence against a by-law.

(2) Subject to this section, by-laws made under section 292 may provide that a person who is alleged to have infringed those by-laws and on whom a notice of infringement has been served may pay to the community government council, as an alternative to prosecution, a specified sum, not exceeding \$20, in lieu of the penalty by which an infringement of those by-laws is otherwise punishable.

(3) By-laws which provide for the imposition of a fixed penalty shall specify -

- (a) the amount of the fixed penalty;
 - (b) subject to sub-section (4), the form of a notice of infringement;
 - (c) the person or persons who may issue a notice of infringement;
 - (d) the person to whom payment of the fixed penalty may be made; and
 - (e) the period within which the fixed penalty shall be paid in order to avoid prosecution.
- (4) A notice of infringement shall indicate -
- (a) the name of the alleged offender;
 - (b) in general terms the nature of the offence alleged to have been committed;
 - (c) the date, time and place of the alleged offence;
 - (d) the amount of the fixed penalty;
 - (e) the period within which, and the place where, the fixed penalty may be paid; and

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- (f) that the alleged offender may, if he so wishes, be dealt with by a court of competent jurisdiction.

295. ENFORCEMENT

A person shall not -

- (a) wilfully obstruct or hinder an officer of or a person employed by a community government council -
- (i) in the performance of his duties under this Part; or
 - (ii) whilst that officer or person is doing anything on behalf of the community government council which the council is, by this Act, authorized to cause to be done;
- (b) refuse to give his name and address to an officer who, having found that person in the act of committing, or having reasonable cause to suspect that person of having committed, an offence against this Act, the Regulations or a by-law, demands his name and address; or
- (c) give a name or address which is false in a particular to an officer who has lawfully demanded his name and address.

Penalty: \$200.

*Division 12 - Dissolution of Community
Government Councils*

296. ADMINISTRATOR MAY DISSOLVE COMMUNITY GOVERNMENT COUNCILS

The Administrator may, on the recommendation of the Minister, dissolve a community government council.

297. CONSULTATION

The Minister shall not recommend to the Administrator that a community government council be dissolved unless -

- (a) he has, by notice in writing, advised the council of his intention so to recommend and the reasons for the recommendation; and
- (b) he has taken into account the representations, if any, made by the council before the expiration of 6 weeks after the date of the notification.

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298. NOTICE OF DISSOLUTION

The notice of a dissolution of a community government council shall be published in the *Gazette* and in a newspaper circulating in the area to which the notice of dissolution relates.

299. MINISTER TO REPORT TO LEGISLATIVE ASSEMBLY AND APPOINT MANAGER

(1) Where a community government council is dissolved under this Division, the Minister shall -

- (a) table in the Legislative Assembly a report on the dissolution and the reasons for his recommendation referred to in section 296 within 2 sitting days after the publication, under section 298, of the notice in the *Gazette*; and
- (b) appoint a manager on such terms and conditions as he thinks fit to manage the affairs of the council until an election is held.

(2) A manager appointed under sub-section (1)(b) may exercise and discharge the functions of the community government council in relation to which he is appointed.

300. EFFECT OF DISSOLUTION

Where a manager is appointed under section 299(1)(b) by the Minister -

- (a) the officers of the community government council referred to in the section cease to hold office unless specifically retained by the manager; and
- (b) the members of the council are deemed to vacate their respective offices,

on the day following the date upon which the appointment of the manager becomes effective.

301. DISALLOWANCE

Where the Legislative Assembly passes a resolution of which notice has been given within 12 sitting days after the report on the dissolution of the community government council has been tabled under section 299(1)(a) in the Assembly disallowing the dissolution of that council, the dissolution of that council, on the date of disallowance, ceases to have effect.

302. NEW ELECTIONS

(1) Where a community government council has been dissolved under this Division, the Minister or a person authorized for that purpose by him shall consult with the residents of the community government area to determine

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whether a majority of the residents is in favour of an election being held.

(2) Subject to sub-section (3), the Minister may appoint a date for the holding of an election.

(3) The Minister shall not appoint a date under sub-section (2) unless he is satisfied that a majority of the residents of the community government area is in favour of the election being so held.

Division 13 - General

303. CONDUCT PREJUDICIAL TO ELECTIONS

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

Penalty: \$200.

304. FINES

All fines and monetary penalties recovered for offences against this Part or a by-law shall be paid to the community government council of the community government area in which the offence was committed.

305. SERVICE

A summons, writ, notice or other proceeding may be served on a community government council by being handed personally to the clerk or by being left with an officer of the council at its office.

306. PROTECTION OF MEMBERS AND OFFICERS

A member or an officer of a community government council is not personally liable for or in relation to a matter or thing done, or a contract entered into by -

- (a) the council in good faith in pursuance of and for the purposes of this Act; or
- (b) the member or officer in good faith in pursuance of and for the purposes of this Act and for or on behalf of the council.

307. EVIDENTIARY PROVISIONS

In a prosecution or other legal proceeding under this Part instituted by, under the direction of, on behalf of or for the benefit of a community government council, proof shall not be required, until evidence is given to the contrary -

- (a) of the constitution of the community government area;

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- (b) of the constitution of the community government council as the council for the community government area;
- (c) of the election of members;
- (d) of the extent of the boundaries of the community government area;
- (e) of the fact that a particular place is within the community government area;
- (f) of the appointment of an officer of the community government council;
- (g) of the particular or general appointment of an officer of the council as the proper person to do an act or for any other purpose of this Act;
- (h) of the contents of a community government scheme;
- (j) of the order under which, or the authority to which, an officer of the community government council prosecutes; or
- (k) of the fact that a defendant is or at the relevant time was -
 - (i) the owner or occupier of land in question; or
 - (ii) the owner, or in possession of, or in charge of a thing or animal in question.

PART IX - SAVINGS AND TRANSITIONALS

308. DEFINITIONS

In this Part, unless the contrary intention appears -

"commencing date" means 1 July 1986;

"former Act" means the *Local Government Act* as in force immediately before the commencing date;

"new Act" means the *Local Government Act 1985* as it is from time to time amended.

309. DELEGATIONS

A delegation under section 6 of the former Act and in force immediately before the commencing date continues to have full force and effect for the purpose of the exercise of a power or performance of a function under the former Act, which is exercised or performed by virtue of this Part.

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310. EXISTING MUNICIPALITIES AND COUNCILS TO CONTINUE

- (1) Where -
 - (a) a municipality; and
 - (b) the council of the municipality,

within the meaning of the former Act, existed immediately before the commencing date, the municipality and council continue to exist under the new Act as if they had been constituted under the new Act on the same basis as they were constituted immediately before the commencing date.

(2) Without derogating from the generality of sub-section (1), where a municipality and the council of the municipality continue to exist by virtue of sub-section (1) -

- (a) the boundaries and name of the municipality;
- (b) where the municipality was divided into wards, the division into wards and the names of those wards;
- (c) notwithstanding section 11 of the new Act, the name and common seal of the council;
- (d) the mayor, deputy mayor and aldermen of the council and, where the municipality was divided into wards, the representation of those wards by those aldermen;
- (e) the clerk and other officers and employees of the council;
- (f) the auditor for the municipality;
- (g) the committees of the council, the members of those committees, their chairmen, the powers and duties of those committees and the By-laws and resolutions which relate to those committees;
- (h) real and personal property held on deposit or trust by a council for a person or for a charitable or public purpose;
- (j) all contracts and agreements;
- (k) the rate book;
- (m) the general fund, each trading fund and each trust fund of the council; and
- (n) the reserve for the purposes of insurance or long service leave,

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shall continue under the new Act on the same basis as they existed immediately before the commencing date and may be dealt with under the new Act.

(3) Where, under sub-section (1), the council of a municipality continues to exist by virtue of sub-section (1), it shall have the same powers and functions of local government which it had under the former Act until, under sub-section (4), the Administrator declares, under section 84 of the new Act, the functions of the council under the new Act.

(4) In relation to the council of a municipality which continues to exist by virtue of sub-section (1), the Administrator shall, as soon as practicable after the commencing date, exercise his power under section 84 of the new Act notwithstanding that the council has not been constituted under section 6 or 7(1)(c)(iii) of the new Act.

311. PETITION TO BE DEALT WITH AS APPLICATION

A petition under Part III Division 4 of the former Act which, before the commencing date, had not been granted or refused under section 17 of the former Act, shall be, after the commencing date, construed by the Minister and Administrator as if it were an application under section 9 of the new Act for a corresponding exercise of power by the Administrator.

312. DISQUALIFICATION OF MEMBER

Where, after the commencing date, a declaration or order is made under section 37 of the former Act, the declaration or order -

- (a) has the same force and effect as a determination or order, as the case may be, under section 26 of the new Act; and
- (b) is deemed to be a decision of the Tribunal for the purposes of section 198 of the new Act.

313. DECLARATIONS

Where, before the commencing date, a person has made a declaration under section 44 or 56 of the former Act and he continues, by virtue of section 310 of the new Act, as a member of a council, he need not make a declaration under section 16(1) of the new Act.

314. TERM OF OFFICE OF MAYOR AND ALDERMAN

Where a person who, before the commencing date, was a mayor or alderman and he continues, by virtue of section 310 of the new Act, as the mayor or alderman, his term of office continues until the declaration of the poll after the first general election held under section 45 of

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the new Act after the commencing date, subject to his resignation, death or disqualification.

315. WHERE SUPPLEMENTARY ELECTION REQUIRED

Where, under section 109 of the former Act, a supplementary election was required but it had not been held before the commencing date, an election shall be held under section 46 of the new Act as if a vacancy had occurred in the office of a member.

316. DESTRUCTION OF BALLOT-PAPERS

A person who, except for the commencement of the new Act, would have been required to discharge a duty under section 114 of the former Act shall, subject to that section, discharge that duty notwithstanding that section 114 has been repealed.

317. MEETINGS OF COUNCIL

Where a meeting of a council would have been required to be held under Part VIII of the former Act, the meeting shall be held on the same day, notwithstanding the commencement of the new Act.

318. MINUTES OF MEETINGS BEFORE COMMENCEMENT

Where a council, committee or sub-committee continues to exist, by virtue of section 310 of the new Act, at its first meeting after the commencing date the council, committee or sub-committee, as the case may be, may approve the minutes of its last meeting held before the commencing date.

319. APPLICATIONS IN RELATION TO RATE BOOK

(1) Where, under section 150 of the former Act, an application was received by a clerk and, before the commencing date, the clerk had not dealt with the application by entering or removing a name from the rate book, the application is deemed to be an appeal under section 107 of the new Act.

(2) For the purposes of sub-section (1), a person who made an application under section 150 of the former Act which is deemed to be an appeal under section 107 of the new Act may -

- (a) amend the application; or
- (b) withdraw the application and lodge other appeal papers,

and is deemed to have complied with section 107(3) of the new Act.

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320. CLERK TO COMPLY WITH DIRECTION

Where, under section 151 of the former Act, a council which continues to exist, by virtue of section 310 of the new Act, directed the clerk to make alterations in the rate book and, before the commencing date, the clerk had not discharged his duty under section 152 of the former Act in relation to that alteration, he shall do so as soon as practicable after the commencing date.

321. APPEAL REGARDING ENTRY IN RATE BOOK

Where an appeal under section 169 or 170 of the former Act was made in the manner provided for by section 171 of the former Act and the appeal -

- (a) was not dealt with under section 172 of the former Act before the commencing date, the appeal shall, after that date, be dealt with as an appeal under section 107 of the new Act; or
- (b) was, before the commencing date, under section 172 of the former Act, referred to a local court of full jurisdiction, that court shall deal with the matter and any order of the court is deemed to be an order or decision, under Part VI of the new Act, of the Tribunal.

322. OUTSTANDING RATES, &c., REMAIN OWING

(1) Where, immediately before the commencing date, a person owed, or was liable for the payment of, money to a council, the person continues after the commencing date to owe, or remains liable for the payment of, the money to the council until that person pays the money to the council, together with any interest which, under subsection (2), has accrued on the money.

(2) Where, under the former Act, interest would have accrued on an amount owed to a council or which a person was liable to pay the council, interest shall continue to accrue on the amount as if the new Act had not commenced.

323. MINISTER'S APPROVAL OF CERTAIN LOANS

Where, under section 235 of the former Act, the Minister had granted permission to a council to borrow money by way of renewal loan or ordinary loan, after the commencing date that permission continues to exist under the new Act as if it were the approval, subject to the same conditions, under section 160 of the new Act of the Minister.

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324. EXISTING SECURITIES

Where, immediately before the commencing date, there existed debentures, bonds or mortgages issued or granted under section 260 of the former Act by a council, the debentures, bonds or mortgages continue to exist under the new Act for the same purposes, and on the same basis, as they existed under the former Act.

325. AUDITOR

(1) Where a person who, before the commencing date, was the auditor for a municipality and he continues, by virtue of section 310 of the new Act, as the auditor, he shall so continue until his term of appointment would have ceased if the former Act had not been repealed, subject to his resignation, death or disqualification.

(2) Where, immediately before the commencing date, there is a vacancy in the office of the auditor for a municipality, it shall be filled after that date by an appointment under section 169(2) of the new Act.

326. INSPECTORS OF LOCAL GOVERNMENT ACCOUNTS

Where, immediately before the commencing date, a person was an inspector of local government accounts within the meaning of the former Act, he is deemed to have been appointed on the commencing date as an inspector of local government under the new Act.

327. APPEAL FROM SURCHARGE

Where, immediately before the commencing date, a person had a right under section 294 of the former Act to appeal to the local court of full jurisdiction and before the commencing date he has not exercised that right, after the commencing date the person has, under section 178 of the new Act, a right of appeal to the Tribunal as if he had been served with a notice under section 177(1) of the new Act.

328. COUNCIL OFFICE

Where a council had established, and immediately before the commencing date had maintained, an office under section 303 of the former Act, it need not establish an office under section 56 of the new Act but shall, under that section of the new Act, maintain the office so established.

329. COUNCIL UNDERTAKING WORK

(1) Where a council was, immediately before the commencing date -

(a) carrying out work under section 305(8) of the former Act, after that date it may continue to do so under section 88 of the new Act; or

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- (b) exercising a power in relation to a function either wholly or partly outside the boundaries of its municipality with the consent of the Minister, after that date the consent is deemed to be consent by the Minister under section 86(1) of the new Act and the council may continue to exercise that power outside its municipality.

330. ROADS VESTED IN TERRITORY

For the purposes of section 91(1) and (3) of the new Act, where immediately before the commencing date, a declaration, under section 307(1) of the former Act, in relation to a road had been made, after that date the declaration is deemed to be a declaration, under section 91(2) of the new Act, in relation to that road and may be dealt with under the new Act.

331. RECOVERY OF PART COSTS OF WORK

Where, immediately before the commencing date, a council could have, under section 310 of the former Act, recovered an amount of money from an owner of land, after the commencing date the council may, under the new Act, recover the amount it could have so recovered under the former Act as if that amount was due and payable under the new Act to the council.

332. WHERE COUNCIL REQUIRED ACTION BY OWNER OR OCCUPIER

Where, before the commencing date, a council had served an owner or occupier of land with a notice which required specified work in relation to the land to be undertaken or completed by a specified date, the owner or occupier is, notwithstanding the commencement of this Act, required to undertake or complete the specified work by the specified date and where, as a result of a failure by the owner or occupier, as the case may be, to comply with the notice the council could have, under the former Act, undertaken or completed the specified work and recovered the cost of so doing, it may undertake or complete the specified work and the owner or occupier is as liable for the cost of the council so doing as if the new Act had not been commenced.

333. COUNCIL TO REIMBURSE MINISTER

Notwithstanding the commencement of the new Act, where a minister had, under section 321 of the former Act, incurred an expense which, immediately before the commencing date, had not been recovered, the Minister may, under section 321 of the former Act, recover the expense or part of the expense, as he thinks fit, as if the new Act had not been commenced.

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334. COUNCIL MAY RECOVER FOR ROAD REPAIRS

Notwithstanding the commencement of the new Act, where a council had, under section 322 of the former Act, incurred an expense which, immediately before the commencing date, had not been recovered, the council may, under section 322 of the former Act, recover the amount of the expense as if the new Act had not been commenced.

335. COUNCIL TO CONTINUE AS TRUSTEES OF CEMETERY

Where, before the commencing date, a public cemetery was vested in a council, it may continue to exercise the powers and authorities of a Board of Trustees appointed under the *Cemeteries Act* in relation to the public cemetery.

336. COUNCIL TO CONTINUE AS TRUSTEE OF RESERVED LAND

Where a council was, immediately before the commencing date, under section 339A of the former Act, acting as the trustee of land reserved under section 103 of the *Crown Lands Act*, after the commencing date, it shall continue to act as the trustee as if the new Act had not been commenced except that the council's by-laws under the new Act shall apply to the reserve in the same way as the by-laws applied before the commencing date.

337. COUNCIL TO CONTINUE AS LESSEE AND LESSOR

Where, under section 339B of the former Act, a council -

- (a) was granted a lease by the Minister; or
- (b) granted, under section 339B(5) of the former Act, a lease of land leased to it under section 339B,

and, immediately before the commencing date, the lease was in force, the lease shall continue as if the new Act had not been commenced.

338. COUNCIL'S POWERS UNDER *PLACES OF PUBLIC ENTERTAINMENT ACT*

Where, before the commencing date, a council has, under the *Places of Public Entertainment Act* and by virtue of section 340 of the former Act, issued a licence under the *Places of Public Entertainment Act* and the term of that licence has not expired before or on the commencing date, in relation to the licence a reference in the *Places of Public Entertainment Act* to the Minister shall continue to be read as a reference to the council until the term of that licence expires, notwithstanding the commencement of the new Act.

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339. BY-LAWS.

(1) By-laws of a council, as they existed immediately before the commencing date, shall after that date, continue to exist as if they were by-laws of the council made under the new Act and are as valid under the new Act as they were under the former Act, if -

- (a) they were made in accordance with section 63 of the *Interpretation Act* as if a council were a statutory corporation; or
- (b) at the time that they were made by the council, the common seal of the council was affixed to them,

except that where -

- (c) the By-laws provide for an appeal to the local court, local court of limited jurisdiction, local court of full jurisdiction or a magistrate, the By-laws shall be read as if they provided for an appeal to the Tribunal and, in relation to non-criminal matters, an appeal to the Supreme Court or a Judge shall be read as if they provided for an appeal to the Appeals Tribunal; and
- (d) there is no penalty provided for a failure to comply with, or a contravention of, the By-laws, a court of competent jurisdiction may impose a penalty not exceeding \$500 or imprisonment for 3 months for such a failure or contravention.

(2) Where, under sub-section (1), a by-law continues to exist, the by-law may be amended or repealed under section 203 of the new Act.

340. PARKING OFFENCE

Notwithstanding the commencement of the new Act, sections 354A and 354B of the former Act continue to apply to offences against a by-law committed before the commencement of the new Act.

341. FINES TO COUNCIL

Notwithstanding the commencement of the new Act, section 399(1), (2) and (3) of the former Act continues to apply to a fine for an offence which was committed before the commencement of the new Act.

342. PROOF OF DECLARATION OF RATES

Notwithstanding the commencement of the new Act, section 402 of the former Act continues to have full force and effect in relation to a question as to whether a rate was declared before the commencing date.

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343. CLERK'S DUTY TO SERVE RATE NOTICES

Where the clerk was, or would have been, under section 403 of the former Act, under a duty to serve a notice on a mayor or alderman in relation to a rate declared before the commencing date, notwithstanding the commencement of the new Act, the clerk shall serve the notice he would have otherwise been required to serve.

344. PROOF OF MATTERS

Where, under a section of the former Act, a matter, issue or thing (including a notice, declaration, procedural requirement, set of circumstances, appointment, ownership, entry or payment) could have been proved by a certificate, signature or other form of evidence, the matter, issue or thing may be proved in the same manner and to the same extent for the purposes of the continued application of the former Act as if the relevant section of the former Act had not been repealed.

345. PROOF OF CERTAIN MATTERS NOT REQUIRED

Notwithstanding the commencement of the new Act, section 418 of the former Act continues to have full force and effect in relation to a prosecution or legal proceeding, which continues or is commenced after the commencing date.

346. REGULATIONS

(1) Regulations which existed immediately before the commencing date shall continue to exist as regulations under the new Act as if they had been made under the new Act and the Regulations so continuing may be amended or repealed under section 236 of the new Act.

(2) Where regulations made under the former Act continue to exist as regulations under the new Act and a reference is made in them to a section of the former Act, that reference shall be construed, where possible, as a reference to an appropriate or relevant provision in the new Act.

347. COMMUNITY GOVERNMENT

(1) Without derogating from section 12 of the *Interpretation Act* and notwithstanding the commencement of the new Act, all actions taken under Part XX of the former Act and which existed immediately before the commencing date continue, after that date, to exist as if the actions had been taken under the new Act and, at that time, the new Act had been commenced.

(2) Without limiting the generality of sub-section (1), "actions" in that sub-section include appointments, constituting community government schemes, elections, approvals, applications, notices, draft

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community government schemes, directions, exhibitions, submissions, consultations, alterations, publications, determinations, inspections, audits, dispensations, reports, declarations, by-laws and calling upon a person to show cause.

(3) Where, under sub-section (1), an action continues to exist, it may be dealt with under the new Act as if it were an action under that Act.

SCHEDULE 1

Section 3

ACTS REPEALED

Ordinance, Act	Number and year
<i>Local Government Ordinance</i> 1954	No. 18, 1955
<i>Local Government Ordinance</i> 1957	No. 32, 1957
<i>Local Government Ordinance</i> 1958	No. 6, 1958
<i>Local Government Ordinance</i> 1959	No. 16, 1959
<i>Local Government Ordinance</i> 1960	No. 15, 1960
<i>Local Government Ordinance</i> (No. 2) 1960	No. 3, 1961
<i>Local Government Ordinance</i> 1962	No. 18, 1962
<i>Local Government Ordinance</i> (No. 2) 1962	No. 19, 1962
<i>Local Government Ordinance</i> (No. 3) 1962	No. 12, 1963
<i>Local Government Ordinance</i> (No. 4) 1962	No. 13, 1963
<i>Local Government Ordinance</i> 1963	No. 28, 1963

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<i>Ordinance, Act</i>	<i>Number and year</i>
<i>Local Government Ordinance (No. 2) 1963</i>	No. 31, 1963
<i>Local Government Ordinance (No. 3) 1963</i>	No. 6, 1964
<i>Local Government Ordinance (No. 4) 1963</i>	No. 7, 1964
<i>Local Government Ordinance 1964</i>	No. 58, 1964
<i>Local Government Ordinance (No. 2) 1964</i>	No. 59, 1964
<i>Local Government Ordinance (No. 3) 1964</i>	No. 68, 1964
<i>Local Government Ordinance 1965</i>	No. 20, 1965
<i>Local Government Ordinance (No. 2) 1965</i>	No. 58, 1965
<i>Local Government Ordinance 1966</i>	No. 10, 1966
<i>Local Government Ordinance (No. 2) 1966</i>	No. 11, 1966
<i>Local Government Ordinance (No. 3) 1966</i>	
<i>Local Government Ordinance (No. 4) 1966</i>	No. 44, 1966
<i>Local Government Ordinance (No. 4) 1966 Amendment Ordinance 1967</i>	No. 3, 1967
<i>Local Government Ordinance 1967</i>	No. 54, 1967
<i>Local Government Ordinance (No. 2) 1967</i>	No. 55, 1967
<i>Local Government Ordinance 1968</i>	No. 7, 1968
<i>Local Government Ordinance (No. 2) 1968</i>	No. 59, 1968

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<i>Ordinance, Act</i>	<i>Number and year</i>
<i>Local Government Ordinance (No. 3) 1968</i>	No. 60, 1968
<i>Local Government Ordinance (No. 4) 1968</i>	No. 68, 1968
<i>Local Government Ordinance 1969</i>	No. 8, 1969
<i>Local Government Ordinance (No. 2) 1969</i>	No. 20, 1969
<i>Local Government Ordinance (No. 3) 1969</i>	No. 28, 1969
<i>Local Government Ordinance 1970</i>	No. 49, 1970
<i>Local Government Ordinance (No. 2) 1970</i>	No. 73, 1970
<i>Local Government Ordinance 1972</i>	No. 2, 1972
<i>Local Government Ordinance (No. 2) 1972</i>	No. 10, 1972
<i>Local Government Ordinance (No. 3) 1972</i>	No. 26, 1972
<i>Local Government Ordinance (No. 4) 1972</i>	No. 66, 1972
<i>Local Government Ordinance (No. 5) 1972</i>	No. 67, 1972
<i>Local Government Ordinance 1973</i>	No. 10, 1973
<i>Local Government Ordinance (No. 2) 1973</i>	No. 20, 1973
<i>Local Government Ordinance (No. 3) 1973</i>	No. 40, 1973
<i>Local Government Ordinance (No. 4) 1973</i>	No. 64, 1973
<i>Local Government Ordinance 1974</i>	No. 5, 1974
<i>Local Government Ordinance (No. 3) 1974</i>	No. 49, 1974

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Ordinance, Act	Number and year
<i>Local Government Ordinance</i> (No. 5) 1974	No. 66, 1974
<i>Local Government Ordinance</i> (No. 2) 1974	No. 91, 1974
<i>Local Government Ordinance</i> (No. 4) 1974	No. 94, 1974
<i>Local Government Ordinance</i> 1975	No. 14, 1975
<i>Local Government Ordinance</i> (No. 2) 1975	No. 35, 1975
<i>Local Government Ordinance</i> (No. 3) 1975	No. 1, 1976
<i>Local Government Ordinance</i> 1976	No. 33, 1976
<i>Local Government Ordinance</i> (No. 2) 1976	No. 52, 1976
<i>Local Government Ordinance</i> (No. 3) 1976	No. 6, 1977
<i>Local Government Ordinance</i> 1977	No. 38, 1977
<i>Local Government Ordinance</i> 1978	No. 2, 1978
<i>Local Government Ordinance</i> (No. 2) 1978	No. 3, 1978
<i>Local Government Ordinance</i> (No. 3) 1978	No. 70, 1978
<i>Local Government Act</i> (No. 4) 1978	No. 7, 1979
<i>Local Government Act</i> 1979	No. 34, 1979
<i>Local Government Act</i> (No. 2) 1979	No. 65, 1979
<i>Local Government Act</i> (No. 3) 1979	No. 89, 1979
<i>Local Government Act</i> (No. 4) 1979	No. 150, 1979

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Ordinance, Act	Number and year
<i>Local Government Act (No. 5) 1979</i>	No. 151, 1979
<i>Local Government Act 1980</i>	No. 22, 1980
<i>Local Government Act (No. 2) 1980</i>	No. 38, 1980
<i>Local Government Amendment Act (No. 3) 1980</i>	No. 57, 1980
<i>Local Government Amendment Act (No. 4) 1980</i>	No. 19, 1981
<i>Local Government Amendment Act 1981</i>	No. 39, 1981
<i>Local Government Amendment Act (No. 2) 1981</i>	No. 3, 1982
<i>Local Government Amendment Act 1982</i>	No. 13, 1982
<i>Local Government Amendment Act (No. 2) 1982</i>	No. 14, 1982
<i>Local Government Amendment Act (No. 3) 1982</i>	No. 70, 1982
<i>Local Government Amendment Act 1983</i>	No. 3, 1983
<i>Local Government Amendment Act (No. 2) 1983</i>	No. 78, 1983
<i>Local Government Amendment Act 1985</i>	No. 30, 1985

SCHEDULE 2

Section 84(1)

General Public Services

1. Fire Protection
2. Local Emergency Services
3. Animal Control
4. Animal Impounding

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Health Services

5. Infants and Mothers
6. Preventative Services
7. Health Inspection
8. Ambulance

Social Security and Welfare Services

9. Child Care
10. Aged and Disabled Persons

Housing and Community Services

11. Cemeteries
12. Council Houses
13. Aged and Disabled Persons Homes
14. Stormwater Drainage
15. Foreshore Protection
16. Land Development Schemes
17. Public Conveniences
18. Sanitation and Garbage
19. Street Cleaning
20. Town Planning

Recreation and Related Cultural Services

21. Halls and Public Buildings
22. Swimming Pools
23. Sport and Recreation
24. Parks, Gardens, Reserves and Cycle Tracks
25. Libraries and Museums
26. National Estate

Roadworks - Construction

27. Roads - sealed
28. Roads - unsealed
29. Bridges

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- 30. Kerb and Water Table
- 31. Footways
- 32. Traffic Control

Roadworks - Maintenance

- 33. Roads - sealed
- 34. Roads - unsealed
- 35. Bridges
- 36. Kerb and Water Table
- 37. Footways
- 38. Traffic Control

Other

- 39. Street Lighting
 - 40. Parking - off street
 - 41. Parking - on street
 - 42. Aerodromes
 - 43. Tourism
 - 44. Caravan Parks
 - 45. Building
 - 46. Markets
 - 47. Saleyards
 - 48. Environmental Control
 - 49. Zoos
 - 50. Public Entertainment
 - 51. Municipal Administration
 - 52. Public Transport
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