

Serial 90
Local
Government
Amendment
(No. 2)
Mr Hatton



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Local Government Act*

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:

1. SHORT TITLE

This Act may be cited as the *Local Government Amendment Act (No. 2) 1995*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

In this Act, the *Local Government Act* is referred to as the Principal Act.

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4. INTERPRETATION

Section 3 of the Principal Act is amended by omitting from the definition of "resident" the words "government area" and substituting "government area or an area in respect of which an application has been made to establish a community government council under section 100 (and has not been withdrawn)".

5. PERIODIC REVIEW OF ELECTORAL REPRESENTATION BY COUNCIL

Section 26(2) of the Principal Act is amended by omitting paragraph (b) and substituting the following:

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

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

(ii) where, in the opinion of the clerk, notice published in such a newspaper would not be sufficient notice of the council's determination, notice in any other publication circulating in that area which the clerk considers would be sufficient notice of the council's determination,

the electors of its determination."

6. DECLARATION OF RATES AND CHARGES

Section 64(1) of the Principal Act is amended by omitting "30 September" and substituting "31 August".

7. PENALTY FOR LATE PAYMENT

Section 82 of the Principal Act is amended by inserting after subsection (1) the following:

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

8. EXHIBITION OF DRAFT SCHEME

Section 103(2) of the Principal Act is amended by omitting paragraph (b) and substituting the following:

"(b) either -

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

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

9. NOTICE OF APPROVAL OF SCHEME

Section 106 of the Principal Act is amended by omitting subsection (3) and substituting the following:

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

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

10. MEETINGS OF ELECTORS

Section 137 of the Principal Act is amended by omitting subsection (3) and substituting the following :

"(3) The clerk shall, in either -

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

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

11. NEW SECTION

The Principal Act is amended by inserting after section 143 the following:

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"143A. EMPLOYEES FOR THE PURPOSES OF THE ABORIGINAL LAND ACT

"An officer or employee of a council is an employee under or by virtue of this Act for the purposes of section 6 of the *Aboriginal Land Act*."

12. INCOME

Section 154 of the Principal Act is amended by omitting "by it" and substituting "by it, including fees and commissions paid to it as an agent and money received by it for and on behalf of another person or organisation or for and on behalf of an Agency".

13. ESTIMATES

Section 162 of the Principal Act is amended -

(a) by omitting subsection (1) and substituting the following:

"(1) A clerk shall, before the declaration of a rate or charge under this Act in respect of a financial year, cause to be prepared and submitted to the council estimates of income and expenditure for that financial year."; and

(b) by omitting from subsection (2) "council" and substituting "council by 31 July of each financial year, or such later date as the Minister allows".

14. TERRITORY GRANTS AND SUBSIDIES

Section 175 of the Principal Act is amended -

(a) by omitting "The Minister" and substituting "(1) The Minister"; and

(b) by adding at the end the following:

"(2) Where the Minister is satisfied that an amount of money paid by the Territory to a council by way of a subsidy or grant is not able to be accounted for or has not been applied to its intended purpose, the Minister may, in addition to any action he or she takes under subsection (1), by written notice served on the council charge the council with the re-payment of an amount of money (being not more than the first-mentioned amount of money) which, if not repaid to the Territory within 6 months after the date of the notice or such other period as determined by the Minister, shall be a debt due and payable by the council to the Territory."

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15. POWERS AND DUTIES OF AUDITOR

Section 181 of the Principal Act is amended -

- (a) by omitting from subsection (4) "the Minister" and substituting "the Minister and provide a copy of the report to the council";
- (b) by adding at the end the following:

"(5) Where an auditor reports a matter to the Minister under subsection (4), the auditor may recommend in the report action to be taken by the council to remedy the breach or non-observance concerned.

"(6) Where a council receives a copy of a report to the Minister from an auditor under subsection (4) -

- (a) the clerk shall ensure that the report is laid before the council at the ordinary meeting of the council next occurring after receipt of the report;
- (b) the council shall, as soon as practicable, advise the Minister and the auditor of the action it proposes to take to remedy the breach or non-observance, including the means it proposes to implement the recommendations of the auditor (if any) made in the report; and
- (c) the council shall, not later than 2 months after the meeting referred to in paragraph (a), commence taking appropriate remedial action in respect of the matter the subject of the report, including the carrying out of the recommendations (if any) made by the auditor in the report.

"(7) Where the Minister is, on reasonable grounds, not satisfied with the action taken by a council to remedy a breach or non-observance the subject of a report made by an auditor, including the progress made by the council in so doing, the Minister may, by notice served on the council, direct the council to take such remedial action as the Minister considers appropriate, and specifies in the direction, within the period specified in the direction.

"(8) Each member of a council which fails to comply with a direction of the Minister under subsection (7) is guilty of an offence.

Penalty: \$5,000.

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"(9) It is a defence to a prosecution for an offence against subsection (8) if the member did not intend that the offence be committed and took all reasonable steps to endeavour to have the council comply with the direction of the Minister."

16. NEW DIVISION

The Principal Act is amended by inserting after section 181 the following:

"Division 11 - Minister May Require Compliance

"181A. MINISTER MAY REQUIRE COMPLIANCE

"(1) Notwithstanding any other provision under this Act, where the Minister suspects on reasonable grounds that -

- (a) a council has failed to comply with a provision under this Act; or
- (b) there is an irregularity in the affairs of a council,

the Minister may, by notice served on the council, direct the council to take the action specified in the notice, within the period specified in the notice, for the purpose of complying with the provision under the Act or remedying the irregularity.

"(2) Where a notice is served on a council under subsection (1), the council -

- (a) may, within the period specified in the notice for the purpose of making submissions, make submissions to the Minister in respect of the matter the subject of the notice; or
- (b) shall comply with the direction in the notice.

"(3) Where submissions are made to the Minister under subsection (2)(a), the Minister shall, having considered the submissions, decide whether or not he or she continues to require the council to take action (and if so what action) for the purpose of complying with the provision contravened or remedying the irregularity and serve a further notice on the council advising the council of his or her decision and, if relevant, directing the council to take action as specified in that notice, within the period specified in that notice.

"(4) The council shall comply with a notice served on it under subsection (3).

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"(5) Each member of a council which fails to comply with a notice served on it under this section is guilty of an offence.

Penalty: \$5,000.

"(6) It is a defence to a prosecution for an offence against subsection (5) if the member did not intend that the offence be committed and took all reasonable steps to endeavour to have the council comply with the direction of the Minister."

17. FUNCTIONS OF INSPECTORS

Section 242 of the Principal Act is amended by inserting after paragraph (b) the following:

"(ba) may institute proceedings in the name of a council in respect of a matter reported to the Minister and the council;"

18. POWERS OF INSPECTORS

Section 243 of the Act is amended by adding at the end the following:

"(4) For the purpose of exercising his or her functions referred to in section 242(b), where an inspector observes an irregularity during an inspection, he or she may recommend in the report on the matter action to be taken by the council concerned to remedy the irregularity, including the -

- (a) engagement for a specified period of a suitably qualified and experienced person to manage the financial affairs, or the operations generally, of the council; or
- (b) specification of practices the council could adopt to improve its management (including financial management and recruitment of staff).

"(5) For the purpose of exercising his or her function referred to in section 242(ba), an inspector shall be taken to be a person authorised by the council referred to in section 207.

"(6) For the purpose of exercising his or her function referred to in section 242(c), an inspector may make a report to any person or body from whom a council has received a payment of money where, in the opinion of the inspector, the money has not been acquitted in accordance with arrangements made between the council and the person or body."

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19. NEW SECTION

The Principal Act is amended by inserting after section 243 the following:

"243A. COMPLIANCE WITH REPORT

"(1) Where an inspector has observed a matter of dishonesty, an irregularity or a breach of a law in force in the Territory during an inspection and has reported the matter to the Minister and the council concerned, the clerk shall ensure that the report of the matter is laid before the council at the first meeting of the council next occurring after receipt of the report.

"(2) The council shall -

- (a) as soon as practicable, advise the Minister of the remedial action it proposes to take in respect of the matter the subject of the report, including the means it proposes to implement the recommendations of the inspector (if any) made in the report; and
- (b) not later than 2 months after the meeting of the council referred to in subsection (1), commence taking appropriate remedial action in respect of the matter the subject of the report, including the carrying out of the recommendations (if any) made by the inspector in the report.

"(3) Where the Minister is, on reasonable grounds, not satisfied with the action taken by a council to remedy a matter the subject of a report made by an inspector, including the progress made by the council in so doing, the Minister may, by notice served on the council, direct the council to take such remedial action as the Minister considers appropriate, and specifies in the direction, within the period specified in the direction.

"(4) Each member of a council which fails to comply with a direction under subsection (3) is guilty of an offence.

Penalty: \$5,000.

"(5) It is a defence to a prosecution for an offence against subsection (4) if the member did not intend that the offence be committed and took all reasonable steps to endeavour to have the council comply with this section."

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20. NEW PART

The Principal Act is amended by inserting after section 265 the following:

"PART 13A - PERSONAL LIABILITY

"265A. RESTRICTION OF LIABILITY

"(1) No action or proceeding, civil or criminal, shall lie against the Minister, the Chief Executive Officer as defined in the *Public Sector Employment and Management Act*, an employee as defined in the *Public Sector Employment and Management Act* or an inspector of local government (while the person holds, or after he or she has ceased to hold, the relevant office or position) for or in relation to an act or thing done in good faith and with reasonable care by the person, or under his or her direction, in the exercise or performance, or purported exercise or performance, of his or her powers, functions or duties under this Act.

"(2) This section does not apply where a professional disciplinary action is brought against a person referred to in subsection (1), or where an action or other proceeding, civil or criminal, is brought against that person by a person who is or was a client of the first-mentioned person (in his or her capacity as client or former client).

"265B. CONFIDENTIALITY OF INFORMATION

"(1) Subject to subsection (2), a person shall not, directly or indirectly, except in the exercise or performance of his or her powers, functions or duties under this Act, (while he or she is holding or after he or she has ceased to hold the relevant office or position) make a record of, disclose or communicate to any person, or make use of information acquired by him or her in the exercise or performance of his or her powers, functions or duties under this Act.

Penalty: \$2,000.

"(2) This section does not apply where a person -

- (a) is required to produce a document that has come into his or her possession, or under his or her control, in a court;
- (b) is required to disclose or communicate a matter or thing that has come to his or her notice, or is within his or her knowledge, to a court; or

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- (c) discloses information or records for or in connection with the administration of this Act, as required or permitted by another Act or for such purposes or to such persons as the Minister directs.

"265C. DESTRUCTION, &c., OF RECORDS

"(1) A person shall not, except in the exercise or performance of his or her powers, functions or duties under this Act, conceal, destroy or remove a document that has come into his or her possession, or under his or her control, in the exercise or performance of his or her powers, functions or duties under this Act.

Penalty: \$2,000.

"(2) This section does not apply where the Minister approves in writing the destruction of a document."

21. AMENDMENTS OF OTHER PROVISIONS

The other provisions of the Principal Act specified in the Schedule are amended as provided for in that Schedule.

| SCHEDULE | | | Section 21 |
|----------------------------------|---------------------------------|-------------------------------|------------|
| AMENDMENTS OF OTHER PROVISIONS | | | |
| Provision | Amendment | | |
| | omit | substitute | |
| Section 3 | | | |
| - definition of "municipality" | "30(1)(c)(iii)" | "30(1)(c)(ii)" | |
| Section 82(2), (3)(b) and (4)(b) | "on a daily basis" | | |
| Section 98(a) | "59(2)" | "58(2)" | |
| Section 105(1)(b) | "(2)" | "(4)" | |
| Section 105(2)(b)(vi) | "the community government area" | "a council meeting" | |
| Section 108(1) | "105(1)(a)" | "106(1)(a)" | |
| Section 108(2) | "from a date" | "from a date before the date" | |

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| | "105(1) (a) " | "106(1) (a) " |
| Section 108(3) | "105(1) (a) " | "106(1) (a) " |
| Section 131(1) (c) | "(e) " | "(a) (v) " |
| Section 140 | "77" | "139" |
| Section 142(1) (b) | "or is" | "or whose appointment is" |
| Section 194(4) (f) | "he" | "he or she" |
| Section 235(3) | "the whole of" | "the whole or" |

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