

Serial 101
Local Government Amendment Bill 2007
Mr McAdam

**A BILL
for
AN ACT**

to amend the *Local Government Act* and the *Associations Act*

NORTHERN TERRITORY OF AUSTRALIA
LOCAL GOVERNMENT AMENDMENT ACT 2007

Act No. [] of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2007

AN ACT

to amend the *Local Government Act* and the *Associations Act*

[Assented to [] 2007]

[Second reading [] 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Local Government Amendment Act 2007*.

2. Commencement

(1) Part 2 commences on the date fixed by the Administrator by *Gazette* notice.

(2) Part 3 commences on the date of transition, as defined in Part 5, Division 4 of the *Local Government Act* (to be inserted by Part 2 of this Act).

PART 2 – AMENDMENT OF *LOCAL GOVERNMENT ACT*

3. Act amended

This Part amends the *Local Government Act*.

4. Amendment of section 3 (Definitions)

- (1) Section 3, definitions "community government area" and "community government constitution"

omit

- (2) Section 3

insert (in alphabetical order)

"community government area" means the area for which a community government council is vested with powers of local government under its constitution and this Act;

"community government constitution" means the constitution of a community government council;

5. New Part 2A

After section 28

insert

PART 2A – RE-STRUCTURING ORDERS

28A. Orders by Minister

(1) The Minister may make any order (a "re-structuring order") the Minister considers necessary or desirable to facilitate re-structuring of the system of local government in the Territory.

(2) A re-structuring order may (for example) do any one or more of the following:

- (a) abolish a council;
- (b) create a new council;
- (c) establish a body corporate as the prospective council for a proposed municipality or shire;
- (d) amalgamate 2 or more councils into a single council or divide a council into 2 or more councils;
- (e) convert a municipal council into a community government council or a community government council into a municipal council;
- (f) amalgamate, or divide council areas or make any other alteration to the boundaries of a council area;

- (g) divide a council area into wards;
- (h) alter the number of wards of a council area;
- (i) alter the number of members of a council or the number of members to be elected for a ward;
- (j) suspend all members of a council, or terminate their terms of office;
- (k) appoint a manager to administer a municipality or community government area;
- (l) cancel, defer or suspend an election or exclude a council from the ambit of a general election;
- (m) appoint a person to a vacancy in the membership of a council;
- (n) assign a person to an office or position in the employment of a council or a prospective council;
- (o) transfer an employee (with the consent of the employee) from one council's employment to another council's employment or the employment of a prospective council;
- (p) make any apportionment or adjustment between councils or a council and a prospective council of:
 - (i) property; or
 - (ii) income or expenditure; or
 - (iii) rights and liabilities;
- (q) deal with any consequential or incidental matter.

(3) The order must be notified in the *Gazette* and a newspaper circulating in the municipality or community government area of the council or councils affected by the order.

28B. Effect of order

(1) A re-structuring order operates to the exclusion of any inconsistent provision of this Act.

(2) If a manager is appointed to administer a municipality or community government area, the manager assumes the council's functions and has all the powers of the council.

28C. Prospective councils

(1) If a re-structuring order establishes a body corporate as a prospective council, the body corporate:

- (a) has the name assigned by the re-structuring order (which may be the name intended for the future council); and
- (b) has the capacity, in its corporate name, to acquire and dispose of property and to acquire or incur any rights or liabilities that may properly attach to a body corporate; and
- (c) has the powers and functions assigned by the re-structuring order (or a later re-structuring order).

(2) The powers of the body corporate are to be exercised, until it becomes a council with democratically elected members, by a manager appointed by the Minister.

(3) The powers assigned to the body corporate may include powers of direction or control over councils for local government areas that will form part of the future municipality or shire.

(4) However, that control or direction may only be exercised for the purpose of facilitating transition from the present to the proposed structures and form of local government administration.

(5) The provisions of this Act applicable to municipal councils apply to a body corporate established as a prospective council to the extent (and subject to modifications) prescribed in the re-structuring order establishing the body corporate (or a later re-structuring order).

28D. Tabling of order

(1) The Minister must, within 6 sitting days after making a re-structuring order, table the order in the Legislative Assembly.

- (2) However, the order is not a disallowable instrument.

6. New Part 5, Division 4

After section 114A

insert

Division 4 – Bringing of local governing associations under this Act

114B. Object

The object of this Division is to provide for the conversion of local governing associations into community government councils.

Note

The conversion is intended as an interim measure prior to a more complete integration of community government councils into the system of local government in the Territory.

114C. Definitions

In this Division:

"date of transition" means a date fixed by the Minister, by *Gazette* notice, as the date of transition;

"local governing association" means an association incorporated under the *Associations Act* and declared under section 101 of that Act to be an association that may exercise the functions of a community government council;

"prescribed property", see section 4 of the *Associations Act*.

114D. Minister to amend constitutions

(1) The Minister may before the date of transition amend a local governing association's constitution as the Minister considers necessary or desirable in view of the association's impending conversion into a community government council on the date of transition.

(2) An amendment made under this section takes effect on the date of transition.

(3) The Minister may (for example) make amendments to ensure that:

(a) on conversion, the name of the council is appropriate to a community government council; and

(b) the constitution contains an adequate description of the community government area for which the council may exercise powers of local government; and

- (c) meetings of the council are held with appropriate frequency; and
- (d) adequate provision is made for the appointment of a CEO; and
- (e) adequate provision exists for filling casual vacancies in the membership of the council.

(4) The Minister may amend the constitution to permit the council to perform a function outside its community government area without the consent of the Minister.

Note for subsection (4)

Under section 124, if a council proposes to perform a function outside its council area, it requires the consent of the Minister to do so.

(5) The amendment of the constitution must be notified in the *Gazette* and a newspaper circulating in the community government area of the council.

114E. Tabling of constitution

(1) A constitution amended by the Minister under this Division must be tabled in the Legislative Assembly in the form in which it has taken, or will take, effect on the date of transition.

(2) The constitution must be tabled before, or within 6 sitting days after, the date of transition.

(3) However, the constitution is not a disallowable instrument.

114F. Conversion of local governing associations

(1) On the date of transition:

(a) each local governing association:

- (i) ceases to be an association incorporated under the *Associations Act*; and
- (ii) becomes (without change of corporate identity) a community government council for the community government area described in its constitution; and

(b) the constitution of the council as amended by the Minister:

- (i) comes into force for the council; and
- (ii) has effect as a law of the Territory.

(2) It follows from the fact that there is no change of corporate identity that:

- (a) the property (including prescribed property), income, rights and liabilities of the local governing association are undisturbed by the conversion (but prescribed property loses its character as such); and
- (b) proceedings commenced by or against the local governing association may be continued and completed by or against the community government council; and
- (c) no stamp duty is payable on the conversion.

(3) A statutory manager for a local governing association holding office under Part 9, Division 2 of the *Associations Act* immediately before the conversion continues in office as manager of the council as if appointed under section 264(2)(b) of this Act.

114G. Application of Divisions 2 and 3

(1) Division 2 does not apply to the amendment of the constitution of a local governing association or its conversion into a community government council under this Division.

(2) No election or appointment of members of such a council is to take place under section 109 or 110.

7. New section 269

After section 268

insert

269. Acquisition on just terms

(1) If, in consequence of a relevant amendment, a re-structuring order made under a relevant amendment, or any other administrative act done under a relevant amendment, a person acquires property on terms that would not (apart from this section) be just, the person from whom the property is acquired is entitled to compensation, sufficient to remedy the injustice, from the person who acquires the property.

(2) In this section:

"relevant amendment" means an amendment made to this Act by the *Local Government Amendment Act 2007*.

PART 3 – AMENDMENT OF ASSOCIATIONS ACT

8. Act amended

This Part amends the *Associations Act*.

9. Repeal of Part 11

Part 11

repeal