

Serial
Local Government Bill 2019
Mr McCarthy

A Bill for an Act to provide for, and regulate, local government and for related purposes

CONSULTATION DRAFT ONLY

**PREPARED FOR THE DEPARTMENT OF LOCAL GOVERNMENT,
HOUSING AND COMMUNITY DEVELOPMENT**

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT ACT 2019

Act No. [] of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

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

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

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

2 Commencement

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

3 Act binds Crown

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

Part 1.2 What this Act is about

4 Principles

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

- (a) local government is a distinct and essential sphere of government;
- (b) the system of local government:
 - (i) needs to be flexible and adaptable to the diverse interests and needs of the many communities within the Territory; and
 - (ii) needs to be comprehensive, democratic, responsive to community needs and accountable both to local communities and the public generally.
- (2) Anyone exercising a power or performing a function under this Act must, as far as practicable, uphold the principles.
- (3) However, the principles do not affect the operation of any law in force in the Territory.

5 Rights and interests of Aboriginal traditional owners

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

6 Overview

This Act provides for the following:

- (a) the establishment of a democratic and effective system of local government that recognises the diversity of communities in the Territory;
- (b) the conferral of wide powers on councils to act for the advancement, and in the best interests, of their local communities;
- (c) the enabling of councils to play a broad role in promoting the social, economic, environmental, and cultural well-being of their local communities;
- (d) the imposition of high standards of ethical conduct on council members;
- (e) the requirement on councils of high standards of governance, service delivery, asset management and financial accountability;

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

Part 1.3 Interpretation

7 Definitions

In this Act:

Aboriginal community living area, see section 8.

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

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

aggrieved person, for an NTCAT reviewable decision, see section 321(2).

allotment, see section 222.

annual return of interests:

- (a) for a council member – see section 108; or
(b) for a staff member of a council or local government subsidiary – see section 174.

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

assessed value, see section 224.

assessment record means the assessment record maintained under section 227.

associate, see section 9.

audit committee means an audit committee established and maintained by a council under section 84.

auditor, means the person appointed by a council as an auditor for the council under section 204.

Australian Accounting Standards means the following standards

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

- (a) Accounting Standards;
- (b) Statements of Accounting Concepts;
- (c) Interpretations;
- (d) Framework for the Preparation and Presentation of Financial Statements.

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

authorised deposit account, for Chapter 10, Part 10.1, see section 186.

authorised person means a person appointed to be an authorised person under section 179.

borrowing, for Chapter 10, Part 10.3, see section 190.

by-election means a by-election mentioned in section 133.

campaign donation return, for Chapter 8, Part 8.6, see section 144.

campaign material, for Chapter 8, Part 8.7, see section 154.

casual vacancy means a vacancy in the office of a member of a council under section 48.

cemetery plan, see section 16 of the *Burial and Cremation Act 2019*.

CEO, of a council, means the council's chief executive officer, who is in charge of day-to-day operations of the council.

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

chairperson, of a meeting of:

- (a) an audit committee – see section 96; or
- (b) a council – see section 93; or
- (c) a council committee – see section 96; or

(d) a local authority – see section 96.

chief executive, of a local government subsidiary, means the local government subsidiary's chief executive, who is in charge of day-to-day operations of the local government subsidiary.

close family relationship means:

- (a) the relationship between spouses or de facto partners; or
- (b) the relationship between a person and:
 - (i) the person's child or remoter lineal descendant; or
 - (ii) the child or a remoter lineal descendant of the person's spouse or de facto partner; or
- (c) the relationship between a person and:
 - (i) the person's parent or remoter lineal ascendant; or
 - (ii) the parent or a remoter lineal ascendant of the person's spouse or de facto partner; or
- (d) the relationship between brothers, sisters or brother and sister.

commissioner means a person appointed by the Minister under section 303.

commission of inquiry means a commission of inquiry established by the Minister under section 303.

committee, for Chapter 3, see section 25.

community cemetery, see section 5 of the *Burial and Cremation Act 2019*.

complaint panel, see section 127(2).

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

conditionally rateable, in relation to land, see section 216.

conflict of interest, in relation to a member of a council, see section 111.

constituent council means a council that forms a local government subsidiary under section 65(1).

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

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

council committee means a council committee established by a council under section 80.

council senior staff member means a council staff member:

- (a) employed in a position in the management level immediately beneath the CEO (of the council) in the council's organisational structure; and
- (b) directly reporting to the CEO (of the council).

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

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

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

deputy principal member, of a council, means the member appointed by the council to be the deputy principal member under section 59(3).

details, for Chapter 8, Part 8.6, see section 144.

disclosure period, for Chapter 8, Part 8.6, see section 144.

donation, for Chapter 8, Part 8.6, see section 144.

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

electoral matter, for Chapter 8, Part 8.7, see section 155.

general election means:

- (a) a general election mentioned in section 131 or 312; or
- (b) a periodic general election mentioned in section 132.

general rates, see section 234.

inspector means an inspector of local government appointed under section 289.

land includes:

- (a) for land held under a pastoral lease or other lease from the Crown – the leasehold interest; and
- (b) for land held under a lease from a Land Trust – the leasehold interest; and
- (c) for land within an Aboriginal community living area that is held under a lease – the leasehold interest; and
- (d) the land to which an interest in a mining tenement relates; and
- (e) for land held under lease from the council – the leasehold interest.

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

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

local authority means a local authority established by a council under section 74.

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

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

local government subsidiary, see section 65.

Lord Mayor, see section 56(2)(a).

Mayor, section 56(1) or (3).

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

minerals includes extractive minerals.

Examples for definition minerals

Sand, gravel, rocks or soil.

mining tenement means:

- (a) the following under the *Mineral Titles Act 2010*:
- (i) an extractive mineral lease;
 - (ii) an extractive mineral permit;
 - (iii) a mineral lease;
 - (iv) a mineral authority that corresponds with a mineral lease, an extractive mineral lease or an extractive mineral permit;
 - (v) a mineral claim granted under the *Mining Act 1980* and continued under section 204 of the *Mineral Titles Act 2010* for which the Minister responsible for the administration of the *Mineral Titles Act 2010* has not taken an action under section 203 of the Act; and
- (b) the following under the *Petroleum Act 1984*:
- (i) a production licence;
 - (ii) a lease granted under the *Petroleum (Prospecting and Mining) Act 1954* and continued under section 119(2) of the *Petroleum Act 1984*.

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

municipal plan, see section 32(2)(a).

NTCAT reviewable decision, see section 321(1).

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

ordinary meeting, of a council, see section 88(1).

owner, of land, means:

- (a) the holder of an estate of fee simple in the land; or
- (b) if the land is held from the Territory or a Land Trust under a pastoral or other lease – the lessee; or
- (c) if the land is within an Aboriginal community living area and is held under lease – the lessee; or
- (d) if the land is subject to a mining tenement – the holder of the tenement.

prescribed corporation, see section 10.

President, section 56(2)(b) or (c).

principal member, of a council, means the member appointed or elected to be the principal member under section 58 or 59.

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

public cemetery, see section 5 of the *Burial and Cremation Act 2019*.

public notice means notice published in accordance with section 11.

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

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

rateable, in relation to land, see section 215.

rate concession, see section 244.

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

rates, for Chapter 11, Part 11.9, see section 248.

region means Territory region.

regional plan, see section 32(2)(b).

register of annual returns of interests, see section 109.

register of declared conflicts, see section 113.

register of declared gifts and benefits, see section 114.

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

- (a) after the election to which the material relates but not after the next periodic general election; and
- (b) for a ward or local government area affected by the election to which the material relates.

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

responsible entity, for a community cemetery or a public cemetery, see section 5 of the *Burial and Cremation Act 2019*.

returning officer, for an election:

- (a) if the election is a by-election – see section 133(9); or
- (b) otherwise – means the Electoral Commissioner.

reviewable decision, see section 316(1).

review panel, see section 122.

road, see section 266.

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

shire plan, section 32(2)(c).

special meeting, of a council, see section 88(5).

special rates, see section 235.

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

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

urban farm land means land classified by a council as urban farm land under section 218.

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

ward means a divided portion of a local government area.

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

Note for section 7

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

8 Meaning of Aboriginal community living area

An **Aboriginal community living area** is:

- (a) an area granted as an Aboriginal community living area under Part 8 of the *Pastoral Land Act 1992* (or the corresponding previous legislative provisions); or

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

9 **Meaning of *associate***

A person is an ***associate*** of another person if:

- (a) they are in a close family relationship; or
- (b) they are in partnership; or
- (c) one is a company and the other is a director or manager of the company; or
- (d) they are related companies; or
- (e) one is a private company and the other is a shareholder in the company; or
- (f) a chain of relationships can be traced between them under one or more of the above paragraphs.

10 **Meaning of *prescribed corporation***

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

11 **Public notice for matters in relation to elections**

- (1) If this Act requires public notice to be given about a matter in relation to an election, notice about the matter must be published as follows:
 - (a) the returning officer for the election must publish information about the matter in a newspaper circulating in the relevant local government area;
 - (b) the returning officer for the election must direct the relevant council to make that information available on the council's website in accordance with section 287.
- (2) The council must comply with the direction under subsection (1)(b).
- (3) This section does not prevent the giving of notice about the matter in another way.

Examples for subsection (3)

Radio or television broadcast.

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

notice is first published under subsection (1).

12 Council policies to be consistent with code of conduct

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

Part 1.4 Application of Criminal Code

13 Application of Criminal Code

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

Note for section 13

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Chapter 2 System of local government

Part 2.1 Local government areas

14 Local government system

Under the system of local government established by this Act:

- (a) the Territory is divided into local government areas having regard to:
 - (i) geography and natural configuration; and
 - (ii) the nature and density of population; and
 - (iii) the viability, and appropriateness, of each area as a separate unit of local government administration; and
- (b) a local government council is constituted for each area to be responsible for the government and management of the area at the local level.

15 Municipalities, regions and shires

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

Part 2.2 Constitutive powers

16 Power to establish local government etc.

- (1) The Administrator may, by *Gazette* notice, exercise any one or more of the following powers:
 - (a) constitute a part of the Territory as a local government area or abolish a local government area;
 - (b) merge 2 or more local government areas;
 - (c) determine whether a local government area is a municipality, a region or a shire;
 - (d) change a municipality into a shire or a shire into a municipality;
 - (e) change a municipality into a region or a region into a municipality;
 - (f) change a region into a shire or a shire into a region;
 - (g) assign a name to a local government area or change the name of a local government area;
 - (h) assign a name to the council for a local government area or change the name of the council for a local government area;
 - (i) define or change the boundaries of a local government area;
 - (j) create or abolish wards;
 - (k) define or change the boundaries of a ward;
 - (l) assign a name to, or alter the name of, a ward;
 - (m) determine or change the number of members to be elected for a particular area or a ward within a particular area;
 - (n) correct an error or omission in an earlier notice under this section.
- (2) The Minister may also, by *Gazette* notice, exercise any of the powers conferred by subsection (1) except the power to constitute or abolish a local government area under subsection (1)(a).
- (3) If a *Gazette* notice under subsection (1) or (2) changes the name of a local government area, or of a local government council, any reference to the area or council is taken to be read as a reference to the area or council as changed by the notice.

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

17 Consequential adjustment of rights and liabilities

- (1) The Administrator may, by *Gazette* notice, make any disposition of property or rights and liabilities in relation to a local government council that may be desirable as a consequence of:
- (a) the constitution or abolition of a local government area; or
 - (b) the merging of 2 or more local government areas; or
 - (c) a change to the boundaries of a local government area.
- (2) The Minister may also, by *Gazette* notice, exercise the power conferred by subsection (1).
- (3) On application for registration of a disposition of an interest in land made by the Administrator or the Minister under subsection (1), the Registrar-General must make appropriate entries in the land register.

18 Prospective council

- (1) This section applies if the Administrator intends to constitute a local government area under section 16(1)(a).
- (2) Before constituting the local government area, the Administrator may, by *Gazette* notice, establish a prospective council under the name to be assigned to the council for the local government area.
- (3) The prospective council:
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) is capable of acquiring, holding and disposing of real property (including leasehold) and personal property and of suing and being sued.
- (4) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the prospective council affixed to a document and are to assume that it was duly affixed.
- (5) The prospective council is constituted by the person appointed under subsection (6) until the prospective council becomes the council or otherwise ceases to exist.
- (6) The Administrator or the Minister may, by *Gazette* notice, appoint a

person to constitute the prospective council.

- (7) A prospective council established under subsection (2) has full power to transact any business or do anything else as if:
- (a) the prospective council were the council for the local government area; and
 - (b) the local government area had been constituted under section 16(1)(a).
- (8) The prospective council becomes the council after the general election for the council for the local government area.

Note for section 18

The Minister must call a general election for an area if the area is newly constituted under section 131.

19 By-laws

- (1) This section applies in relation to by-laws that apply in a part of the Territory immediately before:
- (a) the constitution of a local government area; or
 - (b) the merging of 2 or more local government areas; or
 - (c) the boundaries of a local government area are changed; or
 - (d) there is a change in the classification of a local government area.
- (2) The Administrator or the Minister may, by *Gazette* notice, determine which by-laws apply to a local government area or part of a local government area.

Part 2.3 Role, functions and objectives of councils

20 Principal role of council

The role of a council is:

- (a) to act as a representative, informed and responsible decision maker in the interests of its constituency; and
- (b) to develop a strong and cohesive social life for its residents and allocate resources in a fair, socially inclusive and sustainable way; and
- (c) to provide and coordinate public facilities and services; and

- (d) to encourage and develop initiatives for improving quality of life; and
- (e) to represent the interests of its area to the wider community; and
- (f) to exercise and perform the powers and functions of local government assigned to the council under this Act or another Act.

21 Functions of council

- (1) The functions of a council include the following:
 - (a) to plan for the future requirements of its area for local government services;
 - (b) to provide services and facilities for the benefit of its area, its residents and visitors;
 - (c) to provide for the interests and well-being of individuals and groups within its area;
 - (d) to carry out measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;
 - (e) to manage and develop council facilities and services in its area in a sustainable way;
 - (f) to manage and develop for the benefit of its area all the resources available to the council;
 - (g) other functions assigned to the council under this Act or another Act.
- (2) The functions of a council may (if the council chooses to perform them) include the following:
 - (a) to promote its area as a location for appropriate industries or commerce or as an attractive tourist destination;
 - (b) to establish or support programs that benefit its area.

22 Powers of council

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

23 Objectives of council

A council has the following objectives:

- (a) to provide open, responsive and accountable government at the local level;
- (b) to be responsive to the needs, interests and aspirations of individuals and groups within its area;
- (c) to cooperate with Territory and national governments in the delivery of services for the benefit of its area;
- (d) to seek to ensure a proper emphasis on environmentally sustainable development within its area and a proper balance between economic, social, environmental and cultural considerations;
- (e) to place a high value on the importance of service to the council's constituency;
- (f) to seek to ensure that council resources are used fairly, effectively and efficiently;
- (g) to seek to provide services, facilities and programs that are appropriate to the needs of its area and to ensure equitable access to its services, facilities and programs;
- (h) generally to act at all times in the best interests of the community as a whole.

24 Operations outside area

- (1) A council may provide services outside its own area but cannot exercise its regulatory powers outside its own area except:
 - (a) by mutual agreement with the council in whose area the powers are to be exercised; or
 - (b) if the powers are to be exercised outside the council area – with the Minister's consent.
- (2) For subsection (1)(a), mutual agreement may only be established by resolution of each council to the agreement.
- (3) For subsection (1)(b), the council may only seek the Minister's consent by resolution of the council.
- (4) However, a council may exercise regulatory and other powers outside its own area without the agreement of another council or the Minister's consent (as the case requires), if the occasion for exercising the powers arises from circumstances occurring in the council's area.

Example for subsection (4)

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

Chapter 3 Planning at the local level

Part 3.1 Definition

25 Definition

In this Chapter:

committee means the Local Government Representation Committee, established by section 26.

Part 3.2 Local Government Representation Committee

26 Local Government Representation Committee

- (1) There is a Local Government Representation Committee.
- (2) The committee consists of:
 - (a) the Electoral Commissioner; and
 - (b) the Surveyor-General; and
 - (c) the CEO of the prescribed corporation; and
 - (d) a person appointed by the Minister.
- (3) The chairperson of the committee is the person mentioned in subsection (2)(c).
- (4) The chairperson of the committee has a casting vote.

27 Powers of committee

- (1) The committee may determine:
 - (a) if a local government area is divided into wards:
 - (i) that the local government area remain divided into the same wards or be divided into different wards; or
 - (ii) that the local government area should not be divided into wards; or

- (b) if a local government area is not divided into wards:
 - (i) that the local government area remain that way; or
 - (ii) that the local government area should be divided into wards.
- (2) If the committee makes a determination that a local government area be divided into wards or different wards, the committee must also determine:
 - (a) the number of wards for the local government area; and
 - (b) the boundaries of the wards for the local government area; and
 - (c) the number of council members for each ward.
- (3) The committee may also make recommendations in relation to the local government area.

Example for subsection (3)

The committee may make a recommendation in relation to:

- (a) the names of the wards; or*
- (b) the external boundaries of the local government area.*

28 Procedures

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

29 Considerations for determination

- (1) Before making a determination under section 27, the committee must:
 - (a) invite written submissions from the council for the local government area and the public no later than 10 months after the polling day of a general election for the council; and
 - (b) allow at least 60 days after the invitation to make submissions under paragraph (a) to receive submissions; and
 - (c) after receiving the submissions:
 - (i) consider the submissions; and
 - (ii) publish a preliminary report on its website proposing its determination or alternate determinations; and

- (iii) invite written submissions from the council and the public on the preliminary report; and
 - (d) allow at least 60 days after the invitation to make submissions under paragraph (c)(iii) to receive submissions; and
 - (e) after receiving the submissions:
 - (i) consider the submissions; and
 - (ii) publish a final report with its determination on its website.
- (2) The committee may, for subsection (1)(c), hold a public hearing or request further information from a person who made a submission.
- (3) The committee must provide its final report to the council and the Minister at least 18 months before the next periodic general election for the council.
- (4) The Minister must, by *Gazette* notice, notify the making of the determination.
- (5) The determination takes effect from the next general election for the council.

30 Assessment criteria for committee to use in determinations

In making a determination under section 27, the committee must consider the following matters:

- (a) community of interests in the local government area including economic, social and regional interests;
- (b) types of communication and travel in the local government area with special reference to disabilities arising out of remoteness or distance;
- (c) the trend of population changes in the local government area;
- (d) the density of population in the local government area;
- (e) the physical features of the local government area.

31 Assessment criteria in relation to division of wards

- (1) This section applies if the committee determines:
 - (a) if a local government area is divided into wards – that the local government area remain divided into the same wards or be divided into different wards; or

- (b) if a local government area is not divided into wards – that the local government area should be divided into wards.
- (2) In making the determination, the committee must consider the desirability of:
- (a) the number of electors for each ward being as near to equal as practicable at the next general election; and
 - (b) keeping the area of each ward containing rural and remote areas as small as practicable; and
 - (c) keeping the demographic and geographic nature of each ward as uniform as practicable; and
 - (d) including an identifiable community wholly within one ward if practicable.

Part 3.3 Municipal, regional or shire plans

32 Municipal, regional or shire plans

- (1) Each council must have a plan for its area.
- (2) The plan for a council is:
 - (a) for a municipality – the ***municipal plan***; and
 - (b) for a region – the ***regional plan***; and
 - (c) for a shire – the ***shire plan***.
- (3) A council's municipal, regional or shire plan:
 - (a) must be accessible on the council's website; and
 - (b) must be available for inspection at the council's public office; and
 - (c) must be available for purchase from the council's public office at a fee fixed by the council.

33 Contents of municipal, regional or shire plan

- (1) A municipal, regional or shire plan:
 - (a) must include:
 - (i) a service delivery plan for the period to which the plan relates; and

- (ii) the council's budget and any amendment to the budget; and
 - (b) must include, or incorporate by reference:
 - (i) any long-term, community or strategic plan adopted by the council or a local authority and relevant to the period to which the plan relates; and
 - (ii) the council's long-term financial plan; and
 - (c) must define indicators for judging the standard of the council's performance.
- (2) A municipal, regional or shire plan incorporates a plan or assessment by reference if it refers to the plan or assessment and includes a link or reference to a webpage on which the plan or assessment is accessible.

34 Annual review of municipal, regional or shire plan

- (1) A council must adopt its municipal, regional or shire plan (or revisions to its municipal, regional or shire plan) between 1 March and 30 June in each year.
- (2) The council must give a copy of the plan (or the revised plan) to the Agency by the latter date mentioned in subsection (1).
- (3) Before the council adopts its municipal, regional or shire plan (or revisions to its municipal, regional or shire plan) for a particular year, the council must:
 - (a) prepare a draft of the plan (incorporating any proposed revisions); and
 - (b) make the draft plan accessible on the council's website and make copies available for public inspection at the council's public offices; and
 - (c) publish a notice on its website and in a newspaper circulating generally in the area inviting written submissions on the draft plan within a period (at least 21 days) from the date of the notice; and
 - (d) consider the submissions made in response to the invitation and make any revisions to the draft the council considers appropriate in the light of the submissions.
- (4) Although the council's budget forms part of its municipal, regional or shire plan, this section does not apply to the adoption of the budget

or of amendments to it.

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

35 Core services

- (1) The Minister may, by *Gazette* notice, advise a council as to the services that, in the Minister's view, are services that the council should, as a priority, provide.
- (2) The council must consider the advice when adopting and renewing its plan.

Chapter 4 Council and its members

Part 4.1 Council as a body corporate

Division 1 Corporate nature, capacity and powers of council

36 Council as a body corporate

- (1) A council:
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real property (including leasehold) and personal property and of suing and being sued.
- (2) All courts, judges and persons acting judicially are to take judicial notice of the common seal of a council affixed to a document and are to assume that it was duly affixed.
- (3) A council has the name assigned to it under section 16(1)(h).
- (4) A council has the functions and powers conferred by this Act or another Act.

37 How council acts in its corporate capacity

- (1) A council acts:
- (a) through local authorities, council committees, officers, staff and agents to whom the council has delegated powers or

authorised to act on its behalf; or

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

Note for subsection (1)

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

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

- (a) must be authorised or ratified by resolution of the council; and
- (b) must be attested by the signatures of the CEO and at least one member of the council.

38 Formation, ownership or participation in other bodies corporate

- (1) A council must not form, own (in full or in part) or otherwise participate in any type of corporation, partnership or other trading body, irrespective of whether such formation, ownership or participation is for the purposes of investment or otherwise.
- (2) However, the Minister, in consultation with the Treasurer, may approve a formation, ownership or participation, on any conditions the Minister thinks fit.

Division 2 Delegation

39 Delegation

- (1) A council may delegate its powers and functions.
- (2) A delegation may be made to:
 - (a) the CEO; or
 - (b) a council committee; or
 - (c) a local authority; or
 - (d) a local government subsidiary.
- (3) However:
 - (a) the power to impose rates and charges cannot be delegated; and

- (b) if power to incur financial liabilities is delegated – the council must fix reasonable limits on the delegate's authority; and
 - (c) a delegation cannot duplicate or derogate from the CEO's functions (including delegated functions); and
 - (d) a decision to classify information as confidential cannot be delegated; and
 - (e) a decision to enter into a transaction on conditions that are not arm's length conditions cannot be delegated; and
 - (f) a decision that requires a council resolution cannot be delegated.
- (4) A council, as the responsible entity of a public cemetery or a community cemetery, may only delegate the powers and functions of the responsible entity under the *Burial and Cremation Act 2019* to a local government subsidiary.
- (5) In this section:

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

Part 4.2 Council members

Division 1 Composition of councils

40 Composition of council

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

41 Vacancy etc. in office of member

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

- (a) a vacancy in the office of a member; or
- (b) a defect in the appointment or election of a member; or
- (c) the fact that a person has acted in the office of a member while disqualified from office.

Division 2 Role of members

42 Role of members

- (1) The role of a member of a council is:
 - (a) to represent the interests of all residents and ratepayers of the council area; and
 - (b) to provide leadership and guidance; and
 - (c) to facilitate communication between the members of the council's constituency and the council; and
 - (d) to participate in the deliberations of the council and its community activities; and
 - (e) to ensure, as far as practicable, that the council acts honestly, efficiently and appropriately in carrying out its statutory responsibilities.
- (2) However, a member of the council has no power to direct or control staff, or to interfere with the management of staff.
- (3) A member of the council has a duty to act, at all times, in what the member genuinely believes to be the best interests of the council's constituency.

43 Professional development of members

- (1) The CEO of the Agency may approve training courses for members of a council.
- (2) A member of a council must complete an approved training course within 6 months of each general election.
- (3) If a member is elected in a by-election or appointed to fill a casual vacancy, the training must be undertaken within 12 months of the election or appointment, unless the election or appointment is less than 12 months before the next general election.

Division 3 Terms and conditions of membership

Subdivision 1 Term of membership and disqualification

44 Eligibility for membership

A person is, unless disqualified, eligible for election or appointment as a member of a council if:

- (a) the person is enrolled as an elector in respect of a place of residence within the council's area; and
- (b) the person's principal place of residence is within the council's area.

45 Disqualification

- (1) A person is disqualified from office as a member of a council if the person:
 - (a) holds a judicial office (other than justice of the peace); or
 - (b) is bankrupt; or
 - (c) has been sentenced to a term of imprisonment (which has not expired) of 12 months or more; or
 - (d) is a staff member of the council; or
 - (e) is a staff member of the local government subsidiary of which the council is a constituent council of the local government subsidiary; or
 - (f) is indebted to the council and fails to discharge the debt within 6 months after the debt becomes due and payable in accordance with the regulations; or
 - (g) is certified mentally unfit to carry out the functions of a member; or
 - (h) is disqualified from managing a corporation under the Corporations Act 2001 or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
 - (i) is disqualified under section 40 of the *Associations Act 2003* from being an officer of an incorporated association; or
 - (j) is a member of the Commonwealth House of Representatives or the Senate; or
 - (k) is determined by NTCAT to be unfit to be a member under section 130; or
 - (l) for the period mentioned in that subsection – is incapable of holding a local government office under section 89(3) of the Criminal Code.
- (2) For subsection (1)(g), a person is certified mentally unfit to carry out the functions of a member if 2 medical practitioners have certified

that the person is mentally unfit, and likely to remain unfit for the remainder of the person's term of office, to carry out the functions of a member.

46 Basic term of office

- (1) A council member is elected or appointed for a term of office ending at the conclusion of the next general election following the member's election or appointment.
- (2) If a member continues to be eligible for membership, the member is eligible for re-election for a successive term or terms.

47 Disclosure requirements

- (1) If a council member is convicted of any offence, the member must notify the CEO of the conviction.
- (2) The CEO must notify the Agency of the conviction no later than 14 days after the CEO has been notified by the member under subsection (1).
- (3) A member commits an offence if:
 - (a) the member is convicted of an offence; and
 - (b) does not notify the CEO of the conviction.

Maximum penalty: 100 penalty units.

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

Note for section 47

If a member is convicted of an offence showing the member to be unfit to remain in office, NTCAT may determine the member to be unfit to be a member under section 130.

Subdivision 2 Casual vacancies

48 Casual vacancies

- (1) A person ceases to hold office as a member of a council if the person:
 - (a) dies; or
 - (b) is disqualified from office as a member of the council; or
 - (c) ceases to be enrolled as an elector in respect of a place of residence within the area; or

- (d) ceases to have a principal place of residence within the area;
or
 - (e) is absent, without permission of the council in accordance with the regulations, from 2 consecutive ordinary meetings of the council; or
 - (f) resigns by written notice given to the CEO; or
 - (g) is determined by NTCAT to be unfit to be a member under section 130.
- (2) A person commits an offence if:
- (a) the person is:
 - (i) disqualified from office as a member of the council; and
 - (ii) is reckless in relation to that circumstance; and
 - (b) the person fails to inform the CEO, as soon as practicable, of the vacancy in the office and the reason for it.

Maximum penalty: 100 penalty units.

- (3) A person commits an offence if:
- (a) the person:
 - (i) ceases to be enrolled as an elector in respect of a place of residence within the area; and
 - (ii) is reckless in relation to that circumstance; and
 - (b) the person fails to inform the CEO, as soon as practicable, of the vacancy in the office and the reason for it.

Maximum penalty: 100 penalty units.

- (4) Strict liability applies to subsections (2)(b) and (3)(b).

49 Notifying CEO of resignation

If a member resigns by written notice given to the CEO, the resignation:

- (a) cannot be withdrawn; and
- (b) takes effect on the date the notice is given to the CEO or on a date (not more than 3 months later) specified in the notice.

50 CEO's notifications of casual vacancy

- (1) If a CEO believes on reasonable grounds that a member has ceased to hold office as a member of a council under section 48, the CEO must notify the Agency as soon as practicable.
- (2) After receiving a notification by the CEO, the CEO of the Agency must:
 - (a) confirm whether the member has ceased to hold office as a member of the council under section 48; and
 - (b) give the confirmation to the CEO.
- (3) If the CEO of the Agency confirms a casual vacancy, the CEO of the Agency must notify the Electoral Commissioner and the council as soon as practicable after confirming the casual vacancy.

51 Filling casual vacancy generally

- (1) This section applies if a casual vacancy occurs in the office of a member other than a principal member.
- (2) If a casual vacancy occurs:
 - (a) less than 18 months, but not less than 6 months, before the next general election – the council may, by vote of existing members, appoint a person to fill the vacancy until the next general election; or
 - (b) 6 months or less before the next general election – the council may, by vote of existing members:
 - (i) appoint a person to fill the vacancy until the next general election; or
 - (ii) may leave the office vacant; or
 - (c) 18 months or more before the next general election – the council must hold a by-election.
- (3) The council must fill a casual vacancy under subsection (2) in accordance with its policy for filling casual vacancies, adopted by resolution.

52 Reinstatement if member stands as candidate

- (1) Despite section 51, a person is reinstated as a member of the council if:
 - (a) the person resigns in order to stand as a candidate for election

- to the Legislative Assembly, the Commonwealth House of Representatives or the Senate; and
- (b) the resignation takes effect not more than 28 days before the close of nominations for the relevant election; and
 - (c) the person is not elected; and
 - (d) the person applies to the CEO to be reinstated as a member of the council within 7 days after the result of the election is known.
- (2) A person reinstated to office under subsection (1) is not entitled to remuneration or allowances for the period between resignation and reinstatement.
- (3) If the person reinstated to office under subsection (1) is the principal member:
- (a) the vacancy is taken to be a period during which the member was absent from official duties; and
 - (b) the member is reinstated as the principal member.
- (4) If the member reinstated to office under subsection (1) is the deputy principal member:
- (a) if the member's term of office as the deputy principal member did not expire during the period between resignation and reinstatement – the member is reinstated as the deputy principal member; or
 - (b) if the member's term of office as the deputy principal member expired during the period between resignation and reinstatement – the member is reinstated as an ordinary member.
- (5) A member ceases to hold office as a member of the council under this section if the result of the election is declared and
- (a) the member has been elected; or
 - (b) the member has not been elected, the period for applying for reinstatement under subsection (1) has expired and the former member has not applied for reinstatement.

Subdivision 3 Eligibility for office

53 Determination of eligibility for office by CEO

- (1) The CEO of the Agency may, on an application by the CEO, the returning officer or a member of the public, determine whether a member of a council is eligible to hold office.
- (2) Subsection (1) applies if the member may be disqualified under section 45(1)(a) to (e) or (h) to (l).
- (3) The CEO of the Agency must give the CEO and the member a decision notice for the determination within 14 days after receiving the application.
- (4) The CEO of the Agency may refer the application to NTCAT to determine the application.

54 Determination of eligibility for office by NTCAT

- (1) A council may apply to NTCAT to determine whether a member is eligible to hold office if the member may be disqualified under section 45(1)(f).
- (2) The CEO, the returning officer or a member of the public may apply to NTCAT to determine whether a member is eligible to hold office if the member may be disqualified under section 45(1)(g).

Subdivision 4 Immunity from liability

55 Immunity from personal liability

- (1) No civil or criminal liability attaches to a member of a council for an honest act or omission in the performance, or the purported performance, of official functions under this Act or another Act.
- (2) Any civil liability that would, but for this section, attach to a member of a council, attaches instead to the council.

Subdivision 5 Principal member

56 Mayor or President

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

- (2) However:
- (a) in the case of the council for the City of Darwin local government area – the principal member is to have the title **Lord Mayor**; and
 - (b) in the case of the Litchfield Council – the principal member may instead have, at the election of the council, the title **President**; and
 - (c) in the case of a council for a region or shire – the principal member may instead have, at the election of the council, the title **President**.
- (3) The principal member for the councils mentioned in subsection (2)(b) or (c) may, in the alternative, have the title **Mayor**.

57 Role of principal member and deputy or acting principal member

- (1) In addition to the role of a member mentioned in section 42, the principal member of a council has the following roles:
- (a) to chair meetings of the council; and
 - (b) to speak on behalf of the council as the council's principal representative; and
 - (c) to carry out civic and ceremonial functions;
 - (d) to liaise with the CEO about the performance of the council's and CEO's functions.
- (2) In addition to the role of a member mentioned in section 42, the role of the deputy principal member of a council is to carry out any of the principal member's functions when the principal member:
- (a) delegates the functions to the deputy; or
 - (b) is absent from official duties because of illness or for some other reason; or
 - (c) is on leave.
- (3) If the principal member is absent from official duties or on leave or for some other reason and there is no deputy principal member or the deputy is not available to act in the principal member's position, the council may, by resolution, appoint another member of the council to act in the principal member's position for a specified period or until the principal member resumes official duties.

58 Election or appointment of principal member

- (1) The principal member of a council is to be elected or appointed to the office.
- (2) A council is taken to have chosen appointment as the basis of filling the office until the council changes the basis of filling the office under subsection (3).
- (3) A council may, by special resolution, change the basis of filling the office.
- (4) The council must, as soon as practicable, notify the Electoral Commissioner and the CEO of the Agency if the council changes the basis of filling the office under subsection (3).
- (5) However, a change to the basis of filling the office:
 - (a) may only be made once during a council's term; and
 - (b) must be made at least 12 months, but not more than 18 months, before the end of that term.
- (6) If a change is made to the basis of filling the office:
 - (a) the change does not take effect until the next general election; and
 - (b) for the next general election, the change takes effect as follows:
 - (i) if the change is that the office is to be filled by election – the number of members of the council is increased by one;
 - (ii) if the change is that the office is to be filled by appointment – the number of members of the council is decreased by one.
- (7) If there is a change in the classification of a local government area under section 16, the basis of filling the office of the principal member remains the same as it was before the change, until changed under this section.

59 Election or appointment of principal member and deputy principal member

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

- (2) If appointment is the basis of filling the office of the principal member of a council, the council must, at the first meeting of a council after a general election, appoint one of its members to be the principal member.
- (3) The council may appoint another one of its members to be the deputy principal member of the council.

60 Term of office

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

61 Resignation of principal member

- (1) If appointment is the basis of filling the office of the principal member of a council, the principal member may resign as the principal member and continue the member's term of office as an ordinary member.
- (2) The resignation must include the following:
 - (a) a statement that the principal member is resigning from the office of principal member;
 - (b) a statement whether the principal member is also resigning from the office of ordinary member.
- (3) If the resignation does not include the statement mentioned in subsection (2)(b), the member is taken not to have resigned from the office of ordinary member.
- (4) If election is the basis of filling the office of the principal member, the member is not entitled to continue the member's term of office as an ordinary member.

Note for section 61

Section 49 provides that a resignation takes effect on the date the notice is given to the CEO or on a date (not more than 3 months later) specified in the notice.

62 Resignation of deputy principal member

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

- (2) The resignation must include the following:
 - (a) a statement that the deputy principal member is resigning from the office of deputy principal member;
 - (b) a statement whether the deputy principal member is also resigning from the office of ordinary member.
- (3) If the resignation does not include the statement mentioned in subsection (2)(b), the member is taken not to have resigned from the office of ordinary member.

Note for section 62

Section 49 provides that a resignation takes effect on the date the notice is given to the CEO or on a date (not more than 3 months later) specified in the notice.

63 Filling casual vacancies – principal member

- (1) This section applies if a casual vacancy occurs in the office of a principal member.
- (2) If appointment was the basis for filling the office of the principal member, and a casual vacancy in the office of the principal member occurs, the council:
 - (a) if the vacancy occurs 3 months or more before the next general election – must, by vote of existing members, appoint a member to fill the vacancy; or
 - (b) if the vacancy occurs less than 3 months before the next general election:
 - (i) may, by vote of existing members, appoint a member to fill the vacancy; or
 - (ii) may leave the office vacant.
- (3) If election was the basis for filling the office of the principal member, and a casual vacancy in the office of the principal member occurs, the council:
 - (a) if the vacancy occurs 18 months or more before the next general election – must hold a by-election; or
 - (b) if the vacancy occurs less than 18 months but more than 3 months before the next general election:
 - (i) may, by vote of existing members, decide for a member to fill the vacancy; or
 - (ii) may hold a by-election; or

- (c) if the vacancy occurs 3 months or less before the next general election:
 - (i) may, by vote of existing members, decide for a member to fill the vacancy; or
 - (ii) may hold a by-election; or
 - (iii) may leave the office vacant.
- (4) If a person is voted to fill a casual vacancy in the office of an elected principal member:
 - (a) the person is not (unless appointed by the council to be its principal member) to be the council's principal member; and
 - (b) the council may appoint any of its existing members to be its principal member for the remainder of the council's term; and
 - (c) if the council does not fill a casual vacancy in the office of an elected principal member – it may appoint any of its existing members to be its principal member for the remainder of its term.

Part 4.3 Council office

64 Council office

- (1) A council must have at least one public office.
- (2) A public office must be open to the public at reasonable times determined by the council.
- (3) If a council has more than one public office, a document to be displayed or available for inspection at the council's public office must be displayed or available for inspection at each of the public offices.

Part 4.4 Local government subsidiary

65 Local government subsidiary

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

- (2) The local government subsidiary and the constituent council or councils must comply with:
- (a) any conditions of the Minister's approval; and
 - (b) any guidelines that the Minister may make.

66 Corporate identity and functions of local government subsidiary

- (1) A local government subsidiary comes into existence as a body corporate on a date fixed by the Minister by *Gazette* notice.
- (2) A local government subsidiary:
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real property (including leasehold) and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of a council affixed to a document and are to assume that it was duly affixed.
- (4) A local government subsidiary:
- (a) has the name assigned in its constitution; and
 - (b) has the powers and functions conferred or assigned by its constitution.
- (5) A local government subsidiary acts:
- (a) through officers or agents appointed for the purpose; or
 - (b) under its common seal.
- (6) The common seal of a local government subsidiary may only be affixed to a document as authorised by its constitution.
- (7) The constituent council or councils are jointly and severally liable for any liabilities of the local government subsidiary.

67 Constitution of local government subsidiary

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

- (2) The constitution must provide that any liabilities of the local government subsidiary are guaranteed by the constituent council or councils.
- (3) The constituent council or councils may, with the Minister's approval, vary the constitution of the local government subsidiary.
- (4) The approved constitution must be accessible on the Agency's website and on the website of the constituent council or councils.

68 Reporting obligations

- (1) Each constituent council for a local government subsidiary is responsible for ensuring that proper accounts are kept of the local government subsidiary's financial affairs.
- (2) Each constituent council's annual report is to contain, or to incorporate by reference, a report on the local government subsidiary's activities for the relevant financial year including audited financial statements for the relevant financial year.

69 Chief executive

- (1) A local government subsidiary must have a chief executive for the local government subsidiary.
- (2) The chief executive is the person in charge of day-to-day operations of the local government subsidiary.
- (3) The following persons are not eligible to be the chief executive:
 - (a) the person is disqualified from managing a corporation under the Corporations Act 2001 or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
 - (b) the person is disqualified under section 40 of the *Associations Act 2003*;
 - (c) the person is bankrupt.
- (4) However, a person mentioned in subsection (3) becomes eligible to be the chief executive if the circumstances in that subsection no longer apply to the person.

70 Delegation by chief executive

- (1) The chief executive may delegate a power or function under this Act or another Act to a person or committee.
- (2) However, the chief executive must not delegate a power or function

to any of the following:

- (a) an audit committee;
- (b) a council committee;
- (c) a local authority.

71 Offences for conflict of interest

(1) A person commits an offence if:

- (a) the person is a staff member; and
- (b) the staff member has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice; and
- (c) the member does not disclose the interest:
 - (i) if the staff member is the chief executive – to the local government subsidiary; or
 - (ii) in any other case – to the chief executive.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if:

- (a) the person is a staff member; and
- (b) the staff member has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice; and
- (c) the staff member acts in the matter in a way other than as authorised by the chief executive or the local government subsidiary under subsection (5) (as the case requires).

Maximum penalty: 100 penalty units.

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

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

(5) The local government subsidiary may:

- (a) provide authorisation, on any conditions it considers

- appropriate, to a staff member; and
- (b) authorise the chief executive to provide authorisation, on any conditions the chief executive considers appropriate, to a staff member.
- (6) The local government subsidiary provides the authorisation under subsection (5):
- (a) for a local government subsidiary with one constituent council – by resolution of the constituent council; or
 - (b) for a local government subsidiary with more than one constituent council – by resolution of the local government subsidiary.
- (7) In this section:
- staff member** includes:
- (a) a person who is not an employee but works for, or provides services to, the local government subsidiary on a contract basis; or
 - (b) a person who works for the local government subsidiary under an arrangement with a labour hire agency; or
 - (c) a person acting under powers of the local government subsidiary conferred by delegation.

72 Abolition of local government subsidiary

- (1) The Minister may, by *Gazette* notice, abolish a local government subsidiary.
- (2) Irrespective of the constitution of the local government subsidiary, on abolition of a local government subsidiary, the Minister may make directions in relation to the transfer or vesting of its property, rights and liabilities.

Chapter 5 Local decision making

Part 5.1 Local authorities

73 Object

The object of this Part is to achieve effective integration and involvement of local communities in the system of local government

as it relates to regions.

74 Local authorities

- (1) The Minister may, by *Gazette* notice, identify a council for a region that must establish and maintain one or more local authorities.
- (2) A council identified in a *Gazette* notice mentioned in subsection (1) must establish and maintain the local authority in accordance with any guidelines that the Minister may make.
- (3) The Minister may, by *Gazette* notice, abolish a local authority.

75 Constitution of local authority

- (1) A local authority consists of:
 - (a) at least one member of the council appointed by the council by resolution; and
 - (b) such other members of the community or communities within the local authority's area as the council appoints as members of the local authority by resolution.

Note for subsection (1)

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

- (2) The member mentioned in subsection (1)(a) is not required to be a member of the ward in which the local authority is located and may be the principal member.
- (3) The council must appoint the members under subsection (1)(b) in accordance with any guidelines that the Minister may make.

76 Functions of local authority

The functions of a local authority are:

- (a) to involve local communities more closely in issues related to local government; and
- (b) to ensure that local communities are given an opportunity to express their opinions on questions affecting local government; and
- (c) to allow local communities a voice in the formulation of policies for the locality as well as policies for the area and the region; and
- (d) to take the views of local communities back to the council and

act as advocates on their behalf; and

- (e) to contribute to the development of the relevant regional plan; and
- (f) to make recommendations to the council in relation to the council's budget, and to review expenditures by the council, in relation to the part of the council's area within which the local authority performs its functions; and
- (g) to approve the cemetery plan for each cemetery located within the local authority's area; and
- (h) to perform other functions assigned to the local authority by the Minister, in accordance with any guidelines that the Minister may make.

77 Limits on functions of local authority

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

78 Reporting

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

79 Council to work with local authority

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

- (a) seek advice and recommendations from the local authority or local authorities in relation to the following:
 - (i) the council's budget;
 - (ii) the council's priorities for expenditure;
 - (iii) the council's service delivery;
 - (iv) the council's regional plans;
 - (v) the council's strategic directions;
 - (vi) the council's funding;

- (vii) cemeteries and cemetery plans for the cemeteries in the local government area; and
- (b) ensure its strategies and plans are informed by the vision and priorities of the local authority or local authorities; and
- (c) work with the local authority or local authorities to foster constructive working relationships between the council members and the residents and organisations of the region.

Part 5.2 Council committees

80 Council committees

- (1) A council may, by resolution, establish one or more council committees.
- (2) A council committee consists of the persons appointed, by resolution, by the council to be members of the committee.
- (3) The members of a council committee may consist of, or include, persons who are not members of the council.

Note for subsection (3)

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

- (4) The terms and conditions on which a person holds office as a member of a council committee are to be as determined by the council.
- (5) The council may, by resolution, abolish a council committee.
- (6) The council must establish or abolish a council committee in accordance with any guidelines that the Minister may make.

81 Nature of committee's functions

- (1) A council committee has the functions assigned to the committee by the council.
- (2) The assigned functions may be of an executive or advisory nature.
- (3) A council committee carries out, on behalf of the council, functions delegated to it by the council.
- (4) A council committee must have terms of reference, approved by council resolution, that set out its functions.

82 Control and direction by the council

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

83 Procedures

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

Part 5.3 Audit committees

84 Audit committee

- (1) A council must, by resolution, establish and maintain an audit committee.
- (2) An audit committee consists of the persons appointed, by resolution, by the council to be members of the committee.
- (3) The members of an audit committee may consist of, or include, persons who are not members of the council.

Note for subsection (3)

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

- (4) However, the chairperson of an audit committee must not be a member of the council or a member of the council's staff.
- (5) The terms and conditions on which a person holds office as a member of an audit committee are to be as determined by the council.
- (6) The council may, by resolution, abolish an audit committee.
- (7) The council must establish or abolish an audit committee in accordance with any guidelines that the Minister may make.

85 Nature of committee's functions

An audit committee has the following functions:

- (a) to monitor compliance by the council with proper standards of financial management; and
- (b) to monitor compliance by the council with this Act or another Act and the Australian Accounting Standards.

86 Control and direction by the council

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

87 Procedures

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

Chapter 6 Meetings

Part 6.1 Council meetings

88 Nature and timing of council meetings

- (1) A council must hold a meeting of its members (an **ordinary meeting**) at least once in each successive period of 2 months.
- (2) Subject to this Act, a council may deal with business of any kind at an ordinary meeting.
- (3) The first ordinary meeting of a council to be held after a general election must:
 - (a) be held within 21 days after the conclusion of that general election; and
 - (b) set the schedule for holding of ordinary meetings for the term of the council.
- (4) The schedule for the holding of ordinary meetings may be altered at a subsequent meeting.
- (5) The council may hold a meeting to deal with a particular item of business (a **special meeting**) whenever circumstances require.

89 Convening of meetings

- (1) Meetings of a council are to be convened by the CEO.
- (2) The CEO must convene a special meeting of the council at a specified time and place to deal with specified business if:
 - (a) the principal member or 3 or more other members request the CEO in writing to convene the meeting; or
 - (b) the council resolves that the special meeting should be convened.

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

90 Notice for meeting

- (1) A notice convening a council meeting:
- (a) must be in writing; and
 - (b) must state the date, time, place and agenda (including any confidential business) for the meeting; and
 - (c) must include any business papers to be considered at the meeting (including any business papers for confidential business); and
 - (d) must be given to the members:
 - (i) in the case of an ordinary meeting – at least 3 business days before the date of the meeting; and
 - (ii) in the case of a special meeting – at least 4 hours before the time appointed for the meeting.
- (2) The notice may be given to a member personally, by post, by email, by facsimile or in any other way pre-arranged by the CEO with the member.

91 Publication of notice

- (1) The notice:
- (a) for an ordinary meeting:
 - (i) must be published on the council's website at least 3 business days before the date of the meeting; and
 - (ii) must be posted on a notice board at the council's public office at least 3 business days before the date of the meeting; and
 - (b) for a special meeting:
 - (i) must be published on the council's website at least 4 hours before the time of the meeting; and
 - (ii) must be posted on a notice board at the council's public office at least 4 hours before the time of the meeting.
- (2) If confidential business is to be considered at the meeting, the notice available to the public must contain a statement of that fact

and the provision under which the business is confidential.

- (3) If it is not practicable to do so, the business papers for the meeting may not be posted with the copy of the notice posted on the notice board, however the notice must contain information on how to otherwise access the business papers on the council's website.
- (4) If the business papers considered at the meeting are different to the business papers published and posted for the meeting under subsection (1), the business papers considered at the meeting must be published on the council's website at the same time the minutes of the meeting are published under section 100(2).
- (5) If any other papers or documents are considered at a meeting that have not been published and posted for the meeting under subsection (1), the papers or documents must be published on the council's website at the same time the minutes of the meeting are published under section 100(2).

Note for section 91

1 Confidential matter may be suppressed from the material that is made publicly available under section 288.

2 The regulations prescribe the information that may be suppressed.

92 Business to be considered at a meeting

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

93 Procedure at meeting

- (1) The chairperson of a meeting of a council is:
 - (a) if the principal member is present – the principal member; or
 - (b) if the principal member is not present but the deputy principal member is present – the deputy principal member; or
 - (c) if neither the principal member nor the deputy principal member is present but an acting principal member is present – the acting principal member; or
 - (d) if neither the principal member nor the deputy principal member is present and there is no acting principal member or the acting principal member is not present – a member chosen by the members present at the meeting to chair the meeting.

- (2) A quorum at a meeting of a council consists of a majority of the council's members holding office at the time of the meeting.
- (3) A member who is not physically present at a meeting of a council is taken to be present at the meeting if:
 - (a) the member's attendance at the meeting by means of an audio or audiovisual conferencing system is authorised in accordance with a council resolution establishing a policy for attendance in such a manner; and
 - (b) communication is established by means of the conferencing system, at or around the commencement of the meeting, between the member and the members present at the place appointed for the meeting; and
 - (c) the member has the same or substantially the same opportunity to participate in debate, and to register an opinion, on questions arising for decision as if the member were physically present at the meeting.
- (4) Subject to this Act, a decision carried by a majority of the votes of the members present at a meeting of a council is a decision of the council.
- (5) Each member present at a meeting has and must exercise one vote on a question arising for decision at the meeting and, if the council has a policy allowing the chairperson to exercise a casting vote, the chairperson must exercise, in the event of an equality of votes, a second or casting vote.
- (6) A policy to allow the chairperson to exercise a casting vote:
 - (a) may only be established by resolution of the council passed at the first meeting of the council to be held after a general election; and
 - (b) cannot be altered or revoked during the term of the council; and
 - (c) lapses at the conclusion of the next general election.
- (7) Unless the council decides unanimously to take a vote by secret ballot, voting is to be by show of hands.
- (8) Subject to this Act, and any by-laws regulating the procedure at a meeting, a council may determine its own procedures.

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

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

- (1) Subject to direction by the council:
 - (a) an audit committee meets at times determined by the audit committee; and
 - (b) a council committee meets at times determined by the council committee.
- (2) Subject to any guidelines that the Minister may make, and to direction by the council, a local authority meets at times determined by the local authority.

95 Convening of meetings

- (1) Meetings of an audit committee, a council committee or a local authority are convened by the CEO.
- (2) The CEO may, at the request of the chairperson of an audit committee, a council committee or a local authority, convene a meeting of the audit committee, council committee or a local authority.
- (3) A notice convening a meeting:
 - (a) must be in writing; and
 - (b) must state the date, time, place and agenda for the meeting; and
 - (c) must be given to the members of the audit committee, council committee or local authority within a reasonable time before the time appointed for the meeting; and
 - (d) must be accessible on the council's website within a reasonable time before the time appointed for the meeting; and
 - (e) must be posted on a notice board at the council's public office.
- (4) The notice may be given to a member personally, by post, by email, by facsimile or in any other way pre-arranged by the CEO with the member.

96 Procedure at meeting

- (1) The chairperson of a meeting of an audit committee, council committee or local authority is:
 - (a) for an audit committee – a member appointed by the council; or
 - (b) for a council committee – a member appointed by the council as chairperson of the committee; or
 - (c) for a local authority – a member appointed by the local authority as its chairperson; or
 - (d) for an audit committee, council committee or local authority, if the chairperson is not present (or no-one currently holds the position of the chairperson) – a member chosen by the members present at the meeting to chair the meeting.
- (2) A quorum at a meeting of an audit committee, a council committee or a local authority consists of a majority of its members present at the meeting.
- (3) A member who is not physically present at a meeting is taken to be present at the meeting if:
 - (a) the member's attendance at the meeting by means of an audio or audiovisual conferencing system is authorised in accordance with a council resolution establishing a policy for attendance in such a manner; and
 - (b) communication is established by means of the conferencing system, at or around the commencement of the meeting, between the member and the members present at the place appointed for the meeting; and
 - (c) the member has the same or substantially the same opportunity to participate in debate, and to register an opinion, on questions arising for decision as if the member were physically present at the meeting.
- (4) A decision of an audit committee, a council committee or a local authority is to be by majority vote of the members present at a meeting.
- (5) Subject to this Act and any direction by the council, an audit committee, a council committee or a local authority may determine its own procedures.

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

97 Meetings to be open to the public

- (1) A meeting of a council, council committee or local authority must be open to the public.
- (2) However, the public may be excluded while business of a kind prescribed by regulation as confidential business is being considered.
- (3) If the council, council committee or local authority considers confidential business at a meeting, the agenda for the meeting must identify the type of matter that is to be considered at the meeting.
- (4) A meeting of an audit committee may be conducted in private.

98 Postponement of meeting

- (1) If a quorum is not present within 30 minutes of the start time for the meeting of an audit committee, a council, a council committee or a local authority, the following may postpone a meeting to a time later on the same day:
 - (a) the chairperson;
 - (b) if the chairperson is not present – the principal member;
 - (c) if the chairperson and the principal member are not present but 2 or more members are present – the majority of members present;
 - (d) if the chairperson and the principal member are not present and less than 2 members are present – the CEO or a person authorised by the CEO.
- (2) If it is impracticable for a meeting to be postponed to a time later on the same day under subsection (1), the CEO may postpone the meeting for up to 21 days.
- (3) The person who postpones a meeting under subsection (1) or (2) must ensure, as far as practicable, that each member receives notice of the postponement and of the time and place to which the meeting has been postponed.
- (4) If a meeting is postponed under subsection (2), the notice of the postponement and of the time and place to which the meeting has

been postponed must be published on the council's website.

- (5) The CEO must record, in writing, the fact that a meeting was postponed under subsection (1) or (2).
- (6) The record must be published:
 - (a) on the council's website; and
 - (b) at the council's public office.

99 Minutes

- (1) The CEO must ensure that proper minutes of meetings of an audit committee, a council, a council committee and a local authority are kept.
- (2) The minutes must be in writing and:
 - (a) must set out:
 - (i) the names of the members present at the meeting; and
 - (ii) the business transacted at the meeting; and
 - (iii) any confidential business that was considered at the meeting; and
 - (iv) any other information required by regulation; and
 - (b) must include references to any written reports or recommendations considered in the course of the meeting together with information about how to obtain access to the reports or recommendations.
- (3) The audit committee, council, council committee or local authority must, at its next meeting, or next ordinary meeting, confirm the minutes (with or without amendment), including any confidential business considered at the meeting, as a correct record of the meeting.
- (4) The minutes of an audit committee, a council committee or a local authority must be tabled at the next meeting of the council.

100 Public access to minutes

- (1) This section applies to the minutes of a council, council committee or local authority.
- (2) A copy of the minutes must, within 10 business days after the date

of the meeting to which they relate, be available to the public:

- (a) on the council's website; and
 - (b) at the council's public office.
- (3) If confidential business was considered at the meeting, the copy of the minutes available to the public must contain a statement of that fact and the provision under which the business is confidential.

Note for subsection (3)

- 1 *Confidential matter may be suppressed from the material that is made publicly available under section 288.*
- 2 *The regulations prescribe the information that may be suppressed.*

- (4) A member of the public:
- (a) may inspect without fee, at the council's public office, the copy of the minutes made available to the public; and
 - (b) may, on payment of any fee fixed by the council, obtain an identical copy of the minutes; and
 - (c) may, on payment of any fee fixed by the council, obtain from the CEO a certified copy of, or extract from, the minutes of a meeting.
- (5) However, until the council, council committee or local authority has confirmed the minutes as a correct record of the meeting:
- (a) the minutes, in the form in which they are made available to the public, must be marked with a warning to the effect that they have not been confirmed as a correct record of the meeting; and
 - (b) no certified copy of, or extract from, the minutes is to be issued.

Part 6.4 Meetings of electors

101 Calling meeting of electors

- (1) A council may call a meeting of the electors for its area or a ward within its area.
- (2) A meeting of electors is called by giving notice of the time and place of the meeting:
 - (a) on the council's website; and

- (b) by notice displayed at the council's public office; and
- (c) by notice published in a newspaper circulating generally in the area.

102 Procedure at meeting

- (1) The chairperson of a meeting of electors is to be a person nominated by the council or the local authority (as the case requires) to chair the meeting.
- (2) The procedure at the meeting is, subject to any direction by the council or the local authority, to be as determined by the chairperson.
- (3) Each elector is entitled to one vote on a question arising for decision at the meeting.
- (4) The chairperson may conclusively determine the qualification of a person present at the meeting to vote.
- (5) A question arising for decision at the meeting must be resolved by majority vote.

103 Effect of resolution passed at meeting of electors

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

Chapter 7 Rights and obligations of members

Part 7.1 Allowances and expenses

104 Allowance for members of council

- (1) A member of a council is entitled to be paid the following allowances, the maximum amount of which is determined by the Remuneration Tribunal under section 7B of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*:
 - (a) base allowance;
 - (b) electoral allowance;
 - (c) extra meeting allowance;
 - (d) professional development allowance.

- (2) The allowances payable under this section are to be paid by the council.
- (3) The council must publish the amounts of the allowances payable by the council on its website.
- (4) If there is no determination that applies to a council, the allowances are to be as determined by the Minister.

105 Allowance for members of local authority

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

106 Allowances generally

- (1) Allowances for each financial year are to be fixed as part of the council's budget for the relevant financial year.
- (2) Allowances are to be paid as determined by the council or by the guidelines but are not to be paid in advance.

107 Expenses

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

- (a) attending a meeting of the council, a council committee or a local authority for which the person is a member; or
- (b) attending to business of the council in accordance with a prior resolution of the council.

Part 7.2 Interests

108 Annual return of interests – members

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

- (a) within 60 days of the council member's election; and
 - (b) by no later than 30 September each year for the duration of the council member's membership.
- (2) However, if a member has submitted an annual return of interests after 31 March in a calendar year, the member is not required to submit another return before 30 September in that year.
- (3) A member commits an offence if:
- (a) the member intentionally engages in conduct; and
 - (b) the conduct results in a failure to submit an annual return of interests in accordance with this section and the member is reckless in relation to the result.

Maximum penalty: 32 penalty units or imprisonment for 6 months.

109 Register of annual returns of interests

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

110 Relevant gifts and benefits

- (1) A council must, by resolution, adopt a policy in relation to relevant gifts or benefits received by council members.
- (2) The policy must:
 - (a) differentiate between what is given to a council member for the council and what is given to the member as a relevant gift or benefit; and
 - (b) be in accordance with any relevant guidelines the Minister may make.
- (3) A council member must notify the CEO as soon as practicable after the council member receives a relevant gift or benefit from another person.

111 Conflict of interest

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

- (b) a indirect financial interest;
 - (c) a indirect interest by close association;
 - (d) a indirect interest due to conflicting duties.
- (2) However, the following is not a conflict of interest:
- (a) an interest that the member or associate shares in common with the general public or a substantial section of the public;
 - (b) an interest as an elector or ratepayer that the member or associate shares in common with other electors or ratepayers;
 - (c) subject to subsection (3), an interest that the member or an associate has in a non-profit body or association;
 - (d) an interest so remote or insignificant that it could not reasonably be regarded as likely to influence a decision.
- (3) However, a member has a conflict of interest if the interest that the member or an associate has in a non-profit body or association is that the member or associate is or was a director, manager, office holder or employee of the non-profit body or association.
- (4) In this section:

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

*Example for definition **direct interest***

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

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

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

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

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

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

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

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

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

Examples for definition indirect interest due to conflicting duties

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

112 Disclosure of interest

- (1) As soon as practicable after a member becomes aware of a conflict of interest in a question that has arisen or is about to arise before the council, local authority or council committee, the member must disclose the interest that gives rise to the conflict (the ***relevant interest***):
- (a) at a meeting of the council, local authority or council committee; and
 - (b) to the CEO.
- (2) A member must not:
- (a) be present at a meeting of the council, local authority or council committee while a question in which the member has a conflict of interest is under consideration; or
 - (b) participate in any decision on the question; or
 - (c) engage in behaviour that may influence the council, local authority or council committee's consideration of the question or any decision on the question.
- (3) The Minister may approve the following on any conditions the Minister considers appropriate:
- (a) a member's participation in the consideration of a question in which the member has a conflict of interest;
 - (b) a member's participation in the decision on the question in which the member has a conflict of interest.
- (4) A member commits an offence if the member:
- (a) intentionally engages in conduct; and

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

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

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

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

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

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

113 Register of declared conflicts

- (1) The CEO must keep a register (***register of declared conflicts***) setting out conflicts of interest disclosed by council members under section 112.
- (2) The register of declared conflicts must set out:
 - (a) the name of the member making the disclosure of the conflict of interest; and
 - (b) the nature of the interest that gives rise to the conflict of interest; and
 - (c) the nature of the question on which the conflict of interest arises; and
 - (d) any other matter prescribed by regulation.

114 Register of declared gifts and benefits

- (1) The CEO must keep a register (***register of declared gifts and benefits***) setting out the relevant gifts and benefits received by council members.
- (2) The register of declared gifts and benefits must set out:
 - (a) the name of the member that received the relevant gift or benefit; and

- (b) the details of the relevant gift or benefit, in accordance with the council's policy mentioned in section 110(1); and
- (c) any other matter prescribed by regulation.

115 Registers to be published

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

Part 7.3 Confidential information

116 Improper use of information

- (1) A person commits an offence if:
 - (a) the person obtains information as a member of an audit committee, a council, a council committee or a local authority; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in the improper use of the information and the person is reckless in relation to the result.

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

- (2) Strict liability applies to subsection (1)(a).
- (3) A person makes improper use of information if the person uses it to gain some private benefit for the person or another person, or uses it to inflict harm on another person.

Part 7.4 Code of conduct

Division 1 Code of conduct to apply

117 Code of conduct to apply

- (1) The code of conduct set out in Schedule 1 governs the conduct of members of a council, local authority and council committee.
- (2) The code of conduct must be published on the council's website.

Division 2 Contravention of code of conduct by council members

Subdivision 1 Complaint and review of decision about complaint

118 Complaints of contravention of code of conduct

- (1) A person (the ***complainant***) who believes that a council member has contravened a council's code of conduct may lodge a complaint with the CEO of the council:
 - (a) stating the name of the member alleged to have committed the contravention (the ***respondent***); and
 - (b) giving particulars of the alleged contravention.
- (2) The complaint:
 - (a) must be in the approved form; and
 - (b) must include a statutory declaration verifying the allegations of fact made against the respondent; and
 - (c) must be made within 4 months after the date of the alleged contravention.

119 Policy for contravention of code of conduct

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

120 Complaint referred to council or panel

- (1) As soon as practicable after receiving a complaint under section 118, the CEO must refer the complaint to:
 - (a) the council; or
 - (b) a panel established by the council consisting of least 3 council members.
- (2) The council or panel must decide, in accordance with the council's policy:
 - (a) whether the respondent contravened the council's code of conduct; and
 - (b) the action to be taken if the respondent contravened the code of conduct as follows:

- (i) no action;
- (ii) issue a reprimand to the respondent;
- (iii) recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date.

121 Notice of decision – council or panel

The council or panel must, within 90 days of the receipt of the complaint by the CEO, give a decision notice of the council or panel's decision under section 120(2) to the complainant and the respondent.

122 Review of complaint by prescribed corporation

- (1) A complainant or a respondent may, within 28 days of receiving the decision notice under section 121, apply to the prescribed corporation for a review of the decision of the council or panel under section 121(1).
- (2) On receipt of an application under subsection (1), the prescribed corporation must establish a panel of 2 nominees of the corporation (**review panel**) to review the decision.

123 Procedure of review panel

- (1) The review panel may summarily reject an application under section 122 without reviewing the decision if the review panel is satisfied that:
 - (a) the complaint would more appropriately form the subject matter of a criminal charge; or
 - (b) the complaint is frivolous, vexatious or lacking in substance.
- (2) If the review panel summarily rejects an application under subsection (2), the committee must give a decision notice to the complainant as soon as practicable after making the decision.
- (3) If the review panel decides to proceed to review the decision, the panel must give the complainant and the respondent an opportunity to make representations to the panel.
- (4) The review panel may obtain information in any way it considers appropriate and is not bound by the rules of evidence, however the rules of natural justice apply.

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

124 Decision of review panel

- (1) The review panel must make a decision as soon as practicable after the conclusion of the proceedings under section 123.
- (2) If the review panel is not satisfied, after hearing the parties, that the code of conduct has been contravened, it must reject the complaint.
- (3) If the review panel is satisfied, after hearing the parties, that the code of conduct has been contravened, the review panel must decide the action to be taken as follows:
- (a) no action;
 - (b) issue a reprimand to the respondent;
 - (c) recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date;
 - (d) any other recommendation the review panel considers appropriate.

125 Notice of decision – review panel

The review panel must, within 90 days of the receipt of the application, give a decision notice of the panel's decision under section 124 to the complainant and the respondent.

126 Failure to comply with review panel recommendation

- (1) If a person is subject to a recommendation of the review panel, and does not comply with the recommendation, the complainant or the respondent may apply to NTCAT to deal with the failure.
- (2) NTCAT, after determining the application, may:
- (a) order that the complainant, respondent or any other person attend training, mediation or counselling by a specified date; or
 - (b) if NTCAT finds the respondent contravened the code of conduct – order that the respondent not subsequently contravene the code of conduct; or
 - (c) make any other order NTCAT considers appropriate.

Subdivision 2 No decision by council or prescribed corporation

127 No decision by council or panel

- (1) If the council or the panel established by the council does not give a decision notice in accordance with section 121, the complainant or respondent may refer the complaint to the prescribed corporation.
- (2) On receipt of a complaint under subsection (1), the prescribed corporation must establish a panel of 2 nominees (***complaint panel***) of the corporation to deal with the application.
- (3) Subject to subsection (4), the complaint panel must deal with the complaint in accordance with sections 120 and 121 as if it were the council or panel.
- (4) However, the complainant or respondent may apply to NTCAT for review of the decision of the complaint panel.

128 No decision by review panel

- (1) If the review panel does not give a decision notice in accordance with section 125, the complainant or respondent may refer the complaint to NTCAT.
- (2) NTCAT must deal with the complaint in accordance with sections 122 to 125 as if it were the review panel.

129 No decision by complaint panel

- (1) If the complaint panel does not give a decision notice in accordance with sections 121 and 127(3), the complainant or respondent may refer the complaint to NTCAT.
- (2) NTCAT must deal with the complaint in accordance with sections 120 and 121 as if it were the council or panel.

Part 7.5 Removal from office by NTCAT

130 Removal of member from office

- (1) If a member of a council is convicted of an offence under this Act or another Act demonstrating that the member to be unfit to remain in office, a person may apply to NTCAT to determine whether the member, once convicted, is unfit to remain in office.
- (2) The applicant must:
 - (a) reside in the same local government area as the member; and

- (b) be registered to vote in the local government area.
- (3) NTCAT must consider the following in determining whether the member is unfit to remain in office:
 - (a) whether the nature and details of the offence makes the member unfit to remain in office;
 - (b) the member's role as a community representative;
 - (c) the member's position of influence and trust;
 - (d) the member's responsibility for managing public funds.
- (4) If NTCAT finds the member has been convicted of an offence that demonstrates that the member is unfit to remain in office, NTCAT may dismiss the member from office.
- (5) If NTCAT dismisses the member under subsection (4), NTCAT may disqualify the person from holding office as a council member for a period of up to 5 years.

Chapter 8 Elections and polls

Part 8.1 General elections

131 Minister's power to call general election

- (1) The Minister may call a general election for an area if:
 - (a) the area is newly constituted; or
 - (b) a substantial change is made affecting the electoral representation of the area; or
 - (c) a general election fails for any reason; or
 - (d) 2 or more areas are merged under section 16(1)(b).

Examples for subsection (1)(b)

1 *The division of the area into wards.*

2 *Some substantial change to the boundaries of the area or to wards within the area.*

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

132 Periodic general elections

- (1) A periodic general election is to be held on the 4th Saturday in August in the 4th year after the most recent previous periodic general election was held.
- (2) The Electoral Commissioner may, by *Gazette* notice, provide that a periodic general election be held on a date other than the date on which it is scheduled to be held under subsection (1) (the **nominal date**) if:
 - (a) the date for an election mentioned in section 394 of the *Commonwealth Electoral Act 1918* (Cth) is the same as the nominal date; or
 - (b) the date for a general election under the *Electoral Act 2004* is the same as the nominal date.
- (3) However, the new date on which the periodic general election is to be held under subsection (2) must not be:
 - (a) earlier than 2 months before the nominal date; or
 - (b) later than 2 months after the nominal date.
- (4) Subject to subsection (5), if a general election for an area is called by the Minister under section 131 or 313(1) and is held less than 1 year before the date for a periodic general election under this section:
 - (a) a further periodic general election for the area must not be held on the later date; and
 - (b) the next periodic general election for the area must be held on the date on which it is scheduled to be held under subsection (1), as if the general election for the area had not been called by the Minister and a periodic general election had been held in the ordinary course.
- (5) A general election for an area must not be called less than 3 months before a periodic general election.

Part 8.2 By-elections

133 By-elections

- (1) This section applies if a by-election must be held:
 - (a) under section 51(2)(c) or 63(3); or

- (b) as prescribed by regulation.
- (2) If the member whose seat has become vacant represented a ward, the by-election is confined to the ward.
- (3) A by-election is to be held on a date fixed by the returning officer.
- (4) The date must fall within 4 months after the Electoral Commissioner is notified of the casual vacancy under section 50(3).
- (5) Unless a person is appointed under subsection (6) to be the returning officer for a by-election, the by-election (including nomination of candidates and other related processes) is to be conducted as decided by the Electoral Commissioner.

Note for subsection (5)

Section 138 provides that regulations may provide for the conduct of elections, including by-elections for which the returning officer is appointed under subsection (6), and those by-elections must be conducted in accordance with the regulations.

- (6) The council may appoint the CEO or another person (other than the Electoral Commissioner) to be the returning officer for the by-election, by doing the following within 2 months after the Electoral Commissioner is notified of the casual vacancy under section 50(3):
 - (a) passing a resolution appointing the person;
 - (b) if the person is not the CEO – entering into a contract with the person for the performance of the functions of returning officer.
- (7) As soon as practicable after the council appoints a person to be the returning officer for a by-election under subsection (6), and in any event not later than 5 days after the appointment, the council must notify the Electoral Commissioner of the identity of the returning officer.
- (8) However, failure to notify the Electoral Commissioner under subsection (7) does not affect the validity of the appointment.
- (9) In this section:
returning officer, for a by-election, means:
 - (a) if a resolution is passed under subsection (6) in relation to the by-election – the person appointed by the resolution; or
 - (b) otherwise – the Electoral Commissioner.

134 Resolution for mandatory postal vote election

- (1) A council for a municipality may decide that the only way to vote in a by-election (a ***mandatory postal vote election***) is by postal vote.
- (2) If the council does so, the council must, within 2 months after it is notified of a casual vacancy under section 50(3), pass a resolution declaring the by-election to be a mandatory postal vote election.
- (3) As soon as practicable after the municipal council passes the resolution, and in any event not later than 5 days after the passage of the resolution, the council must notify the following persons that the resolution has been passed:
 - (a) if the returning officer is the Electoral Commissioner – the Electoral Commissioner;
 - (b) otherwise – the Electoral Commissioner and the returning officer.
- (4) Failure to notify a person as required by subsection (3) does not affect the validity of the resolution.

Part 8.3 Electors and electoral rolls

135 Entitlement to vote

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

136 Electoral rolls

- (1) The Electoral Commission must prepare a new roll for an area or ward whenever it is necessary to do so in order to allow for the conduct of an election or poll of electors.
- (2) The roll must contain the same information about each elector required of a roll prepared under the *Electoral Act 2004*.

Note for subsection (2)

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

- (3) If the address of an elector is suppressed from a roll prepared under the *Electoral Act 2004*, it must also be suppressed from the roll prepared for this Act.

- (4) An electoral roll closes for an election or a poll of electors on a date determined in accordance with the regulations.
- (5) When an electoral roll closes, it must be available for public inspection until the conclusion of the election or poll at the Electoral Commission's public offices.
- (6) As soon as practicable after an electoral roll closes for a by-election, the Electoral Commissioner must give a copy of the roll to the returning officer (unless the Electoral Commissioner is the returning officer).
- (7) Access is to be permitted to the electoral roll for the area or ward on the same basis as access to a roll under the *Electoral Act 2004*.

137 Use of electoral roll for by-election

- (1) A returning officer for a by-election commits an offence if:
 - (a) the returning officer is given a copy of an electoral roll under section 136(6); and
 - (b) the returning officer intentionally engages in conduct; and
 - (c) the conduct results in the information obtained from the copy of the roll being used improperly and the returning officer is reckless in relation to the result.

Maximum penalty: 80 penalty units.

- (2) A person, other than the returning officer for a by-election, commits an offence if:
 - (a) the returning officer for the by-election is given a copy of an electoral roll under section 136(6); and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in the information obtained from the copy of the roll being used improperly and the person is reckless in relation to the result.

Maximum penalty: 50 penalty units.

- (3) Strict liability applies to subsections (1)(a) and (2)(a).
- (4) In this section:

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

Part 8.4 Conduct of elections

138 Conduct of elections and polls

- (1) Subject to section 133(5), an election or poll of electors must be conducted in accordance with the regulations.
- (2) If a periodic general election under this Act is to be held on the polling day for the election under the *Constitutional Convention (Election) Act 2001*, the regulations may provide for any of the following:
 - (a) additional provisions to facilitate the holding of the election under that Act and the periodic general election on that day;
 - (b) modifications of specified provisions in this Chapter and the regulations to facilitate the holding of both elections on that day;
 - (c) a matter arising because of the holding of both elections on that day.

139 Voting

- (1) Voting is compulsory.
- (2) Subject to a resolution passed under section 134 and the regulations, an elector may vote:
 - (a) by returning a postal vote; or
 - (b) if the Minister approves – by voting electronically in a manner approved by the Minister; or
 - (c) by attending and voting at a voting centre; or
 - (d) in any other way authorised by regulation.
- (3) A person commits an offence if:
 - (a) the person is an elector; and
 - (b) the person fails to vote at an election or poll.

Maximum penalty: 1 penalty unit.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

Part 8.5 Electoral disputes

140 Disputing validity of election or poll

- (1) The returning officer or a person with a proper interest in the result of an election or poll may, by application to NTCAT, dispute the result of the election or poll.
- (2) A person has a proper interest in the result of an election or poll if the person:
 - (a) was a candidate for election or a prospective candidate whose nomination was rejected; or
 - (b) is an elector for the relevant area.
- (3) An application disputing the result of an election:
 - (a) must state the grounds on which the applicant seeks relief from NTCAT; and
 - (b) must state the nature of the remedy sought by the applicant.
- (4) An application must be filed with the Registrar of NTCAT within 21 days after the conclusion of the election to which it relates.
- (5) The period mentioned in subsection (4) cannot be extended.
- (6) Section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a decision of NTCAT under this section.

141 Service of application

- (1) An application disputing the result of an election or poll must be served on:
 - (a) the returning officer; and
 - (b) any member or candidate for election whose position could be affected by the result of the application; and
 - (c) any person on whom the NTCAT directs service.
- (2) A person on whom an application is served is a respondent to the application.
- (3) A respondent may, within 7 days after service of the application or a longer period allowed by NTCAT, file in NTCAT a reply to the application.

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

142 Powers of NTCAT

- (1) NTCAT has the following powers:
- (a) declare the election or poll void and order another election;
 - (b) declare a person who should have been declared elected to have been duly elected as a member of the council;
 - (c) declare a respondent to the application not to have been duly elected as a member of the council;
 - (d) order that the votes for an ineligible candidate be distributed to the candidate next in order of the voter's preferences on the ballot paper.
- (2) NTCAT must not disturb the result of an election on the ground of an error affecting the conduct of the election unless satisfied that the error is a material error that is likely to have affected the result of the election.
- (3) If, in the course of an inquiry under this Part, NTCAT finds that a person has committed an offence, the Registrar must, as soon as practicable, report the finding to the Minister.
- (4) NTCAT cannot inquire into the correctness of an electoral roll.

143 Exclusive method of challenge

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

Part 8.6 Donation disclosure

144 Definitions

In this Part:

campaign donation return means the return required to be given by a principal member candidate to the Electoral Commission under section 145.

details means:

- (a) for a donation or loan made on behalf of the members of an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
- (b) for a donation or loan out of a trust fund or the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or foundation; and
 - (ii) the name, title or description of the trust fund or foundation; or
- (c) for another donation or loan – the name and address of the person or entity that made the donation or loan.

disclosure period means the period mentioned in section 146.

donation means gifts totalling \$200 or more to the same candidate for the disclosure period and includes a gift:

- (a) made in a private capacity to a candidate for the candidate's personal use; and
- (b) that the candidate has not used, and will not use, solely or substantially for a purpose related to an election.

145 Campaign donation return

- (1) Each principal member candidate in a periodic general election, general election or by-election, must give a campaign donation return for the disclosure period to the Electoral Commission.
- (2) The return must be in the form approved by the Electoral Commission.
- (3) If a candidate is a principal member candidate and an ordinary member candidate, the candidate must provide information for the

loans and donations related to both candidacies.

146 Period for disclosure

- (1) The disclosure period begins:
 - (a) for a principal member candidate that was an elected member of the council (whether or not as a principal member) immediately prior to the election – on the day that the results of the previous election were declared; or
 - (b) for a principal member candidate that was an appointed member of the council (whether or not as a principal member) immediately prior to the election – on the day when the member was appointed; or
 - (c) for any other principal member candidate – the earlier of the following:
 - (i) on the day on which the candidate announced candidacy;
 - (ii) on the day on which the candidate was nominated as a candidate.
- (2) The disclosure period concludes on the day the results of the election are declared.

147 Candidate to know details for donation or loan

A principal member candidate must not accept a donation or loan from a person during the disclosure period unless the candidate knows the details for the campaign donation return for the donation or loan.

148 Contents of return

- (1) The campaign donation return must set out the following:
 - (a) the amounts or values of each donation made, directly or indirectly, to the principal member candidate;
 - (b) the dates each donation was made;
 - (c) the details of the donors;
 - (d) the amounts and terms of any loan to the principal member candidate;
 - (e) the details of the lenders of the loan.

- (2) If the principal member candidate did not receive any donations or loans during the disclosure period, the principal member candidate must give a return to that effect.
- (3) A copy of the return must be made available for public inspection by the Electoral Commissioner 30 days after the principal member candidate was required to give the return and for 4 years from that date.
- (4) The principal member candidate must keep and maintain records in relation to the donations or loans specified in the return for a period of 4 years.

149 Incomplete return

If a principal member candidate cannot complete a campaign donation return, the candidate may:

- (a) prepare the return to the extent possible; and
- (b) give the Electoral Commission a notice stating:
 - (i) the return is incomplete; and
 - (ii) the particulars the candidate cannot obtain; and
 - (iii) the reasons why the candidate cannot obtain the particulars; and
 - (iv) if the candidate believes on reasonable grounds that another person can give the particulars, the name and address of the person.

150 Permission to amend return

A principal member candidate may request permission from the Electoral Commission:

- (a) to personally amend a return to correct an omission or an error; or
- (b) for the Electoral Commission to amend a return to correct an omission or an error.

151 Offences

- (1) A principal member candidate commits an offence if:
 - (a) the candidate engages in conduct; and
 - (b) the conduct results in a failure to give the Electoral

Commission a return in the time required.

Maximum penalty: 100 penalty units.

- (2) A principal member candidate, except a candidate who complies with section 149, commits an offence if:
- (a) the candidate engages in conduct; and
 - (b) the conduct results in the giving of an incomplete return to the Electoral Commission.

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.
- (5) Despite section 52 of the *Local Court (Criminal Procedure) Act 1928*, a prosecution for an offence against a provision of this section may be started at any time within 3 years after commission of the offence.

152 Investigation by Electoral Commission

Sections 216 to 219 of the *Electoral Act 2004* apply to this Part.

Part 8.7 Miscellaneous matters

Division 1 Interpretation

153 Definitions

In this Part:

campaign material, see section 154.

electoral matter, see section 155.

154 Meaning of ***campaign material***

- (1) ***Campaign material*** is an advertisement, document or any other thing that is intended to promote the electoral prospect of a particular candidate or group of candidates for an election.
- (2) Without limiting subsection (1), campaign material includes the following:

- (a) an electoral advertisement;
 - (b) a printed document containing an electoral matter (for example, a handbill, pamphlet or how-to-vote card);
 - (c) a message containing an electoral matter that is sent by telephone or otherwise broadcast by electronic means;
 - (d) material containing an electoral matter that is published.
- (3) The returning officer for an election may, in writing, declare a thing mentioned in subsection (3) or (4) is not campaign material.
- (4) The returning officer may do so only if the returning officer is satisfied the declaration is warranted having regard to all of the following:
- (a) any information contained in the thing and the way in which the information is presented;
 - (b) the person for whom the thing is created;
 - (c) the way in which the thing is intended to be used or distributed;
 - (d) any other matters as the returning officer considers appropriate.

155 Meaning of *electoral matter*

- (1) ***Electoral matter*** is matter, in printed or electronic form, that is intended or likely to affect voting at an election.
- (2) Without limiting subsection (1), matter is taken to be intended or likely to affect voting at an election if it contains an express or implicit reference to or comment on:
- (a) the election; or
 - (b) a candidate for the election; or
 - (c) the performance of a member, or former member, of a council;
or
 - (d) an issue submitted to, or otherwise before, the electors in relation to the election.

Division 2 Miscellaneous matters

156 Minister's powers in relation to election

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

157 Caretaker policy during general election

- (1) A council must, by resolution, adopt a caretaker policy governing the conduct of the council and its staff during the period that:
 - (a) commences on the nomination day for a general election as prescribed by regulation; and
 - (b) ends when the result of the general election is declared in accordance with the regulations.
- (2) The caretaker policy must be published on the council's website.

158 Interference with proper conduct of election or poll

- (1) A person commits an offence if:
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct results in the obstruction or interference with the proper conduct of an election or poll; and
 - (c) the person is reckless in relation to the result.

Maximum penalty: 400 penalty units or imprisonment for 2 years.
- (2) A person commits an offence if:
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct is violence or intimidation; and
 - (c) the conduct results in the influence of the vote of an elector at an election or poll; and
 - (d) the person is reckless in relation to the result.

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

- (3) Strict liability applies to subsection (2)(b).

159 Secrecy of vote

- (1) A person commits an offence if:
- (a) the person is acting in an official capacity in relation to an election or poll or is assisting a person to vote; and
 - (b) the person finds out how a voter voted; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in the disclosure of the voter's vote and the person is reckless in relation to the result.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(a) and (b).

160 Offences relating to campaign material

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in the publication or distribution of campaign material and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the publication is the announcement by advertisement in a newspaper of the holding of a meeting; or
 - (b) the material:
 - (i) clearly states the name and address of the person authorising the publication or distribution; and
 - (ii) if the material is a printed document – includes the name and address of the printer who printed the document; and
 - (iii) if the material is intended to be viewed from 2 sides – includes the information mentioned in this paragraph and paragraph (a) on both sides.

- (3) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in the publication or distribution of campaign material and the person is reckless in relation to that result; and
 - (c) the campaign material:
 - (i) is likely to mislead an elector casting a vote; or
 - (ii) is likely to deceive an elector casting a vote; or
 - (iii) is likely to improperly interfere with an elector casting a vote; or
 - (iv) contains an untrue or incorrect statement; and
 - (d) the person has knowledge of the circumstance mentioned in paragraph (c).

Maximum penalty: 100 penalty units.

Chapter 9 Council staff

Part 9.1 Council's CEO

161 CEO

- (1) A council must appoint a CEO.
- (2) The CEO may, in writing, appoint a Deputy CEO for the period (not exceeding 2 years) specified in the appointment, and is eligible for reappointment.
- (3) If the CEO is absent or unavailable to carry out official duties:
 - (a) if there is a Deputy CEO who is available to act – the Deputy CEO acts as CEO; and
 - (b) if there is no Deputy CEO, or the Deputy is absent or unavailable to act – a person nominated by the CEO to act in that situation acts as CEO.
- (4) The CEO must notify the principal member of the council of a nomination made by the CEO under subsection (3)(b).
- (5) Appointments to the office of CEO are to be made, as occasion

requires, by the council in accordance with:

- (a) the requirements prescribed by regulation; and
- (b) any relevant guidelines the Minister may make.

162 Eligibility for CEO and Deputy CEO

- (1) The following persons are not eligible to be the CEO or the Deputy CEO:
 - (a) the person is disqualified from managing a corporation under the Corporations Act 2001 or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
 - (b) the person is disqualified under section 40 of the *Associations Act 2003*;
 - (c) the person is bankrupt.
- (2) However, a person mentioned in subsection (1) becomes eligible to be the CEO or the Deputy CEO if the circumstances in that subsection no longer apply to the person.

163 Role and functions of CEO

The CEO is responsible to the council:

- (a) to ensure that the council's policies, plans and lawful decisions are implemented and to ensure council reviews council's policies, plans and decisions in a timely manner; and
- (b) to undertake the day-to-day management of the council's operations, including the management of the council's staff; and
- (c) to ensure that the appointment of the council's staff is properly managed within the budget allocated to staffing expenditure approved by the council; and
- (d) to ensure that the management of the council's operations are properly managed within the budget allocated to non-staffing expenditure approved by the council; and
- (e) to provide or obtain for the council the information and advice the council reasonably requires for effectively carrying out its functions; and
- (f) to ensure that the council's constituency is kept properly informed about council policies, programs and decisions and

- to ensure that appropriate and prompt responses are given to specific requests for information; and
- (g) to ensure that the council's assets and resources are properly managed and maintained; and
 - (h) to ensure that proper standards of financial management are maintained, including proper controls over revenue and expenditure; and
 - (i) to ensure that financial and other records are properly made and maintained; and
 - (j) to appoint, manage and, if necessary, terminate the appointment of the council's staff (other than the CEO); and
 - (k) to carry out other functions delegated to the CEO by the council or assigned to the CEO under this Act or another Act.

164 Delegation by CEO

- (1) The CEO may delegate a power or function under this Act or another Act to a person or committee, except the power to authorise a staff member in relation to a conflict of interest under section 175(6).
- (2) However, the CEO must not delegate a power or function to the following:
 - (a) an audit committee;
 - (b) a council committee;
 - (c) a local authority;
 - (d) a local government subsidiary.
- (3) The CEO:
 - (a) must not delegate the power to authorise a staff member in relation to a conflict of interest under section 175(6); and
 - (b) may only delegate a power or function under the *Burial and Cremation Act 2019* to a person.

165 Vacancy

If there is a vacancy in the office of the CEO, the council must advertise the vacancy:

- (a) within 28 days of the vacancy occurring; and

- (b) in accordance with the requirements prescribed by regulation.

Part 9.2 Other staff

166 Other staff of the council

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

167 CEO to advise council of change in staff

If any of the following occur, the CEO must table a document at the next ordinary council meeting advising the council of that fact:

- (a) the CEO appoints a person to be a council senior staff member;
- (b) a council senior staff member resigns;
- (c) a council senior staff member's appointment is terminated;
- (d) a council senior staff member's contract expires and is not renewed.

Part 9.3 Principles and policies

168 Principles of human resource management

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

- (a) selection processes for appointment or promotion:
 - (i) must be based on merit; and
 - (ii) must be fair and equitable;
- (b) the council's staff must have reasonable access to training and development and opportunities for advancement and promotion;
- (c) the council's staff must be treated fairly and consistently and must not be subjected to arbitrary or capricious decisions;
- (d) there must be suitable processes for dealing with employment-related grievances;
- (e) working conditions must be safe and healthy;

- (f) there must be:
 - (i) no unlawful discrimination against a member, or potential member of the council's on the ground of sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment, age or any other ground; and
 - (ii) no other form of unreasonable or otherwise unjustifiable discrimination against a member or potential member of the council's staff.

169 Statement of employment policies

- (1) The CEO must maintain an up-to-date statement of the council's employment policies.
- (2) The statement of employment policies:
 - (a) must cover:
 - (i) recruitment; and
 - (ii) probation and performance assessment; and
 - (iii) opportunities for advancement that are based on merit and are fair and equitable; and
 - (iv) access to training and development; and
 - (v) access to employment-related benefits; and
 - (vi) resolution of employment-related grievances; and
 - (b) may cover other employment-related subjects.
- (3) The statement of employment policies must be consistent with the principles of human resource management specified in section 168.

170 Allowances and fringe benefits policy

- (1) The council must, by resolution, adopt a policy in relation to allowances and fringe benefits for the CEO and the council's staff.
- (2) The policy:
 - (a) must cover:
 - (i) allowances; and
 - (ii) vehicles; and

- (iii) accommodation; and
- (b) may cover other subjects related to allowances and fringe benefits.

171 Code of conduct for staff

The council must, by resolution, adopt a code of conduct for the CEO and the council's staff.

Part 9.4 Local government subsidiary

172 Application to local government subsidiary

- (1) This Chapter, except sections 161 and 162 and Part 9.7, apply to a local government subsidiary as if:
 - (a) a reference to a council were a reference to a local government subsidiary; and
 - (b) a reference to a CEO were a reference to a chief executive.
- (2) In relation to the application of Part 9.3, the local government subsidiary may:
 - (a) create its own policies or code of conduct; or
 - (b) adopt the policies or code of conduct of its constituent council or one of its constituent councils.
- (3) The policies and code of conduct of the local government subsidiary must be approved by the constituent council or councils.

Part 9.5 Staff obligations

173 Standards to be observed by council's staff and local government subsidiary's staff

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

174 Annual return of interests – staff

- (1) The following persons must submit an annual return to the council containing the details prescribed by regulation:
 - (a) a CEO;

- (b) a council senior staff member.
- (2) The following persons must submit an annual return to the constituent council or councils of a local government subsidiary containing the particulars prescribed by regulation:
 - (a) a chief executive;
 - (b) a local government subsidiary senior staff member.
- (3) Each person mentioned in subsection (1) or (2) must submit the annual return:
 - (a) within 14 days of the commencement of the person's employment; and
 - (b) by no later than 30 September each year for the duration of person's employment.
- (4) However, if the person has submitted a return after 31 March in a calendar year, the person is not required to submit another return before 30 September in that year.
- (5) The council and the constituent council or councils of the local government subsidiary must keep a register of returns submitted under this section.
- (6) A person commits an offence if:
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct results in a failure to submit an annual return in accordance with this section and the member is reckless in relation to the result.

Maximum penalty: 32 penalty units or imprisonment for 6 months.

- (7) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.
- (8) In this section:

local government subsidiary senior staff member means a member of staff of the local government subsidiary:

- (a) employed in a position in the management level immediately beneath the chief executive of the local government subsidiary in the local government subsidiary's organisational structure; and

- (b) directly reporting to the chief executive of the local government subsidiary.

175 Offences for conflict of interest

- (1) A person commits an offence if:
 - (a) the person is a staff member; and
 - (b) the staff member has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice; and
 - (c) the member does not disclose the interest:
 - (i) if the staff member is the CEO – to the council; or
 - (ii) in any other case – to the CEO.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if:
 - (a) the person is a staff member; and
 - (b) the staff member has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice; and
 - (c) the staff member acts in the matter in a way other than as authorised by the CEO or the council (as the case requires).

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant was unaware of the personal or financial interest.
- (5) The council may, by resolution, provide the authorisation mentioned in subsection (1)(b) to the CEO.
- (6) The CEO may, in writing, provide the authorisation mentioned in subsection (1)(b) to a staff member.
- (7) In this section:

staff member includes:

- (a) a person who is not an employee but works for, or provides services to, the council on a contract basis; or
- (b) a person who works for the council under an arrangement with a labour hire agency; or
- (c) a person (other than a member of the council, a council committee or a local authority) acting under powers of the council conferred by delegation.

Part 9.6 Rights and immunities of staff

176 Portability of long service leave rights

- (1) A person (the ***applicant***), who leaves the employment of one employer to which this section applies (the ***former employer***) and enters the employment of another employer to which this section also applies (the ***later employer***) within 3 months, may elect, in accordance with this section, to transfer accrued and accruing rights to long service leave to the later employment.
- (2) An employer must, as soon as practicable after an employee enters into employment, require the employee to provide to the employer, not later than 28 days after the requirement, a written declaration stating:
 - (a) whether the employee was employed by another employer within the 3 months immediately preceding the entering into employment; and
 - (b) if the employee was employed by another employer within those 3 months – whether the employee elects to transfer accrued and accruing rights to long service leave to the later employment.
- (3) The requirement under subsection (2) is to be given to the employee not later than 5 days after the employee enters into employment, but failure to do so within those 5 days does not affect the validity of the requirement.
- (4) An employee who does not provide a declaration under subsection (2) is considered to have decided not to elect to transfer any accrued and accruing rights to long service leave to the later employment.
- (5) If the declaration under subsection (2) states that the employee elects to transfer accrued and accruing rights to long service leave to the later employment:

- (a) the later employer must, not later than 3 months after the employee enters into employment, notify the former employer, in writing, that the employee has made an election under this section; and
- (b) the former employer must, not later than 30 days after receiving a notification under paragraph (a):
 - (i) notify the later employer, in writing, of the applicant's accrued and accruing rights to long service leave as appear from the former employer's records; and
 - (ii) pay to the later employer the amount of the provision for long service leave in the former employer's accounts.
- (6) An amount mentioned in subsection (5)(b)(ii) that remains unpaid after the 30 days may be recovered as a debt due to the later employer from the former employer by action in a court of competent jurisdiction.
- (7) This section applies to the following employers:
 - (a) a council for an area within the Territory;
 - (b) a local government subsidiary formed with the Minister's approval under this Act;
 - (c) the prescribed corporation.

177 Resignation to contest election – staff members

- (1) This section applies if the following persons resign in order to stand as a candidate for election to a council, the Legislative Assembly, the Commonwealth House of Representatives or the Senate:
 - (a) a CEO;
 - (b) a chief executive;
 - (c) a staff member of a council;
 - (d) a staff member of a local government subsidiary.
- (2) However, this section does not apply if a person mentioned in subsection (1) resigns in order to stand as a candidate for election to a council that is not:
 - (a) in the case of a CEO or a staff member of a council – the council the CEO or staff member is employed by; or
 - (b) in the case of a chief executive or a staff member of a local

government subsidiary – the constituent council or councils for the local government subsidiary the chief executive or staff member is employed by.

- (3) The person must give the following written notice at the time of resignation that the person claims the benefit of this section:
 - (a) for a CEO – the principal member of the council;
 - (b) for a subsidiary chief executive – the constituent council or councils of the local government subsidiary;
 - (c) for a staff member of a council – the CEO of the council;
 - (d) for a staff member of a local government subsidiary – the subsidiary chief executive for the local government subsidiary.
- (4) The person's resignation must take effect not more than 28 days before the close of nominations for the relevant election.
- (5) If the person is not elected, and applies to the person mentioned in subsection (3) to be reinstated within 7 days after the result of the election is known, the person must be reinstated to the person's former position or an equivalent position.
- (6) A person reinstated under subsection (5) is to be treated as having been on unpaid leave between the date of resignation and the date of reinstatement.

178 Immunity from personal liability

- (1) No civil or criminal liability attaches to a staff member for an honest act or omission in the performance, or purported performance, of official functions under this Act or another Act.
- (2) Any civil liability that would, but for this section, attach to a staff member, attaches instead to the council or local government subsidiary.

Part 9.7 Authorised persons

Division 1 Appointment of authorised persons

179 Appointment of authorised persons

- (1) A council may appoint a person (other than a member of the council) to be an authorised person.
- (2) The council may, by notice to the authorised person:

- (a) add to, or vary, any limitations and conditions of appointment;
or
- (b) revoke the appointment.

180 Powers of authorised persons

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

181 Identity cards for authorised persons

- (1) The council must issue each authorised person with an identity card:
 - (a) containing the person's name and a photograph of the person;
and
 - (b) stating that the person is an authorised person.
- (2) The authorised person must, at the reasonable request of a person, produce the identity card for inspection.
- (3) A person commits an offence if:
 - (a) the person is an authorised person; and
 - (b) the person, on ceasing to be an authorised person, fails to return the identity card to the council.

Maximum penalty: 20 penalty units.

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

Division 2 General powers of authorised person

182 Power to require statement of name and address

- (1) If an authorised person reasonably suspects a person of having committed an offence against this Act or the council's by-laws, the authorised person may require the person:
 - (a) to state the person's name and address; and
 - (b) if the authorised person considers further evidence of identity necessary – to provide further evidence of a specified kind of identity.

- (2) A person commits an offence if:
- (a) the person is required to comply with a requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

183 Power to enter land or premises

- (1) An authorised person may, with the necessary authority, enter land or premises for an authorised purpose and remain on the land or premises for as long as may be necessary for that purpose.
- (2) The necessary authority is:
- (a) the consent of the occupier; or
 - (b) a warrant issued by a justice of the peace; or
 - (c) in an emergency – the CEO's authorisation.
- (3) A justice of the peace may, if satisfied by information verified by oath, that there are reasonable grounds on which an authorised person should be authorised to enter land or premises to carry out an authorised purpose, issue a warrant accordingly.
- (4) An **authorised purpose** is any one or more of the following:
- (a) investigating a suspected offence against this Act or a by-law;
 - (b) taking necessary action in an emergency:
 - (i) to protect the health of, or prevent injury to, a person or animal; or
 - (ii) to relieve the suffering of an animal; or
 - (iii) to seize or destroy a savage, diseased or injured animal;
 - (c) destroying a dog that has, within the preceding 24 hours, attacked and injured a person in a public place;
 - (d) exercising any other power conferred on an authorised person by this Act or a by-law.

184 Assistance of police

An authorised person may call a police officer for assistance in the exercise of powers under this Act or a by-law.

Division 3 Obstruction of authorised person

185 Obstruction of authorised person

- (1) A person commits an offence if:
- (a) the person intentionally obstructs another person; and
 - (b) the other person is an authorised person; and
 - (c) the authorised person is acting in an official capacity and the person has knowledge of that circumstance.

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

- (2) Strict liability applies to subsection (1)(b).

- (3) In this section:

obstruct includes hinder and resist.

Chapter 10 Financial management

Part 10.1 Receipt and expenditure of money

186 Definition

In this Part:

authorised deposit account means an account with an ADI.

187 Authorised deposit accounts

- (1) A council or local government subsidiary may establish as many authorised deposit accounts as may be necessary for proper financial administration.
- (2) All money received by a council or local government subsidiary must be paid into an authorised deposit account.
- (3) All expenditure made by a council must be made from an authorised deposit account.

188 Segregation of certain money

- (1) Trust money must be kept separate from the general funds of the council but money subject to different trusts may be kept together in a common authorised deposit account (to be designated as a **trust account**).
- (2) If a council or local government subsidiary receives funds for a particular purpose, the funds must not be used for any other purpose unless the provider of the funds authorises use of the funds for another purpose.

Note for section 188

If money is given on trust, this provision is not intended to limit the power of the Supreme Court to vary the terms of trust (see section 262).

Part 10.2 Investment

189 Investment

- (1) A council or local government subsidiary may invest money not immediately required for the purposes of the council or local government subsidiary.
- (2) The Minister may, after consultation with the Treasurer, issue investment guidelines from time to time.
- (3) A council may, by resolution, adopt a policy for investing money that is consistent with this Act and the Minister's guidelines.
- (4) A local government subsidiary may adopt a policy for investing money, approved by the constituent council or councils, that is consistent with this Act and the Minister's guidelines.
- (5) An investment must be in accordance with the council's policy or the local government subsidiary's policy for investing money.
- (6) If the council or local government subsidiary do not have a policy for investing money, the council or local government subsidiary may only invest money by banking money in an interest bearing account with an ADI.

Part 10.3 Council or local government subsidiary borrowing

190 Definition

In this Part:

borrowing, see section 191.

191 Meaning of *borrowing*

A council or local government subsidiary ***borrow***s money if the council or local government subsidiary obtains any form of financial accommodation.

Examples for section 190

- 1 *The financial accommodation might take the form of an overdraft or a loan of some other kind.*
- 2 *If a council or local government subsidiary acquires possession of goods under a hire-purchase agreement, a finance lease or an instalment purchase arrangement, the council or local government subsidiary is taken to borrow money equivalent to the present value of the future consideration to be paid by the council or local government subsidiary under the agreement, lease or arrangement.*

192 Council's or local government subsidiary's power to borrow

- (1) Subject to subsection (2), the Minister's approval, to be given after consultation with the Treasurer, is required before a council or local government subsidiary borrows money.
- (2) However, the Minister's approval is not required for the following:
 - (a) an advance on overdraft if:
 - (i) the term of the advance does not exceed 2 months; and
 - (ii) the amount of the advance does not exceed 2% of the council's total revenue income for the last financial year for which the council has an audited financial statement;
 - (b) a transaction classified as a minor transaction under guidelines issued by the Minister.
- (3) Subject to subsection (4), the council or local government subsidiary may borrow money if:
 - (a) for the council – council has, by resolution, sought the Minister's approval to borrow money; and
 - (b) for the local government subsidiary – the local government subsidiary has obtained written authorisation from each of its constituent councils to seek the Minister's approval to borrow money; and
 - (c) if the Minister's approval is required for the borrowing – the Minister has approved the borrowing of the money.

- (4) If subsection (2) applies, the council or local government subsidiary may borrow money if:
 - (a) for the council – the council has, by resolution, decided to borrow money; and
 - (b) for the local government subsidiary – the local government subsidiary has obtained written authorisation from each of its constituent councils to borrow money.
- (5) A council resolution or written authorisation under subsection (3)(a) or (b) or (4)(a) or (b) must specify the following:
 - (a) the amount to be borrowed;
 - (b) the lender or provider of financial accommodation;
 - (c) the purpose of the loan or financial accommodation;
 - (d) the terms of the local or financial accommodation.

193 Security for borrowing

- (1) A council or local government subsidiary may, with the Minister's approval, give security for a borrowing in the nature of a mortgage or charge over property of the council or local government subsidiary.
- (2) The property over which a security is granted may consist of or include (present and future) general revenue of the council or local government subsidiary.
- (3) The Minister must not approve a security over property if, in the Minister's opinion, it is essential that the property be retained in the ownership of the council or local government subsidiary.
- (4) The Minister must consult with the Treasurer before approving a security under this section.

194 Security over general revenue

- (1) If a council or local government subsidiary defaults on an obligation secured on the general revenue of the council or local government subsidiary, the Supreme Court may, on application by the holder of the security or a trustee for holders of the security:
 - (a) make one or both of the following orders:
 - (i) an order requiring the council or local government subsidiary to appropriate a specified portion of its

revenue to the satisfaction of its obligations;

- (ii) an order requiring the council or local government subsidiary to raise a specified amount by way of rates and directing that the amount raised be applied towards satisfaction of the council's or local government subsidiary's obligations; and
- (b) give incidental or ancillary directions.
- (2) The rights conferred by subsection (1) are in addition to other rights (if any) conferred by the security.

Part 10.4 Long-term financial plan

195 Long-term financial plan

- (1) A council must prepare and keep up-to-date a long-term financial plan.
- (2) A long-term financial plan must relate to a period of at least 4 financial years.
- (3) A long-term financial plan must contain:
 - (a) a statement of the major initiatives the council proposes to undertake during the period to which the plan relates; and
 - (b) projections of income and expenditure for each financial year of the period to which the plan relates; and
 - (c) the council's proposals for the repair, maintenance, management and development of infrastructure for each financial year of the period to which the plan relates; and
 - (d) any other matters prescribed by regulation.
- (4) The council must provide the Agency with a copy of its long-term financial plan by 30 June in the first financial year to which the plan relates.

Part 10.5 Annual budgets

196 Annual budgets

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

- (2) The budget for a particular financial year must:
- (a) outline:
 - (i) the council's objectives for the relevant financial year; and
 - (ii) the measures the council proposes to take, during the financial year, towards achieving those objectives; and
 - (iii) the indicators the council intends to use as a means of assessing its efficiency in achieving its objectives; and
 - (b) contain estimates of revenue and expenditure for the financial year, differentiating between operating and capital expenditure; and
 - (c) state the amount to be allocated to the development and maintenance of each class of infrastructure for the financial year; and
 - (d) state the amount the council proposes to raise by way of rates, and set out the rates structure, for the financial year; and
 - (e) include an assessment of the social and economic effects of its rating policies; and
 - (f) state the allowances for members of the council for the financial year and the amount budgeted to cover payment of those allowances; and
 - (g) include any other information required by any guidelines that the Minister may make or as prescribed by regulation; and
 - (h) be in a form required by any guidelines that the Minister may make or as prescribed by regulation.

197 Budget not to be for deficit

A council must not budget for a deficit except in accordance with the regulations.

198 Adoption of budget or amendment

- (1) A council must adopt its budget for a particular financial year on or before 30 June in the previous financial year.
- (2) Subject to subsection (3), a council may, after adopting its budget for a particular financial year, adopt an amendment to its budget.

- (3) An amendment must not have the effect of:
 - (a) increasing the amount of an allowance for the financial year for the members of the council; or
 - (b) changing the amount of an allowance for the financial year for members of a local authority established by the council except in accordance with any guidelines made by the Minister.
- (4) As soon as practicable after adopting its budget or an amendment to its budget for a particular financial year a council must:
 - (a) publish the budget or amendment as adopted on the council's website; and
 - (b) notify the Agency in writing of the adoption of the budget or amendment; and
 - (c) publish a notice in a newspaper circulating generally in the area informing the public that copies of the budget or amendment may be downloaded from the council's website or obtained from the council's public office.
- (5) If an amendment to the council's budget is published on the council's website, the budget as adopted must remain published on the council's website clearly indicating that the budget has been superseded by an amendment.
- (6) The council's budget and any amendment to the budget forms part of the council's municipal, regional or shire plan.

199 Allocation of money not in budget

- (1) A council must not allocate money unless provision for the allocation is made in the budget for the relevant financial year.
- (2) However, a council may allocate money that is not provided for in the budget if the allocation is:
 - (a) authorised by resolution of the council; or
 - (b) either:
 - (i) within the terms of a grant accepted by council; or
 - (ii) covered by an inflow of money that compensates the expenditure.

Example for subsection (2)(b)(ii)

The council enters a contract to provide civil works. The council purchases equipment and materials to perform the works. The cost of the equipment and

materials is within the amount the council is to be paid under the contract.

- (3) If a council allocates money under subsection (2)(b), the allocation must be reported to the next general ordinary meeting of the council.
- (4) An allocation of money under subsection (2) must be included in any subsequent amendment to the council's budget.

Part 10.6 Accounting records

200 Accounting records

- (1) A council must keep accounting records that give a true and fair view of:
 - (a) the council's revenue and expenditure; and
 - (b) the council's assets and liabilities.
- (2) The records must be kept in accordance with the Australian Accounting Standards and other requirements prescribed by regulation.

201 Availability of records for inspection

- (1) The accounting records must be available for inspection at any reasonable time by:
 - (a) the council's auditor; or
 - (b) an inspector.
- (2) Subject to the council's privacy policy, the accounting records must also be available for inspection at any reasonable time by a member of the council.
- (3) A council must, by resolution, adopt a privacy policy protecting members and staff of the council from undue intrusion into their private affairs.
- (4) A local government subsidiary must adopt a privacy policy protecting the local government subsidiary's staff from undue intrusion into their private affairs.

Example for subsection (4)

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

- (5) The local government subsidiary adopts the policy:

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

Part 10.7 Annual financial statement

202 Annual financial statement

- (1) A council must prepare a financial statement for each financial year.
- (2) The annual financial statement must confirm with:
 - (a) the Australian Accounting Standards; and
 - (b) any other requirements prescribed by regulation; and
 - (c) any guidelines that the Minister may make.

203 Reference of annual financial statement for audit

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

- (a) as soon as reasonably practicable after the end of the relevant financial year; and
- (b) in any event – in time to ensure that the audited statement is available no later than 15 November in the calendar year in which the financial year ends.

Part 10.8 Audit

Division 1 Auditor

204 Auditor

- (1) A council must appoint an auditor.
- (2) The auditor must be:
 - (a) the Auditor-General; or
 - (b) a registered company auditor or an authorised audit company;
or

- (c) a firm whose members include a registered company auditor.
- (3) A person is not eligible to be the auditor if the person:
 - (a) is a member or a candidate for election as a member of the council; or
 - (b) holds any other office or position with the council.
- (4) The council must, in the auditor's appointment:
 - (a) fix the term of appointment, which must be between 2 and 5 years; and
 - (b) fix the basis of the auditor's remuneration.
- (5) The office of auditor becomes vacant if:
 - (a) the auditor dies; or
 - (b) the auditor resigns by written notice to the CEO; or
 - (c) the auditor becomes a candidate for election as a member of the council or accepts some other remunerated office or position with the council; or
 - (d) the auditor's term of office comes to an end and the auditor is not reappointed; or
 - (e) the auditor is removed from office by the council with the Minister's consent.
- (6) In this section:

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

205 Appointment by the Minister

- (1) If a council fails to appoint an auditor, the Minister may make an appointment on behalf of the council.
- (2) An auditor appointed under subsection (1) is to be paid fees fixed by the Minister.

Division 2 Audit

206 Annual audit

- (1) The auditor must, as soon as practicable after the council's annual financial statement is referred to the auditor for audit:
 - (a) audit the statement; and
 - (b) report to the council on the results of the audit and, in particular, on any material irregularity in the council's accounting practices or the management of the council's financial affairs identified in the course of the audit; and
 - (c) report to the Minister and the ICAC on any evidence found in the course of the audit of a contravention of the law or serious financial irregularity; and
 - (d) if the results of the audit provide for a disclaimer of opinion – provide a copy of the report of the results of the audit to the Minister.
- (2) The audit is to be carried out in accordance with the Australian auditing standards and requirements prescribed by regulation.
- (3) The auditor's report mentioned in subsection (1)(b) must be tabled at the next meeting of the council.
- (4) The CEO must prepare a report on any action to be taken to implement any of the auditor's recommendations as a result of the audit and table the report at the next meeting of the council.
- (5) In this section:

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

207 Other audits

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

208 Assistance to be provided to the auditor

- (1) The auditor may ask the CEO or another member of the council's staff:
 - (a) to produce financial records; or
 - (b) to answer questions relevant to the council's financial affairs.

- (2) A person commits an offence if:
 - (a) the person is required to comply with a requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.Maximum penalty: 100 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

Part 10.9 Rectification orders

209 Power of Minister to make rectification order

- (1) If the Minister is of the opinion that an irregularity has occurred, or is occurring, in the administration of a council's financial affairs, the Minister may, by order (a **rectification order**) given in writing to the council, require the council to take specified action to correct the irregularity or to guard against the recurrence of irregularities (or both).
- (2) A rectification order must fix a date for compliance (the **compliance date**).
- (3) On application by the council, the Minister may postpone the compliance date from time to time.

210 Non-compliance with order

- (1) A person commits an offence if:
 - (a) the person is a member of a council; and
 - (b) the council fails to comply with a rectification order by the compliance date.Maximum penalty: 100 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant acted with reasonable diligence to secure compliance by the council.

Part 10.10 Contracts

211 High value contract

A council must not enter a contract of a higher value than the amount prescribed by regulation unless the council has authorised the contract by resolution.

212 Council to enter into contracts according to principles

If a council enters into a contract, the council must have regard to the following principles:

- (a) support of local business and industry;
- (b) ethical behaviour and fair dealing;
- (c) value for money;
- (d) environmental protection;
- (e) open and effective competition.

213 Shared services policy

- (1) A council must, by resolution, adopt a shared services policy.
- (2) A shared services policy may deal with the following matters:
 - (a) sharing the delivery of a council service with another council;
 - (b) the council jointly procuring from a third party the delivery of a service with another council.

Chapter 11 Rates and charges

Part 11.1 Rateability

214 Categorisation of land

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

- (a) rateable land; and
- (b) conditionally rateable land; and
- (c) land (***exempt land***) that is exempt from rates.

215 Rateable land

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

- (a) conditionally rateable land that is not within the ambit of a notice published under section 216 that is in force; or
- (b) exempt land.

216 Conditionally rateable land

- (1) The following land is **conditionally rateable**:
 - (a) land held under a pastoral lease;
 - (b) land occupied under a mining tenement;
 - (c) other land that is prescribed by regulation as conditionally rateable.
- (2) Conditionally rateable land is only rateable in accordance with a notice published by the Minister in the *Gazette* at least 2 months before the commencement of the financial year for which the rates are declared.
- (3) The council for the area may make submissions to the Minister in relation to conditionally rateable land.
- (4) Before publishing the notice, the Minister must:
 - (a) consider a submission made under subsection (3), if the submission is received by the Minister by 31 December in the year before the beginning of the relevant financial year; and
 - (b) consult with the Minister responsible for the administration of pastoral matters and the Minister responsible for the administration of mining matters.
- (5) As soon as practicable after the notice is published in the *Gazette*:
 - (a) the council must publish the notice on its website; and
 - (b) the Agency must publish the notice on the Agency's website.
- (6) In this section:

pastoral lease means a pastoral lease granted under the *Pastoral Land Act 1992*.

217 Council to rate all rateable land

A council must rate all rateable and conditionally rateable land in the council area.

218 Urban farm land

- (1) The owner or occupier of land within a council area may apply to the council for classification of the land as urban farm land.
- (2) Land is not eligible for classification as urban farm land unless:
 - (a) its area is more than 0.8 of a hectare; and
 - (b) it is used by the occupier for carrying on a prescribed business or industry; and
 - (c) the occupier derives a substantial part of the occupier's livelihood from carrying on that business or industry.

219 Exempt land

- (1) The following land is exempt from rates:
 - (a) Crown land that is:
 - (i) vacant and not the subject of a lease; or
 - (ii) occupied by the Territory for a public purpose (other than the provision of public housing);
 - (b) land of the council, other than such land leased for a purpose that does not give rise to an exemption under some other provision of this section;
 - (c) a public place consisting of:
 - (i) a park, garden or reserve; or
 - (ii) a playground or sports ground; or
 - (iii) a cemetery; or
 - (iv) a road;
 - (d) land belonging to a religious body consisting of:
 - (i) a church or other place of public worship; or
 - (ii) a place of residence for a minister of religion associated with a church or other place of public worship; or

- (iii) a place of residence for the official head in the Territory of the religious body; or
 - (iv) an institution for religious teaching or training;
 - (e) a hospital conducted by the Territory;
 - (f) a medical clinic or health centre conducted by the Territory;
 - (g) subject to subsections (3) and (4), land used for a non-commercial purpose by a public benevolent institution or a public charity that is registered with the Australian Charities and Not-for-profits Commission established under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
 - (h) a kindergarten, Government school as defined in section 5 of the *Education Act 2015*, non-Government school registered under the *Education Act 2015*, or a university or other tertiary educational institution;
 - (i) land recognised by the council as a youth centre;
 - (j) a public library or public museum;
 - (k) the common property:
 - (i) in a units plan or building development plan registered under the *Real Property (Unit Titles) Act 1975*; or
 - (ii) of a scheme formed under the *Unit Title Schemes Act 2009*;
 - (l) land owned by a Land Trust or an Aboriginal community living area association except:
 - (i) land prescribed by regulation as rateable; or
 - (ii) land subject to a lease or a licence conferring a right of occupancy; or
 - (iii) land used for a commercial purpose;
 - (m) land exempted from rates by another Act.
- (2) If land is used for 2 or more different purposes, and one or more but not all the purposes are exempt, the land is not exempt from rates unless the non-exempt purpose is merely incidental to the exempt purpose.

Example for subsection (2)

An allotment consists of a public museum containing a cafeteria. The allotment is exempt from rates despite the existence of the cafeteria. However, if the allotment were a restaurant attracting customers in its own right, the allotment would not be exempt from rates.

- (3) Subject to subsection (4), in deciding whether land is used for a commercial or non-commercial purpose, the fact that the user is a public benevolent institution or a public charity is irrelevant and the question is to be decided according to the nature of the use and not the nature of the user.
- (4) However, a non-commercial purpose does not include the land being used for a residential purpose for employees or contractors of the institution or charity.

220 Special cases

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

Example for subsection (1)

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

- (2) A Land Trust is not liable to rates but:
 - (a) an occupier of land owned by the Land Trust (other than the Trust itself) is liable to rates; and
 - (b) if land owned by the Trust is held under a lease from the Trust – the leasehold estate constitutes the rateable land for the purposes of this Act.

Note for subsection (2)

This subsection applies to land of a Land Trust that is not fully exempt from rates under section 219(1)(l).

- (3) An Aboriginal community living area association is not liable to rates but:
 - (a) an occupier of land owned by the association (other than the association itself) is liable to rates; and
 - (b) if land owned by the association is held under a lease from the association, the leasehold estate constitutes the rateable land for the purposes of this Act.

Note for subsection (3)

This subsection applies to land of an Aboriginal community living area that is not fully exempt from rates under section 219(1)(l).

- (4) Land owned by a Land Trust or an Aboriginal community living area association:
- (a) is not subject to the provisions of this Chapter under which overdue rates become a charge on the land to which they relate; and
 - (b) is not liable to be sold for non-payment of rates.

Note for subsection (4)

This subsection does not, however, protect a leasehold estate from such a charge or from being sold for non-payment of rates.

221 Apportionment if land rateable for part only of a financial year

- (1) If land becomes rateable during the course of a financial year, or ceases to be rateable during the course of a financial year:
- (a) the land is liable to rates for the financial year; but
 - (b) the amount of the liability is reduced to a proportion of the rates that would have been payable if the land had been rateable for the whole of the financial year.
- (2) The proportion is the proportion between the period for which the land is rateable (expressed in days) and the number of days in the financial year.
- (3) A council must make any refund or remission of rates necessary to give effect to this section.

Part 11.2 Basis for assessment of rates

222 Allotments

- (1) An **allotment** is a parcel of land or part of a parcel of land for which a council proposes to make a separate assessment of rates.
- (2) A parcel of land includes the following:
- (a) a unit or lot created by registration of a plan under the *Real Property (Unit Titles) Act 1975* or the *Unit Titles Act 1975*;
 - (b) a unit created by the registration of a unit title scheme under the *Unit Title Schemes Act 2009*.
- (3) A council may only divide a parcel of land that is subject to the same ownership into separate allotments if:
- (a) the allotments are subject to separate occupation; or

- (b) the allotments fall within different zones; or
- (c) there is some other good reason for disaggregating the parcel into separate allotments.

Example for subsection (3)

If land consists of a block of flats in the same ownership but separately occupied, the council could either treat the block of flats as a single allotment and determine rates for the whole, or disaggregate it into the separate flats and determine rates for each flat.

- (4) In this section:

parcel of land, see section 4 of the *Valuation of Land Act 1963*.

223 Basis of rates

- (1) Rates may consist of:
 - (a) a fixed amount (a **fixed amount**) for each allotment; or
 - (b) an amount (a **valuation-based amount**) calculated as a proportion of the assessed value of each allotment; or
 - (c) a combination of a fixed amount and a valuation-based amount.
- (2) If rates consist of, or include, a valuation-based amount, the amount may be subject to a specified minimum (a **minimum amount**).

Example for subsection (2)

A valuation-based amount might be expressed as a specified proportion of assessed value or \$100 (whichever is the greater amount).

- (3) Different fixed amounts, different valuation-based amounts, and different minimum amounts may be fixed for:
 - (a) allotments within different parts of the local government area; or
 - (b) different classes of allotments; or
 - (c) a combination of both paragraphs (a) and (b).

Example for subsection (3)(a)

The rates for land within different planning zones might be based on different components.

Example for subsection (3)(b)

If land is divided into small allotments (such as self-storage units or marina

berths) because of a subdivision for the purposes of the Unit Titles Act 1975 or Unit Title Schemes Act 2009, and the council considers it inequitable to apply the minimum amount otherwise applicable to land within the area to the small allotments, the council could fix a different and lesser minimum for the small allotments.

- (4) However:
- (a) a council may only impose a fixed amount on unvalued allotments and a valuation-based amount (or a combination of a fixed amount and a valuation-based amount) on valued allotments; and
 - (b) different amounts must not be fixed on the basis of who the owner or occupier of the allotment is.
- (5) If an allotment is divided into separate parts or units that are adapted for separate occupation or use, a minimum amount may consist of a fixed amount to be multiplied by the number of separate parts or units.

Example for subsection (5)

If an allotment consists of a block of flats in separate occupation, the minimum amount could consist of a fixed amount to be multiplied by the number of flats comprised in the complex.

- (6) In this section:

unvalued, in relation to an allotment, means a valuation is not entered for the allotment on the valuation roll maintained under the *Valuation of Land Act 1963*.

224 Basis of assessed value

- (1) A council may adopt unimproved capital value, improved capital value, or annual value as the basis of the assessed value of allotments within its area or part of its area.
- (2) The **assessed value** of land is the unimproved capital value, the improved capital value or the annual value of the land (according to whichever basis of valuation has been adopted by the council for the land) as it appears from the valuation roll.
- (3) However:
- (a) the unimproved value of a mining tenement is its assessed value; and
 - (b) the unimproved value is taken to be 20 times the annual rental payable under the tenement.

(4) In this section:

annual value, of land, see section 8A of the *Valuation of Land Act 1963*.

improved capital value, of land, see section 8 of the *Valuation of Land Act 1963*.

unimproved capital value, of land, see section 9 of the *Valuation of Land Act 1963*.

Part 11.3 Liability for rates

225 Joint and several liability

- (1) The owner and the occupier (if not the owner) of an allotment are jointly and severally liable for rates payable in respect of an allotment.
- (2) However, an occupier of an allotment (if not an owner) does not become liable for rates in respect of the allotment unless:
 - (a) the occupier's name is entered in the assessment record, on the occupier's own application, as the principal ratepayer for the allotment; or
 - (b) the council gives the occupier written notice that it proposes to seek recovery of rates from the occupier.
- (3) If notice is given under subsection (2)(b) in the course of a financial year, the occupier is only liable for a proportionate part of the rates for that financial year.

226 Principal ratepayer for an allotment

- (1) The owner of an allotment is the principal ratepayer for the allotment.
- (2) However, the occupier of the allotment is the principal ratepayer if the owner is not liable to rates for any reason.

Note for subsection (2)

In the case of an allotment owned by a Land Trust, the Trust itself is not liable to rates so the lessee (if there is a lessee) is treated under this Act as the owner and hence the principal ratepayer for the allotment. If there is no lessee, the occupier may be liable for rates (see section 225(2)) and, if so, would be the principal ratepayer for the allotment.

- (3) Subsections (1) and (2) are subject to the following qualifications:
 - (a) the CEO may, on the application of an occupier who would not be the principal ratepayer in accordance with subsection (2), designate the ratepayer in the assessment record as the principal ratepayer for an allotment;
 - (b) if 2 or more ratepayers would, in accordance with subsection (1) or (2), be the principal ratepayer for an allotment, the CEO may designate one or more of them in the assessment record as the principal ratepayer for the allotment.
- (4) A ratepayer designated under subsection (1) or (2) as the principal ratepayer for an allotment is the principal ratepayer to the exclusion of others.
- (5) If rates are paid by, or recovered from, a ratepayer who is not the principal ratepayer for an allotment, the ratepayer may, subject to any relevant agreement, recover the amount from the principal ratepayer or set the amount off against any liability owed to the principal ratepayer.

Part 11.4 Assessment record

227 Assessment record

- (1) The council must maintain an assessment record.
- (2) The assessment record must contain:
 - (a) a brief description of each allotment within the area and a statement of its assessed value; and
 - (b) if a charge is imposed on non-rateable land in the area – a brief description of the land; and
 - (c) the name and address of the owner of the land; and
 - (d) if the owner is not the principal ratepayer for the land – the name and address of the principal ratepayer; and
 - (e) if the land is subject to a different rate on the basis of its use – the land use; and
 - (f) other information the council directs to be included in the record.
- (3) The assessment record may be kept in an electronic form.

- (4) A person with sufficient interest in the assessment record may inspect or copy the assessment record, at a fee fixed by the council, at the council's public office.
- (5) A council policy, adopted by resolution, may provide for what constitutes a sufficient interest in the assessment record.
- (6) However, the following may inspect or copy the assessment record free of charge:
 - (a) in relation to the part of the record for particular land – an owner, occupier or lessee of the land or the adjoining land or an agent of the owner, occupier or lessee of the land or the adjoining land;
 - (b) the CEO of an Agency.
- (7) The CEO must, at the request of a person to whom an entry in the assessment record relates, suppress the person's contact details from the publicly accessible copy of the record.

228 Notifications to be given by ratepayers

- (1) A person commits an offence if:
 - (a) the person becomes the principal ratepayer for a particular allotment within a council area; and
 - (b) the person does not, within 28 days of doing so, give the CEO written notice of that fact and of the person's postal address.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
 - (a) the person is the principal ratepayer for a particular allotment within a council area; and
 - (b) the person's postal address changes; and
 - (c) the person does not, within 28 days of the change, give the CEO written notice of the new address.

Maximum penalty: 20 penalty units.

- (3) A person commits an offence if:
 - (a) the person ceases to be the principal ratepayer for a particular allotment within a council area; and
 - (b) the person does not, within 28 days of doing so, give the CEO

written notice of that fact.

Maximum penalty: 20 penalty units.

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

229 Correction of record by council

- (1) The council may, on its own initiative, change an entry in the assessment record.
- (2) If the council changes an entry under subsection (1), the council must give a decision notice to the person to whom the entry relates within 14 days of changing the entry.
- (3) Subsection (2) does not apply if the council changes the entry to correct a typographical error.

230 Correction of record by application

- (1) A person may apply to the council, free of charge, for the correction of an entry in the assessment record.
- (2) The application may be made on any one or more of the following grounds:
- (a) the entry wrongly classifies an allotment that is not rateable as rateable land;
 - (b) the entry should, but does not, classify an allotment as urban farm land;
 - (c) the entry wrongly records the use of an allotment;
 - (d) the entry contains some other relevant misclassification or misdescription of an allotment;
 - (e) the entry wrongly records ownership or occupation of an allotment;
 - (f) the entry wrongly designates the applicant as principal ratepayer for an allotment;
 - (g) the entry takes effect from the wrong date;
 - (h) the entry contains some other relevant error.
- (3) The application:
- (a) must be in writing; and

- (b) must state the applicant's interest in the allotment to which the application relates; and
 - (c) must state the nature of the amendment that should, in the applicant's opinion, be made, including when the effect of the amendment should take place.
- (4) If the application is uncontroversial, the CEO may decide the application on behalf of the council but, if it raises matters of possible controversy, the application is to be dealt with by the council or a council committee.
- (5) The CEO, council or council committee (the **decision maker**) may, as soon as practicable but no later than 90 days of receiving the application, request further information from the applicant in relation to the application.
- (6) The CEO must give the applicant a decision notice for the application and notify the applicant of the date the decision takes effect:
- (a) as soon as practicable but no later than 90 days after receiving the application; or
 - (b) if the decision maker has requested further information under subsection (5) – as soon as practicable but no later than 90 days after receiving the information or notification that the applicant cannot provide the information.

231 Application for correction or review

The lodging of the following does not prohibit a principal ratepayer for a particular allotment in a council area from paying rates:

- (a) an application for a correction of the assessment register under section 230(1);
- (b) an application for review of the decision under section 317;
- (c) an application for review of the decision by NTCAT under section 321;
- (d) any other review or appeal available to the principal ratepayer.

232 Correction of record for misclassification

- (1) This section applies if:
- (a) a person makes an application to the council for a correction to an entry in the assessment record on the grounds that the

entry contains a misclassification of an allotment; and

- (b) the decision maker or NTCAT decides to correct the record.
- (2) The correction of the record must not take effect from a retrospective date if the correction results in the ratepayer for the allotment being liable for a higher amount of rates or charges.

233 Liability or entitlement to rates

- (1) This section applies if an entry on the assessment record is corrected and the correction takes effect from a retrospective date.
- (2) The person to whom the entry relates is, as a result of the correction:
 - (a) if the difference in rates amounts to a liability – liable for the difference in rates; or
 - (b) if the difference in rates amounts to an entitlement – entitled to the difference in rates.
- (3) If the person has an entitlement under subsection (2)(b), the person may be entitled to interest on the entitlement.
- (4) Any entitlement to interest:
 - (a) only applies to an amount that has already been paid by the person; and
 - (b) is subject to the interest rate charged by the council for each respective year of rates.
- (5) A person's entitlement, and any interest on the entitlement, may only be given to the person as a deduction of subsequent rates payable.
- (6) A council is not entitled to interest in relation to an amount owed to the council under subsection (2)(a).

Part 11.5 Imposition of rates, charges and parking rates

Division 1 General and special rates

234 General rates

- (1) A council must, on or before 30 June in the financial year preceding the financial year for which the rates are imposed, declare rates (**general rates**) on allotments throughout the area to raise the

amount the council intends to raise for general purposes for the financial year.

- (2) The council may, at the same time, raise an amount towards a special purpose.
- (3) The declaration must state:
 - (a) the amount:
 - (i) to be raised for general purposes; and
 - (ii) if an amount is to be raised for a special purpose – to be raised for the special purpose; and
 - (b) the basis or bases of the rates; and
 - (c) if the rates are to be payable in instalments – the number of instalments and when they are payable.

235 Special rates

- (1) Subject to this section, a council may, on or before 30 June in the financial year preceding the financial year for which the rates are imposed, declare rates for a particular purpose (***special rates***).
- (2) Before declaring special rates under this section, the council must, at least 30 days before the meeting in relation to the special rates:
 - (a) publish in a newspaper circulating generally throughout the Territory a notice specifying its intention to declare special rates; and
 - (b) give the principal ratepayer for each allotment to which the special rates are intended to be applied with a notice of intention to declare special rates; and
 - (c) at a council meeting after the time the making of submissions has expired, consider any submissions received.
- (3) The notices under subsection (2)(a) and (b) must contain the following particulars:
 - (a) the purpose for which the council proposes to apply the special rates;
 - (b) the total amount that is proposed to be raised by the special rates;
 - (c) the basis of the proposed special rates and the amount that the allotment would be liable for;

- (d) whether the proposed special rates would be imposed on rateable property generally or on rateable property in a particular part of the council area and an identification of the particular part;
 - (e) that a person may make submissions to the council about the proposed special rates before the date of the meeting in relation to the special rates specified in the notice;
 - (f) how a person can obtain further information about the proposed special rates from the council.
- (4) After considering any submissions received, the council may:
- (a) by special resolution:
 - (i) declare special rates that are consistent with the proposed special rates specified in the notices under subsection (2); or
 - (ii) declare special rates that are:
 - (A) consistent with the proposed special rates specified in the notices under subsection (2); or
 - (B) reduced for one or more of the allotments for which the special rates were proposed; or
 - (C) reduced for all of the allotments for which the special rates were proposed; or
 - (b) not declare special rates.
- (5) If special rates are imposed for the benefit of a particular part of the area, they may be limited to allotments within the relevant part of the area.
- (6) A declaration under this section must:
- (a) state the purpose for which the special rates are imposed; and
 - (b) state the amount to be raised; and
 - (c) state the basis of the special rates; and
 - (d) state whether the special rates are imposed on rateable property generally, or on rateable property within a particular part of the area and, if they are limited to a particular part of the area, identify the relevant part.

Division 2 Charges

236 Imposition of charges

- (1) If a council carries out work, or provides services, for the benefit of land, or the occupiers of land, within its area, the council may declare a charge on the land.
- (2) The declaration of the charge does not cease to have effect only because the occupier of the land does not accept the work or services.
- (3) A declaration of a charge must:
 - (a) state the amount or basis of the charge; and
 - (b) identify the land to which the charge applies; and
 - (c) state the purpose of the charge.
- (4) The amount of a charge need not be limited to the cost of providing the service, however the amount of the charge must not exceed a reasonable expectation of the cost of service.
- (5) Subject to subsections (6) and (7), the provisions of this Chapter applicable to rates apply with necessary adaptations and modifications to charges imposed under this section.
- (6) A charge:
 - (a) may be imposed on land that is not liable to rates, including land that is exempt from rates; and
 - (b) may have a reasonable basis that differs from rates; and
 - (c) may only consist of payments that are compulsory in respect of an allotment and its improvements; and
 - (d) must not consist of any payments for an optional service.

Example for subsection (6)(b)

A charge to recover the cost of kerbing might consist of an amount per metre of the frontage of an allotment.

Examples for subsection (6)(c) and (d)

1 A council that provides sewerage services to an allotment may impose a charge for this service, and may impose different charges with reference to the number of toilets installed at the allotment. However, if the council provided the service of connecting a toilet to a sewerage network, it could impose a fee for service but not a charge for the work.

2 A council may impose a charge for rubbish bin collection that provides for an

allotment to a specified number of rubbish bin collections. However, if the council provided the service of additional rubbish bin collections, it could impose a fee for service but not a charge for the work.

- (7) The provisions for rate concessions do not apply to charges.

Division 3 Parking rate for council for municipality

237 Imposition of parking rate

- (1) A council for a municipality may, by resolution, impose a parking rate for the municipality (a **municipal parking rate**) in accordance with any requirements prescribed by regulation.
- (2) A municipal parking rate imposed is notified in a rates declaration on or before 30 June and applies for the next financial year.

Part 11.6 General and particular notice

238 Public notice

- (1) Within 21 days after declaring rates, the council must publish notice of the rates:
- (a) on its website; and
 - (b) in a newspaper circulating generally in the council's area.
- (2) The notice must:
- (a) give details of the rates; and
 - (b) state the date on which payment of the rates fall due and, if the council has resolved to allow payment by instalment, the date on which each instalment falls due for payment; and
 - (c) give details of any discount or other concession or benefit the council has resolved to allow for prompt payment of the rates in full.
- (3) Failure to publish the notice within the time limit fixed by subsection (1) does not invalidate the declaration.

239 Rates notice

- (1) At least 28 days before the payment of the rates (or the first instalment of the rates) falls due, the council must issue an account for the payment of rates (a **rates notice**) for each allotment.
- (2) The rates notice must be given if practicable to the principal

ratepayer for an allotment or, if it is not practicable to do so, to any other ratepayer for the allotment.

- (3) The rates notice must:
 - (a) state the due date for payment of the rates and, if payment by instalment is allowed, the due date for payment of the first instalment; and
 - (b) must be given at least 28 days before the due date for payment of the rates or the first instalment of the rates.
- (4) Non-compliance with subsection (3)(b) does not invalidate the rates notice.

240 Discount for prompt payment

- (1) A council may resolve to allow a discount, or some other form of concession or benefit, for prompt payment of rates in full.
- (2) If the council resolves to allow a discount for prompt payment of rates in full, the rate notice must:
 - (a) state the percentage discount; and
 - (b) the conditions on which it is to be allowed, and
 - (c) both the discounted and the undiscounted amount payable.

241 Payment by instalment

- (1) If a council allows payment of rates by instalment, it does so on condition that each instalment is paid by the due date.
- (2) If a ratepayer defaults in payment of an instalment by the due date, all remaining instalments become immediately due and payable.
- (3) A council may, however, relieve a ratepayer, or ratepayers generally, from the consequences of default to an extent decided by the council.
- (4) At least 28 days before the payment of the second and subsequent instalments falls due, the council must issue a notice for the payment of the instalment (a **reminder notice**), if practicable, to the principal ratepayer or, if it is not practicable to do so, to any other ratepayer for the allotment.
- (5) The reminder notice must:
 - (a) state the due date for payment of the instalment; and

- (b) be given at least 28 days before the due date for payment of the instalment.

Part 11.7 Interest on unpaid rates

242 Accrual of interest on overdue rates

- (1) If rates are not paid by the due date, interest accrues on the amount of the unpaid rates at the relevant interest rate.

Note for subsection (1)

If the ratepayer defaults in payment, all remaining instalments become due and payable. Interest therefore accrues on the total amount of the unpaid rates and not merely the amount of the instalment (see section 241(2)).

- (2) Interest is calculated on a daily basis on the amount in default (exclusive of interest) from the due date until the date of payment.
- (3) A council may:
 - (a) fix a rate of interest as the relevant interest rate; or
 - (b) vary a rate of interest previously fixed as the relevant interest rate.
- (4) In this section:

relevant interest rate is a rate of interest:

- (a) prescribed by regulation; or
- (b) if the rate interest is not prescribed by regulation – fixed by the council.

243 Remission of interest

A council may remit interest wholly or in part.

Part 11.8 Rate concessions

244 Rate concessions

- (1) A **rate concession** is one or more of the following:
 - (a) a waiver in whole or part of rates or a component of rates;
 - (b) a deferment in whole or part of an obligation to pay rates or a component of rates.

- (2) A council must, by resolution, adopt a policy for rate concessions and publish the policy on its website.
- (3) A council may grant a rate concession under section 245, 246 or 247:
 - (a) in accordance with this Part and the council's policy for rate concessions; and
 - (b) on any conditions the council considers appropriate.
- (4) If a council grants a conditional rate concession under section 245, 246 or 247 and the ratepayer fails to comply with a condition, the council may by notice to the ratepayer:
 - (a) withdraw the concession; and
 - (b) require the ratepayer to pay an amount, on or before a date specified in the notice, to neutralise any benefit to the ratepayer of the rate concession.

245 Rate concession to alleviate financial hardship

- (1) A council may grant a rate concession to alleviate financial hardship.
- (2) A rate concession may be granted on application by a person who establishes to the council's satisfaction that the person will suffer financial hardship if the concession is not granted.

246 Correction of anomalies in operation of rating system

- (1) A council may grant a rate concession to a particular ratepayer or to ratepayers of a particular class if satisfied that it is necessary to do so in order to correct anomalies in the operation of the rating system.
- (2) A council may grant a rate concession under this section on:
 - (a) the council's own initiative; or
 - (b) application by an affected ratepayer.

247 Public benefit concessions

- (1) A council may grant a rate concession if satisfied that the concession would advance one or more of the following purposes:
 - (a) securing the proper development of its area;
 - (b) preserving buildings or places of historical interest;

- (c) protecting the environment;
 - (d) encouraging cultural activities;
 - (e) promoting community health or welfare;
 - (f) encouraging agriculture;
 - (g) providing recreation or amusement for the public.
- (2) A council may grant a rate concession under this section on:
- (a) the council's own initiative; or
 - (b) application by an affected ratepayer.

Part 11.9 Recovery of rates

Division 1 Application of this Part

248 Extended meaning of *rates* in this Part

In this Part:

rates includes:

- (a) a charge; and
- (b) if the rates (or charge) are overdue:
 - (i) accrued interest; and
 - (ii) costs reasonably incurred by the council in recovering, or attempting to recover, them.

Division 2 Application of payments

249 Application of payments

Any money paid to a council in respect of rates or charges is, despite a direction by the person paying the money, to be applied towards payment of those rates and charges in the order in which they became due.

Division 3 Recovery by action

250 Recovery by action

- (1) Rates may be recovered as a debt due to the council from the

principal ratepayer or any other ratepayer by action in a court of competent jurisdiction.

- (2) A proceeding may be commenced at any time within 6 years after the rates are imposed.

Division 4 Overriding statutory charge

251 Overdue rates to be a charge on land

- (1) Subject to subsection (2), if rates are not paid by the due date, the rates become a charge on the land to which they relate.
- (2) Rates do not become a charge over land:
 - (a) unless the owner of the land is a ratepayer who is liable for the rates that are in arrears; or
 - (b) within an Aboriginal community living area.

252 Registration of charge

- (1) After rates have been in arrears for at least 6 months, the council may apply to the appropriate registration authority for registration of the charge over the land to which the charge relates.
- (2) The registration authority must, on payment of the appropriate fee by the council:
 - (a) register the charge as an overriding statutory charge; and
 - (b) notify all persons with a registered interest in or over the land of the registration of the charge.
- (3) Failure to give notice of the registration of the charge under subsection (2)(b) does not invalidate the registration of the charge.
- (4) A registration authority must cancel registration of a charge if the council applies for the cancellation.
- (5) The council:
 - (a) must apply for cancellation if the liability to which the charge relates is fully satisfied, and
 - (b) may apply for cancellation for any other reason.

253 Effect of registered charge

If a charge is registered as an overriding statutory charge under this

Division, it has priority over all other registered and unregistered mortgages, charges and encumbrances except a previously registered overriding statutory charge.

Division 5 Sale of land

254 Power to sell land for non-payment of rates

The council may sell the land if:

- (a) rates have been in arrears for at least 3 years, and
- (b) an overriding statutory charge securing liability for the rates has been registered for at least 6 months.

255 Pre-conditions of sale

- (1) Before the council sells land for non-payment of rates, it must give a notice to the principal ratepayer for the land at the address appearing in the assessment record:
 - (a) stating the period for which rates have been in arrears; and
 - (b) stating the total amount currently outstanding on the land; and
 - (c) warning that if that amount is not paid in full within a stated period (at least one month) after the date of the notice, the council intends to sell the land for non-payment of rates.
- (2) A copy of the notice must be given to:
 - (a) any other person with a registered interest in the land; and
 - (b) if the land is a pastoral or other lease granted by the Territory, or a mining tenement – the Minister administering the legislation under which the lease or mining tenement was granted.
- (3) If the whereabouts of a person to whom a notice (or copy) is not ascertained by the council after reasonable inquiries, the notice may be given by:
 - (a) publishing it in a newspaper circulating generally throughout the Territory; and
 - (b) leaving a copy of the notice in a conspicuous place on the land.

256 Sale of land

- (1) If the full amount of the outstanding rates is not paid within the time allowed in the warning notice, the council may sell the land.
- (2) Subject to subsection (3), the sale must be by public auction.
- (3) If the land is:
 - (a) a pastoral or other lease granted by the Territory, or a mining tenement, the sale must be made as approved by the Minister administering the legislation under which the lease or mining tenement was granted; and
 - (b) a leasehold estate granted by a Land Trust, the sale must be made as approved by the relevant Land Council.
- (4) A public auction must be advertised:
 - (a) on the council's website; and
 - (b) on at least 2 separate occasions in a newspaper circulating generally throughout the Territory.
- (5) If before the date of the sale, the outstanding rates (including costs incurred by the council with a view to sale of the land) are paid, the council must call off the sale.
- (6) If an auction fails, the council may sell the land by private contract for the best price that it can reasonably obtain.
- (7) If a council sells land under this section, the council may execute a conveyance of the land under its common seal.
- (8) On registration of the conveyance, title to the land vests in the purchaser freed and discharged from all mortgages, charges and encumbrances securing the payment of money.

257 Proceeds of sale

- (1) The council must apply the proceeds of the sale of the land as follows:
 - (a) first – in the payment of the costs incurred in selling the land under this Division;
 - (b) second – in the payment of all liabilities secured on the land (including the liability to the council) in the order of their priority;
 - (c) third – in payment to the owner of the land.

- (2) If the council fails, after reasonable inquiry, to discover the identity or whereabouts of a person entitled to payment under this section, the council may make the payment to the Public Trustee as unclaimed property.
- (3) A payment made to the Public Trustee under subsection (2) vests in the Public Trustee under and for the purposes of section 59A of the *Public Trustee Act 1979*.

Part 11.10 Correction of errors

258 Correction of errors

- (1) The Minister may, by *Gazette* notice, declare that rates have been validly declared, or declared and levied, by a council despite a particular procedural non-compliance or some other irregularity or error of a minor or technical nature.
- (2) The declaration validates the rates from the date of their purported declaration.

Chapter 12 Council property

Part 12.1 Property generally

259 Acquisition of property

- (1) A council may acquire real or personal property (including intellectual property) by agreement.
- (2) The Minister administering the *Lands Acquisition Act 1978* may, by arrangement with a council, compulsorily acquire land for the council under that Act.
- (3) The council must reimburse the relevant Minister for compensation and other costs associated with the acquisition.

260 Assumption of care, control and management of land

- (1) A council may, at the request or with the consent of the interested persons, assume the care, control and management of land within its area.
- (2) However, if the land is subject to a trust, the consent of the trustee is required, but the consent of the equitable owners is not required.
- (3) The consent of the following is not required:

- (a) a person who cannot be found after reasonable inquiry; or
 - (b) a body that has become defunct.
- (4) When a council assumes the care, control and management of land, it must publish notice of that fact on its website.
- (5) In this section:

interested person is:

- (a) the owner;
- (b) a person (other than the owner) with a registered estate or interest in the land;
- (c) if a person claims an interest in the land and the interest is protected by a registered caveat – the caveator.

261 Power to develop and improve land

A council may develop and improve land in its ownership or under its care, control and management.

262 Power to act as trustee

- (1) A council may act as a trustee of land or other property.
- (2) However, a council cannot assume an obligation to promote a particular religion.
- (3) Subsection (2) does not prevent a council from accepting a gift on conditions requiring the council to maintain a particular part of a cemetery set apart for the members or adherents of a particular religious group or denomination.
- (4) A council may apply to the Supreme Court for an order varying the terms of a trust of which the council is a trustee.
- (5) Notice of an application describing the nature of the variation sought must be given:
 - (a) on the council's website; and
 - (b) by notice published in a newspaper circulating generally in the Territory; and
 - (c) in any other way directed by the Supreme Court.
- (6) If the Supreme Court is satisfied that it is not practicable for the council to give effect to the trust in its present form, the Court may

vary the terms of the trust.

- (7) The council must publish notice of the making and effect of the order on its website.

263 Power to deal with and dispose of property

- (1) Subject to the Minister's guidelines, a council may deal with or dispose of property of which the council is the owner.
- (2) This section does not authorise a council to act in contravention of trust or in contravention of conditions on which the property was accepted by the council.

Part 12.2 Reserves and cemeteries

264 Reserves

- (1) If a council agrees, the Minister may, by *Gazette* notice, place a reserve in the council's area under the care, control and management of the council.
- (2) The council has, in relation to the reserve, the powers and functions of trustees appointed under section 79 of the *Crown Lands Act 1992*.

265 Public and community cemeteries

A council is the responsible entity for a public or community cemetery if the cemetery is located in the council's area.

Part 12.3 Roads

266 Roads

- (1) A **road** is:
 - (a) land vested in a council at the commencement of this Act as a road or a road reserve; and
 - (b) land vested in, or placed under the care control and management of, a council as a road or a road reserve, after the commencement of this Act, under this or some other Act; and
 - (c) land reserved, dedicated or resumed, with the council's agreement, as a public street, road or thoroughfare; and

- (d) land transferred to the council in fee simple, and accepted by the council, as a public road; and
 - (e) land declared by the council, by *Gazette* notice, to be a road with the consent of the owner of the land; and
 - (f) land vested in the council, with the council's agreement, by notice under subsection (2).
- (2) If a council agrees, the Minister may, by *Gazette* notice, vest Crown land in, or place Crown land under the care, control and management of, the council as a road or a road reserve.
- (3) Land ceases to be a road if the road is permanently closed under this Act or another Act.

267 Care control and management of roads

- (1) Subject to this section, all roads within a council area are under the care, control and management of the council.
- (2) After consulting with a council, the Minister may, by *Gazette* notice, withdraw a road from the care, control and management of the council and place it under the care control and management of the Territory.
- (3) Subject to any contrary agreement between the council and the Minister, if a road is vested in the council, a notice under subsection (2) divests the road from the council and vests it in the Territory.
- (4) If a council has the care, control and management of a road that is vested in someone else, then, subject to any contrary agreement between the council and the owner, the powers of the council to control and manage the road are exclusive of those of the owner.
- (5) While a road remains under the care, control and management of a council, the following belongs to the council:
- (a) all vegetation growing on the road;
 - (b) anything erected on, or affixed to, the road except infrastructure or equipment belonging to the Commonwealth or the Territory or a statutory authority of the Commonwealth or the Territory.

268 Closing of roads

- (1) A council may temporarily or permanently close a road, or part of a road, under its care, control and management.

- (2) However, a road or part of a road is not to be permanently closed under subsection (1) unless:
 - (a) any relevant procedural requirements prescribed by regulation have been satisfied; and
 - (b) the following Ministers consent:
 - (i) the Minister; and
 - (ii) the Minister responsible for the administration of the *Control of Roads Act 1953*.
- (3) Subject to any contrary agreement between a council and the Minister, if a road under the care, control and management of a council is vested in the Territory and the road is permanently closed, the land comprising the road vests in the council in fee simple.

269 Establishment of new road

- (1) Before a council establishes a new road in its area, it must give public notice of the proposal to do so.
- (2) The proposal (which must include a plan delineating the proposed new road with reasonable accuracy and detail):
 - (a) must be accessible on the council's website; and
 - (b) must be available for inspection by interested members of the public at the council's public office.
- (3) The notice must include an invitation to any person who may object to the proposal to lodge a written objection to the proposal within a reasonable period (at least 28 days) stated in the notice.
- (4) The council must consider any written objections lodged in accordance with the invitation.
- (5) If, after publishing a notice under this section, the council substantially modifies its proposal, either as a result of objections or for some other reason, the council must publish a fresh notice under this section of the modified proposal.
- (6) This section does not apply to the establishment of a road on a temporary basis.

270 Substantial temporary road closure

- (1) If a council proposes to close a road temporarily but for a

substantial period (at least one month), the council must, before proceeding with its proposal, consult with the Minister (or the Minister's nominee) and the MLA for the electoral division in which the road is situated.

- (2) The council:
 - (a) must carefully consider written submissions made by the Minister (or the Minister's nominee) and the MLA in the course of the consultation; and
 - (b) must not proceed with the closure unless satisfied that the reasons for the closure justify the disruption to traffic resulting from the closure.
- (3) However, this section does not apply if:
 - (a) the road to be temporarily closed is a laneway; or
 - (b) the road closure is urgently necessary in the interests of safety.

Chapter 13 Regulatory powers

Part 13.1 By-laws

271 Power to make by-laws

- (1) Subject to this Part, a council may make by-laws for the good governance of its area.
- (2) The regulations may:
 - (a) prescribe the subject matter that falls within the ambit of a council's power to make by-laws; or
 - (b) excluding subject matter from the ambit of a council's power to make by-laws.
- (3) A by-law may be of general or limited application.
- (4) A by-law binds the Territory and all its instrumentalities.
- (5) A by-law may impose a penalty, not exceeding 100 penalty units for an individual or 500 penalty units for a body corporate, for contravention of the by-law.
- (6) A by-law may also provide for a daily penalty, not exceeding 5 penalty units for an individual or 25 penalty units for a body

corporate, for each day a contravention of the by-law continues.

272 Principles applying to by-laws

- (1) A by-law must conform with the following principles:
 - (a) a by-law must not exceed the power under which it is purportedly made;
 - (b) a by-law must not:
 - (i) operate retrospectively; or
 - (ii) impose a tax;
 - (c) a by-law must not shift the legal or evidential burden of proof to the accused in criminal proceedings unless:
 - (i) the offence is a parking offence or other minor traffic infringement; or
 - (ii) the shift of onus concerns only formal matters or matters peripheral to the substance of the offence; or
 - (iii) there is clear authority in the authorising legislation to shift the onus of proof to the accused;
 - (d) a by-law must not infringe personal rights in an unreasonable way or to an unreasonable extent.
- (2) A by-law should reflect the following principles:
 - (a) a by-law should not impose unreasonable burdens on the community;
 - (b) a by-law should not restrict competition unless the benefits of the restriction clearly outweigh the detriments;
 - (c) a by-law should be consistent with basic principles of justice and fairness;
 - (d) a by-law should be expressed in plain language as far as possible (and in gender neutral language).
- (3) If a by-law infringes one or more principles stated in subsection (2) it is not necessarily invalid on that ground, but a court, in considering whether the by-law represents a reasonable exercise of the power under which the by-law was made, must take the infringement into account.
- (4) A by-law should be consistent with other legislation applying in the

council's area.

- (5) A by-law should avoid duplication of, or overlap with, other legislation.
- (6) This section does not affect the validity of a by-law made before the commencement of this Act.

273 By-laws for animal management

Without limiting section 271, the power of a council to make by-laws extends to the making of by-laws providing for:

- (a) the seizure of an apparently diseased, injured, savage, destructive, stray or unregistered animal or an animal at large; and
- (b) the destruction of a diseased, injured, savage, destructive, unclaimed, unregistered or unwanted animal.

274 Making by-laws

- (1) Before a council makes a by-law:
 - (a) the council must, at least 28 days before the meeting at which the council proposes to make the by-law:
 - (i) publish the proposed by-law on its website; and
 - (ii) make copies of the proposed by-law available for public inspection, without charge, at the council's public office; and
 - (iii) give notice in a newspaper circulating in the area of the council of the availability of the by-law and of its general nature and effect; and
 - (b) the council must allow at least 21 days for members of the public to make written submissions to the council about the by-law;
 - (c) the council must consider the submissions; and
 - (d) the council must obtain a certificate from the CEO of the Agency, which specifies that the by-law is consistent with the principles in this Part.
- (2) A special resolution of the council is required for making a by-law.

Notes for section 274

- 1 *Section 63 of the Interpretation Act 1978 is relevant to the making of by-laws.*
- 2 *Section 63(2) provides that by-laws must be signed by a person authorised by the council to sign them and forwarded to the Minister.*
- 3 *Section 63(3) provides that, where by-laws are forwarded to the Minister, the Minister must cause them to be notified in the Gazette and must lay them before the Legislative Assembly within 3 sitting days after the Gazette notification. By-laws are then liable to disallowance by the Legislative Assembly under section 63(9).*

275 Register of by-laws and certified copies

- (1) A council must keep a register of all by-laws made or adopted by the council.
- (2) The register must include the text of each by-law and of any code, standard or other document referred to or incorporated in the by-law.
- (3) The register:
 - (a) must be accessible on the council's website; and
 - (b) must be available for inspection at the council's public office.
- (4) A person is entitled, on payment of a fee fixed by the council, to a certified copy of a by-law.
- (5) An extract from, or a copy of an entry in, the register signed by the CEO is evidence of the details contained in the entry without requiring the production of the register, unless a court otherwise orders.

276 Matters of evidence for entries in register

A statement signed by the CEO in relation to the details contained in an entry in a register established by a by-law, including the following, is evidence of those details without requiring production of the register, unless a court otherwise orders:

- (a) whether the name of a person was entered in a register in relation to an animal, matter or thing;
- (b) whether a licence or registration had been issued in relation to an animal or premises.

277 Determinations to be published

If a council makes a determination of general application under a by-law, the council must publish the determination on its website.

Part 13.2 Regulatory orders

Division 1 Categories of regulatory order

278 Visual pollution

- (1) If visual pollution exists on land and it detracts significantly from the amenity of the surrounding neighbourhood, a council may make an order (a **regulatory order**) requiring the owner or occupier of the land to take specified action to remove, or to reduce the impact of, the visual pollution.
- (2) **Visual pollution** exists on land if:
 - (a) the land itself is in an unsightly condition; or
 - (b) there is an unsightly structure or object on the land.

279 Mitigation of hazard or nuisance

A council may make an order (a **regulatory order**) requiring the owner or occupier of land to remove or mitigate a hazard or nuisance or potential hazard or nuisance.

Examples for section 279

- 1 *The council may require the owner to construct drains to prevent water from the land draining across an adjoining road.*
- 2 *The council may require the owner or occupier to cut back overhanging vegetation.*
- 3 *The council may require the owner or occupier to fence the land to prevent animals from running out from the land across a road.*
- 4 *The council may require the owner or occupier to clear away objects or materials that could prove hazardous to neighbours during a cyclone.*

280 Animals and activities involving animals

If an animal or an activity involving an animal is, or is likely to become, a hazard or nuisance, the council may make an order (a **regulatory order**) requiring the owner or occupier of the land on which the animal is kept or the activity is carried out, to take specified action to remove or mitigate the hazard or nuisance.

Examples for section 280

- 1 *The council may require relocation of slaughtering activities to a place where they are less likely to cause offence or a risk to the health of others.*
- 2 *The council may require action to reduce the number of cats kept on a property.*
- 3 *The council may require action to reduce noise or odours.*

- 4 *The council may require the destruction of a dangerous animal that cannot be adequately controlled in its current location.*

Division 2 Regulatory orders generally

281 Review of orders

A regulatory order is reviewable.

282 Time for carrying out work under regulatory order

- (1) A regulatory order must fix a reasonable period for taking the action required by the order.
- (2) The council may, from time to time, extend the time for compliance with the order on application by the person required to comply.

283 Non-compliance with order

- (1) A person commits an offence if:
 - (a) the person is subject to a regulatory order; and
 - (b) the person fails to comply with the order.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.
- (4) If a person fails to comply with a regulatory order, a person authorised by the council may, after reasonable notice to the occupier of the land, enter the land and carry out work, or take other action, required under the order.
- (5) The council may recover the cost of the work, or other action, as unpaid rates.

Part 13.3 Fees for services

284 Fees for services

- (1) A council may, by resolution, impose a fee to be charged a service.
- (2) The amount of the fee may be fixed in revenue units, however the council must show the equivalent dollar value in any publication of the fee on its website.

- (3) Any service for which a fee is charged must be an optional service or a service provided on request.

Chapter 14 Reporting and public disclosure

Part 14.1 Annual reports

285 Annual reports

- (1) A council must, on or before 15 November in each year, report to the Minister on its work during the financial year ending on the preceding 30 June.
- (2) As soon as practicable after the report has been delivered to the Minister, the council must:
- (a) publish the report on the council's website; and
 - (b) publish a notice in a newspaper circulating generally in the area informing the public that copies of the report may be downloaded from the council's website or obtained from the council's public office; and
 - (c) provide a copy of the report to the Agency.

286 Content of annual report

The annual report of a council must include:

- (a) a copy of the council's audited financial statement for the relevant financial year; and
- (b) an assessment of:
 - (i) the council's performance against the objectives stated in the relevant municipal, regional or shire plan adopted for the relevant financial year (applying indicators of performance set in the plan); and
 - (ii) for a council for a region – the activities of any local authority within the council's area; and
- (c) an itemisation of any shared services the council has been involved with for the relevant financial year; and
- (d) details in relation to any delegations of the council's functions and powers in force for the relevant financial year; and
- (e) an itemisation of the salary, allowances or any other payments

made to, or fringe benefits received by or on behalf of, the CEO; and

- (f) an itemisation of any amounts of fees or allowances made to committee members; and
- (g) any other information and be in the form prescribed by regulation or in accordance with guidelines made by the Minister.

Note for section 286

The annual report of a constituent council of a local government subsidiary has additional requirements mentioned in section 68(2).

Part 14.2 Public access to information

287 Information to be publicly available

The material specified in Schedule 3 is to be available on the council's website and at the council's public office, subject to the corresponding conditions specified in Schedule 3.

288 Suppression of certain information

- (1) The CEO must suppress from publicly available material information prescribed by regulation as confidential.
- (2) A person may request, in writing, the CEO to suppress from any publicly available material of the person's name, address, telephone number or email address or any other personal detail.
- (3) The CEO must comply with a request under subsection (2) unless there is good reason for not doing so.
- (4) The CEO must notify the person who made the request, in writing, of the result of the request.
- (5) A decision to refuse suppression is reviewable.
- (6) In this section:

publicly available material means an assessment record or other material (except an electoral roll) that is to be made publicly available under this Part or any other provision of this Act.

Chapter 15 Compliance reviews and investigations

Part 15.1 Inspectors

289 Inspectors

- (1) The Minister may appoint inspectors of local government.
- (2) An appointment may be made on terms and conditions specified in the instrument of appointment.
- (3) The terms and conditions of appointment may limit the circumstances in which the appointee may exercise powers as an inspector.

Example for subsection (3)

If an inspector's field of expertise lies in auditing financial records, the appointment could limit the inspector to that field.

290 Identity cards for inspectors

- (1) The Agency must issue each inspector with an identity card:
 - (a) stating the inspector's name and displaying a photograph of the inspector; and
 - (b) stating that the person whose name and photograph appear on the card is an inspector.
- (2) The inspector must, at the reasonable request of a person and before exercising a power under this Act, produce the inspector's identity card for inspection.
- (3) A person must commits an offence if:
 - (a) the person is an inspector; and
 - (b) the person, on ceasing to be an inspector, fails to return the identity card to the Agency.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

291 Functions of an inspector

The functions of an inspector are:

- (a) to carry out compliance reviews; and
- (b) to investigate suspected irregularities in or affecting the conduct of a council's or local government subsidiary's affairs.

Part 15.2 Compliance review

292 Program of compliance reviews

- (1) The Agency must establish a program of compliance reviews for councils and local government subsidiaries.
- (2) The purpose of a compliance review is to ensure that councils and local government subsidiaries conduct their business lawfully.
- (3) A local government subsidiary may be subject to a separate compliance review to the compliance review of its constituent council or councils.

293 Carrying out of compliance review

A compliance review is to be carried out by one or more inspectors assigned to the review by the Agency.

294 Agency must report on results of compliance review

- (1) The Agency must:
 - (a) for a compliance review of a council – report to the council on the results of the compliance review; and
 - (b) for a compliance review of a local government subsidiary – report to the local government subsidiary and the constituent council or councils on the on the results of the compliance review.
- (2) The report may contain recommendations for administrative or regulatory change.
- (3) A copy of the report must be provided to the CEO of the council or the chief executive of a local government subsidiary.
- (4) As soon as practicable after receiving the report:
 - (a) the CEO must provide a copy of the report to all council members; and

- (b) the chief executive of the local government subsidiary must provide a copy of the report to each constituent council.

Part 15.3 Investigations

295 Investigations

- (1) The Agency may, at any time, direct an investigation into the affairs of a council or a local government subsidiary.
- (2) An investigation is to be carried out by an inspector, or 2 or more inspectors, assigned to the investigation by the Agency.

Part 15.4 Powers of inspector

296 Power of entry

- (1) For the purposes of a compliance review or an investigation, an inspector may:
 - (a) enter, examine and search land and premises of the council or local government subsidiary; and
 - (b) examine and take copies of any records or other documents of the council or local government subsidiary.
- (2) The CEO, chief executive, or any other member of the council's staff or local government subsidiary's staff must, at the request of an inspector, do the following:
 - (a) anything reasonably necessary to facilitate the exercise of powers under subsection (1);
 - (b) answer any question relevant to the compliance review or the investigation asked by the inspector;
 - (c) produce any specified record or documentary material relevant to the compliance review or the investigation;
 - (d) give any other assistance the inspector reasonably requires;
 - (e) any combination of the above.
- (3) A request under subsection (2) must be in writing.
- (4) A person commits an offence if the person contravenes a request under subsection (2).

Maximum penalty: 100 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant took reasonable steps to comply with the request.

297 Power of formal questioning

- (1) For the purposes of a compliance review or investigation, an inspector may, by notice, require a person:
 - (a) within the time allowed in the notice, to provide written answers to specified questions or other specified written information; or
 - (b) to attend before the inspector at a specified time and place for examination on a subject stated in the notice; or
 - (c) to produce specified records or documents or records or documents of a specified kind.
- (2) A person required under subsection (1)(a) to provide written answers to questions or other written information must verify the answers or information by statutory declaration.
- (3) A person who attends for examination before an inspector must:
 - (a) if the inspector so requires, take an oath to answer truthfully all questions put to the person by the inspector; and
 - (b) answer questions put to person at the examination.
- (4) A person commits an offence if the person contravenes a requirement under this section.

Maximum penalty: 100 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant took reasonable steps to comply with the requirement.

298 Self-incrimination

- (1) A person required to answer a question, give information or produce a document under this Act is not excused from doing so on the ground that the answer, information or document might tend to incriminate the person or make the person liable to a penalty.
- (2) However, the answer, information or document is not admissible in

evidence against the person in a civil or criminal proceeding except a proceeding for an offence in which the falsity or misleading nature of the answer, information or document is relevant.

299 Confidential matters

- (1) A person must not refuse to comply with a requirement under section 296 or 297 because the answer, information, record or document is confidential.
- (2) However, the person is not required to comply with the requirement if it requires the person to disclose legally privileged information.

300 Inspector's report

- (1) If an inspector finds evidence of an irregularity in the conduct of a council's or local government subsidiary's affairs, the inspector must report the matter to:
 - (a) the Agency; and
 - (b) the council or constituent council or councils.
- (2) If the irregularity appears to involve improper conduct the inspector must also report the matter to the Minister and the ICAC.
- (3) In this section:

improper conduct, see section 4 of the *Independent Commissioner Against Corruption Act 2017*.

Part 15.5 Agency's power to remedy irregularity

301 Power to impose surcharge

- (1) If a council has suffered loss as a result of dishonesty or serious illegality, the council may apply to NTCAT to impose a surcharge on a person whose dishonest or illegal act gave rise to the loss.
- (2) If NTCAT imposes a surcharge on a person, the amount of the surcharge must not exceed the total of the following amounts:
 - (a) the amount of the loss suffered by the council;
 - (b) the amount incurred by the council to recover the surcharge.
- (3) The surcharge is imposed by giving the person a decision notice.
- (4) Section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a decision of NTCAT under this

section.

302 Recovery of surcharge

- (1) A surcharge may be recovered as a debt due to the council.
- (2) The council may set off against the amount of a surcharge the amount of any liability owed by the council to the person liable for the surcharge.

Chapter 16 Inquiries

Part 16.1 Establishment of commission

303 Establishment of commission of inquiry

- (1) The Minister may establish a commission of inquiry to inquire into:
 - (a) the affairs of a particular council; or
 - (b) the affairs of a particular local government subsidiary, either as part of an inquiry into its constituent council or councils or separately; or
 - (c) any other question relevant to local government in the Territory.
- (2) A commission of inquiry consists of one or more persons (**commissioners**) appointed by the Minister to constitute the commission of inquiry.
- (3) If the Minister establishes a commission of inquiry to inquire into the affairs of a particular council, the Minister must give notice to the relevant council of the reasons for and subject matter of the inquiry.

304 Commissioner's terms of office

- (1) The remuneration and other terms and conditions on which a commissioner holds office are determined by the Minister.
- (2) A Commissioner has the same privileges and immunities as a Supreme Court Judge in relation to the performance of official functions.

Part 16.2 Conduct of inquiry

305 Conduct of inquiry

- (1) A commission of inquiry must inquire diligently into the subject matter of the inquiry and report to the Minister on the results of the inquiry.
- (2) A commission of inquiry may gather information in any way it considers appropriate and is not bound by the rules of evidence.
- (3) Proceedings of a commission of inquiry are to be held in a place open to the public unless the commission considers it desirable, in the public interest, to hold the proceedings in private.
- (4) If a commission of inquiry is appointed to inquire into the affairs of a particular council, it must allow the council a reasonable opportunity to make submissions on the subject matter of the inquiry.

306 Evidentiary powers of commission

- (1) A commission of inquiry may exercise any of the following evidentiary powers:
 - (a) it may require a person to appear before it to give evidence;
 - (b) it may require a person to provide written answers to questions put to the person by the commission and to verify the answers by statutory declaration;
 - (c) it may require a person to produce documents or other evidentiary materials in the person's possession or control to the commission.
- (2) A requirement under subsection (1) is made by giving the person whose compliance is required a notice in writing:
 - (a) stating the subject matter of the inquiry; and
 - (b) setting out the terms of the requirement; and
 - (c) fixing or allowing a reasonable time for compliance with the requirement.
- (3) The commission may require a person appearing before it to give evidence on oath.
- (4) A person commits an offence if:
 - (a) the person is required to comply with a requirement under

subsection (1); and

- (b) the person intentionally engages in conduct; and
- (b) the conduct results in a failure to comply with the requirement and the person is reckless in relation to the result.

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

(5) Strict liability applies to subsection (4)(a).

(6) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in the person's failure or refusal to take an oath when required to do so by the commission and the person is reckless in relation to the result.

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

(7) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in the person's failure or refusal to answer a question relevant to the subject matter of the inquiry when required to do so by the commission.

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

(8) It is a defence to a prosecution for an offence against subsection (4), (6) or (7) if the defendant has a reasonable excuse.

(9) A person who gives evidence to a commission of inquiry has the same privileges and immunities as a witness in proceedings before the Supreme Court.

307 Legal representation

A council or other person whose conduct is under investigation by a commission of inquiry is entitled to be represented by a legal practitioner in proceedings before the commission.

308 Re-opening of inquiry

The Minister may direct a commission of inquiry to re-open the inquiry if fresh evidence comes to light or it appears desirable for

some other reason to re-open the inquiry.

309 Report of commission of inquiry

- (1) Publication of a report of a commission of inquiry is absolutely privileged.
- (2) Publication of a fair report of proceedings or findings of a commission of inquiry is protected by qualified privilege.

Chapter 17 Defaulting councils

Part 17.1 Required remedial action

310 Minister may require action to remedy deficiencies

- (1) If the Minister is satisfied that deficiencies have been identified in the conduct of a council's affairs and that action must be taken to address them, the Minister may:
 - (a) require the council to take specified remedial action within a specified period; and
 - (b) require the council to report to the Minister, at the end of the specified period, on the action taken to give effect to the requirement.
- (2) The remedial action referred to in subsection (1) must be specified in writing and the notice must refer to the offence and maximum penalty in subsection (3).
- (3) A person commits an offence if:
 - (a) the person is a member of a council; and
 - (b) the council fails to comply with a requirement under this section.

Maximum penalty: 500 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (2) if the defendant acted with reasonable diligence to secure compliance by the council.

Part 17.2 Financial controller

311 Financial controller

- (1) The CEO of the Agency may, by *Gazette* notice, appoint a financial controller for a council or a local government subsidiary if the CEO considers the council or local government subsidiary is not:
 - (a) performing its financial responsibilities appropriately; or
 - (b) complying with this Act.
- (2) A financial controller is responsible for:
 - (a) implementing financial controls as directed by the CEO of the Agency; and
 - (b) performing other related duties as directed by the CEO of the Agency.
- (3) The council or local government subsidiary must cooperate fully with the financial controller.
- (4) If a financial controller is appointed, the council or local government subsidiary must obtain the financial controller's authorisation before undertaking any of the following:
 - (a) a transaction from an account kept by the council or local government subsidiary with a financial institution;
 - (b) any other type of expenditure;
 - (c) any future financial commitments.
- (5) If the financial controller believes on reasonably grounds that a decision, resolution or order to make a payment is financially unsound, the financial controller must:
 - (a) refuse to make a payment; and
 - (b) advise the CEO of the Agency about why the decision, resolution or order is financially unsound.
- (6) In this section:

financially unsound, in relation to a decision, resolution or order, means the decision, resolution or order:

 - (a) may cause the council or local government subsidiary to become insolvent; or

- (b) would result in unlawful expenditure by the council or local government subsidiary; or
- (c) would result in a disbursement from a fund that is not provided for in the council's or local government subsidiary's budget; or
- (d) would result in expenditure from grant moneys for a purpose other than the purpose for which the grant was given.

Part 17.3 Official management

312 Official management of councils

- (1) If the Minister is satisfied that there are or there may be serious deficiencies identified in the conduct of a council's affairs, the Minister may, by *Gazette* notice, place the council under official management.
- (2) When the Minister places a council under official management:
 - (a) all members of the council are suspended from office; and
 - (b) despite section 132, if a periodic general election is scheduled to be held for the period of official management – the council does not participate in the election; and
 - (c) the Minister:
 - (i) must appoint a suitable person to manage the affairs of the council; and
 - (ii) must appoint a suitable person (who may – but need not – be the manager) to investigate and report back to the Minister, within a period allowed by the Minister, on the conduct of the suspended members and the affairs and financial position of the council.
- (3) The persons appointed under subsection (2)(c)(i) and (ii) have the powers of an inspector.
- (4) The Minister may from time to time extend the time allowed for the investigator's report.
- (5) When the Minister receives the investigator's report, the Minister must invite written submissions from the suspended members on the content of the report within a reasonable period (of at least 21 days) specified in the invitation.
- (6) No later than 12 months after placing the council under official

management, and after considering any submissions made in response to an invitation under subsection (5), the Minister must, by *Gazette* notice:

- (a) reinstate all of the suspended members; or
- (b) dismiss all of the suspended members from office.

313 General election for council under official management

- (1) The Minister must, by *Gazette* notice, immediately call a general election for the council if:
 - (a) the Minister dismisses all of the suspended members from office under section 312(6)(b); or
 - (b) both of the following apply:
 - (i) the Minister reinstates all of the suspended members under section 312(6)(a);
 - (ii) a periodic general election was scheduled to be held during the period of official management in which the council did not participate.
- (2) If the Minister does not make a decision mentioned in section 312(6) within 12 months after placing the council under official management, the Minister must, by *Gazette* notice, call a general election for the council within 90 days of the expiry of the 12 month period.
- (3) If a general election for a council is called by the Minister and is held within one year before the date for a periodic general election under section 132:
 - (a) no further periodic general election for the area is to be held on the later date; and
 - (b) the next periodic general election for the area is to be held on the date on which it is scheduled to be held under section 132(1), as if the general election for the council had not been called by the Minister and a periodic general election had been held in the ordinary course.

Note for section 313

Under section 88(3) the first ordinary meeting of a council must be held within 21 days after the conclusion of the general election.

314 Resignation of suspended member

If a suspended member resigns during the suspension, the resignation:

- (a) if the member is reinstated – takes effect at the time of the reinstatement; or
- (b) if the member is dismissed – has no effect.

315 Official manager

- (1) The manager has full power to transact any business of the council and to do anything else the council could have done but for the suspension or dismissal of its members.
- (2) The manager may act in the manager's own name, or in the name of the council, and may execute a document under the common seal of the council.
- (3) The manager's remuneration and terms and conditions of office are determined by the Minister.
- (4) The manager's remuneration is payable from the funds of the council.
- (5) If the members of the council are reinstated, the manager ceases to hold office.
- (6) If the members of the council are dismissed from office, the manager ceases to hold office at the conclusion of the next election of members of the council.

Chapter 18 Review of decisions

Part 18.1 Internal review

316 Reviewable decisions

- (1) A **reviewable decision** is a decision or order made by a council, or an officer of a council, that is designated as reviewable:
 - (a) by this Act (or a by-law under this Act); or
 - (b) by resolution of the council.

- (2) A list setting out each category of reviewable decisions must be accessible on a council's website.

Note for section 316

The following are designated by this Act as reviewable:

- (a) a regulatory order under section 281;
(b) a decision in relation to suppressing a person's personal details in publicly available material under section 288(5).

317 Right to apply for review

- (1) A person who is adversely affected by a reviewable decision may, within 28 days after the date of the decision, apply to the CEO for a review of the decision.
- (2) The application must:
- (a) be made in writing; and
- (b) set out in detail the grounds on which the decision should, in the applicant's opinion, be re-considered.
- (3) The CEO may extend the period for making an application for review if the CEO is satisfied that there are exceptional circumstances justifying the extension.

318 Consideration of application by administrative review committee

- (1) The CEO must, on receiving an application for review, refer the application to an administrative review committee.
- (2) The administrative review committee may summarily reject an application for review if satisfied that the application is frivolous, vexatious or lacking in substance.
- (3) If the administrative review committee summarily rejects an application under subsection (2), the committee must give a decision notice to the applicant as soon as practicable after making the decision.
- (4) The administrative review committee:
- (a) must, unless it rejects the application under subsection (2), inquire into the matters raised by the application; and
- (b) must make a recommendation on the application to the council.
- (5) The recommendation may be:

- (a) to confirm the decision; or
- (b) to amend the decision; or
- (c) to revoke the decision; or
- (d) to make some further decision to mitigate the effect of the decision.

319 Council's decision on recommendation

- (1) After receiving a recommendation from an administrative review committee, the council must make a final decision on the application.
- (2) The decision need not be consistent with the administrative review committee's recommendation.
- (3) The CEO must give a decision notice to the applicant as soon as practicable but no later than 90 days after receiving the application for review under section 318(1) after the council makes a final decision on the application.

320 No decision by council

If the CEO does not give a decision notice to the applicant in accordance with section 319, the applicant or the respondent may refer the application to NTCAT.

Part 18.2 Jurisdiction of NTCAT

321 Review by NTCAT

- (1) NTCAT has jurisdiction to review a decision (an ***NTCAT reviewable decision***) specified in Schedule 3.
- (2) An ***affected person***, for an NTCAT reviewable decision, is a person specified in Schedule 3 for the decision.
- (3) An affected person for an NTCAT reviewable decision may apply to NTCAT for review of the decision.

Note for section 321

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.

322 Review does not affect decisions and orders

- (1) An application for review of an NTCAT reviewable decision to

NTCAT does not suspend the operation of the decision.

- (2) However, NTCAT may make an order suspending an obligation arising from a decision to which a review relates, or prohibiting action to give effect to the decision, until NTCAT makes its decision on the matter.
- (3) Section 44(2) of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a review of a decision made under this Act.

Chapter 19 Miscellaneous

Part 19.1 Legal proceedings

323 Commencement of legal proceedings on behalf of council

- (1) Legal proceedings (including proceedings for an offence) may be commenced in the name of a council by the CEO or some other person authorised by the council to bring the proceedings on its behalf.
- (2) Legal proceedings in the name of the council may only be commenced by resolution of the council.
- (3) Proceedings for an offence against this Act may be commenced at any time within 3 years after the date on which the offence is alleged to have been committed.

Part 19.2 Service of documents

324 Service of documents on council or local government subsidiary

A document may be served on a council or a local government subsidiary:

- (a) by handing it to the CEO or chief executive personally; or
- (b) by emailing it to the CEO or chief executive; or
- (c) by leaving it at the council office or local government subsidiary office with a member of the council's staff or local government subsidiary's staff; or
- (d) by posting it to the council's postal address or local government subsidiary's postal address; or

- (e) by serving the document in any other way notified on the council's website or local government subsidiary's website as a permissible way to serve the document.

325 Service of documents by council or local government subsidiary

- (1) A notice, order or other document the council or local government subsidiary is required or permitted to serve under this Act, may be served:
 - (a) personally on the person to whom it is addressed; or
 - (b) by leaving it for the person at the person's place of residence, employment or business; or
 - (c) by posting it, addressed to the person, at the person's last known place of residence, employment or business.
- (2) If a council or local government subsidiary serves a notice, order or other document on a person in the person's capacity as owner or occupier of land, it binds successors in title or successive occupiers (as the case requires).

Part 19.3 Evidence

326 Judicial notice to be taken of certain facts

A court is to take judicial notice of the following:

- (a) the existence of a municipality, shire or region and its boundaries;
- (b) the division of a municipality, shire or region into wards and the boundaries of each ward;
- (c) the existence and membership of the council for each municipality, shire or region;
- (d) the election of members of the council;
- (e) the appointment and signature of the CEO.

327 Certified copies of minutes

The following extracts are admissible in legal proceedings as evidence of proceedings and decisions to which the extract relates:

- (a) an extract from the minutes of a council or council committee certified by the CEO;

- (b) an extract from the minutes of a local government subsidiary certified by the chief executive.

328 Evidence of land ownership

A certificate signed by the Registrar-General is admissible in legal proceedings as evidence of the ownership of an estate in fee simple, or a leasehold estate, in land to which the certificate relates.

Part 19.4 Offences for unauthorised disclosure and misleading information

329 Offence to disclose certain information

- (1) A person commits an offence if:
 - (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
 - (b) the information is confidential and the person is reckless in relation to that circumstance; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
 - (e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

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

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for section 329

In addition to the circumstances mentioned in this section, a person who

discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

330 Misleading information

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person (the **local government officer**); and
 - (b) the information is misleading and the person has knowledge of that circumstance; and
 - (c) the local government officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person intentionally gives a document to the local government officer; and
 - (b) the document contains misleading information and the person has knowledge of that circumstance; and
 - (c) the local government officer is acting in an official capacity and the person has knowledge of that circumstance.

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

- (3) It is a defence to a prosecution for an offence against subsection (2) if the person, when giving the document:
- (a) draws the misleading aspect of the document to the local government officer's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the local government officer the information necessary to remedy the misleading aspect of the document.

- (4) In this section:

local government officer means:

- (a) a member of an audit committee, a council, a council committee or a local authority; or

- (b) a staff member of a council or a local government subsidiary;
or
- (c) a CEO or a chief executive; or
- (d) an inspector; or
- (e) an official manager or investigator; or
- (f) an authorised officer; or
- (g) a financial controller.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

staff member includes:

- (a) a person who is not a member of the staff but works for, or provides services to, the council or local government subsidiary on a contract basis; or
- (b) a person who works for the council under an arrangement with a labour hire agency; or
- (c) a person (other than a member of the council, a local authority or a council committee) acting under powers of the council conferred by delegation.

Part 19.5 Carrying out work on land

331 Occupier entitled to carry out work on land

- (1) If an owner of land fails to carry out work on land that the owner is required under this Act to carry out, the occupier of the land may do so instead.
- (2) If the occupier of land carries out work under subsection (1), the occupier may recover the reasonable cost of doing so from the owner as a debt, or set off the amount against liabilities owed to the owner.

332 Owner entitled to enter land to carry out work

- (1) An owner may, after reasonable notice to the occupier, enter land to carry out the work if:
 - (a) the owner of land is required under this Act to carry out work on land; and

- (b) the owner is not in occupation of the land.
- (2) A person commits an offence if:
- (a) the person is an occupier of the land; and
 - (b) the occupier intentionally engages in conduct; and
 - (c) the conduct results in the owner being obstructed from entering the land to carry out work required under this Act and the person is reckless in relation to the result.

Maximum penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2)(a).

Part 19.6 Certificates of liabilities

333 Certificates

- (1) A council must, on application by a person with a proper interest in land within the council's area, issue a certificate containing:
- (a) details of outstanding rates and charges due to the council in relation to the land; and
 - (b) details of statutory notices and orders issued by the council in relation to the land.
- (2) If a person, acting on faith in the certificate, purchases land or lends money on mortgage over the land, the council is estopped as against that person from disputing the correctness of the certificate.
- (3) For this section, a person has a proper interest in land if the person is:
- (a) an owner or occupier of the land; or
 - (b) a purchaser or prospective purchaser of the land; or
 - (c) a mortgagee or prospective mortgagee of the land; or
 - (d) a person acting for any of the above.

Part 19.7 Acquisition on just terms

334 Acquisition on just terms

If the operation of this Act would, apart from this section, result in

an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

Part 19.8 Guidelines and regulations

335 Guidelines

- (1) The Minister may make, amend or revoke guidelines for the purposes of this Act.
- (2) The guidelines must be published on the Agency's website.
- (3) The Minister must table guidelines in the Legislative Assembly within 6 sitting days after making them.
- (4) The guidelines are not subordinate legislation.

336 Regulations

The Administrator may make regulations under this Act.

Chapter 20 Repeals

337 Acts repealed

The Acts specified in Schedule 4 are repealed.

Chapter 21 Transitional matters for Local Government Act 2019

338 Definitions

In this Chapter:

commencement means the commencement of the new Act.

LGANT means the Local Government Association of the Northern Territory, continued under section 339.

new Act means the *Local Government Act 2019*.

former Act means the *Local Government Act 2008*, as in force immediately before the commencement.

repealed, in relation to a section, means the section of the former Act as in force immediately before the commencement.

339 Continuation of LGANT

The Local Government Association of the Northern Territory, continues under the new Act as if section 242 of the former Act had not been repealed:

- (a) for 12 months from the commencement; or
- (b) for the period prescribed in the regulations.

340 LGANT in formation of local government subsidiary

- (1) Subsection (2) applies if LGANT participated with a council or 2 or more councils in the formation of a local government subsidiary under repealed section 27(3) before the commencement.
- (2) LGANT continues to participate with the council or councils to form the local government subsidiary after the commencement, and a reference in the new Act to a council or constituent council extends to LGANT.
- (3) The prescribed corporation is to participate with the council or councils to form the local government subsidiary after the expiry of the period in section 339 of the new Act, and a reference in the new Act to a council or constituent council extends to the prescribed corporation.
- (4) The prescribed corporation's participation under subsection (3) ceases in accordance with the regulations.

341 Continuation of existing councils and by-laws

- (1) The councils and local government areas for municipalities and shires are continued, as constituted immediately before the commencement.
- (2) The members of the council in office immediately before the commencement continue in office until the next general election for the council.
- (3) The by-laws of a council that continues under this section continue in force subject to variation or revocation by by-laws made under this Act.

Note for subsection (3)

This subsection applies to the by-laws made under the by the Jabiru Town Council that became by-laws of the Western Arnhem Shire Council under section 34 of the Jabiru Town Development Act 1978.

- (4) Anything done by a council after the enactment but before the commencement of this Act, and in accordance with its provisions, is validly done despite any conflict with the provisions of the former Act.

342 Regional councils taken to be local government councils

- (1) A regional council constituted for a region under repealed section 8 before the commencement is taken to be a local government council constituted for a region under section 15 of the new Act.
- (2) The name of a council mentioned in subsection (1) immediately before the commencement is the same immediately after commencement.
- (3) The members of the council in office immediately before the commencement continue in office until the next general election for the council.
- (4) The by-laws of a council that continues under this section continue in force subject to variation or revocation by by-laws made under this Act.
- (5) Anything done by a council after the enactment but before the commencement of this Act, and in accordance with its provisions, is validly done despite any conflict with the provisions of the former Act.
- (6) Subsection (2) does not prevent the Administrator or the Minister from changing the name of a council under section 16(1)(h) of the new Act.

343 Formation, ownership or participation in other bodies corporate before the commencement

- (1) Subsection (2) applies if, before the commencement, a council formed or otherwise participated in a corporation, partnership or other trading body under the former Act.
- (2) After the commencement, the council is taken to form or otherwise participate in that corporation, partnership or other trading body as if it had approval from the Minister under section 38 of the new Act.

344 Continuation of allowances and expenses

Repealed sections 71 and 72, and the guidelines made under repealed section 71(2), continue in force after the commencement

until the Remuneration Tribunal makes a determination under section 7B of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

345 Conflict of interest if interest relates to allowances or expenses

- (1) Subsection (2) applies if, after the commencement:
 - (a) a member has a conflict of interest in a question arising for decision by the council; and
 - (b) the interest is an interest in a question about the level of allowances or expenses to be set for members; and
 - (c) the Remuneration Tribunal has not made a determination under section 7B of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006* in relation to the members of the council.
- (2) Repealed section 73(2)(a) continues to apply to the interest until the Remuneration Tribunal makes the determination.

346 Preservation of local government functions of Nhulunbuy Corporation Limited

- (1) Subject to this section:
 - (a) the Nhulunbuy Corporation Limited continues to have the same local government functions as it had under the former Act immediately before the date of transition; and
 - (b) the *Nhulunbuy (Animal Control) By-laws 1998* continue in force (subject to amendment or revocation under this Act) as by-laws under this Act; and
 - (c) this Act applies to the Nhulunbuy Corporation Limited, in relation to its performance of local government functions as if it were a council for a shire constituted under this Act.
- (2) The Nhulunbuy Corporation Limited has the same functions as that of a council under the new Act.
- (3) The Minister may, by *Gazette* notice:
 - (a) withdraw functions from, or add to or modify the local government functions of, the Nhulunbuy Corporation Limited continued under this section; or
 - (b) modify the operation of this Act in its application to the

Nhulunbuy Corporation Limited.

347 Annual review of plans

- (1) This section applies in relation to a council's municipal, regional or shire plan.
- (2) Repealed section 24 applies to the plan for the financial year in which the new Act commences.
- (3) Section 24 of the new Act applies to the plan for the financial year after the commencement.

348 Local authorities

- (1) This section applies to the members of a regional council and the principal member of the council that constitute a local authority under repealed section 53C(1)(a) and (2) before the commencement.
- (2) The members of the local government council and the principal member of the council are taken to be appointed members of the local authority under section 75(1)(b) of the new Act after the commencement.

349 Complaints of contravention of code of conduct

- (1) This section applies if a person lodged a complaint under repealed section 79 before the commencement.
- (2) Chapter 7, Part 7.4, Division 2 of the former Act continues to apply in relation to the complaint.
- (3) The new Act applies if a person lodges a complaint under section 118 of the new Act after the commencement.
- (4) Subsection (3) applies irrespective of whether the alleged contravention of the code of conduct that is the subject of the complaint occurred before or after the commencement.

350 Eligibility requirements for CEO, Deputy CEO and chief executive

- (1) This section applies if a CEO, Deputy CEO or chief executive was appointed and entered into a contract of employment before the commencement.
- (2) Section 162 of the new Act does not apply to the CEO or Deputy CEO during the term of the CEO or Deputy CEO's contract of employment.

- (3) Section 69 of the new Act does not apply to the chief executive during the term of the chief executive's contract of employment.
- (4) However:
 - (a) section 162 of the new Act applies to the CEO or Deputy CEO if the CEO or Deputy CEO is reappointed and enter into a renewal of the CEO or Deputy CEO's contract of employment after the commencement; and
 - (b) section 69 of the new Act applies to the chief executive if the chief executive is reappointed and enters into a renewal of the chief executive's contract of employment after the commencement.

351 Long-term financial plan

- (1) This section applies in relation to a council's long-term financial plan.
- (2) Repealed section 126 continues to apply to the plan for the financial year in which the new Act commences.
- (3) Section 195 of the new Act applies to the plan for and from the financial year after the commencement.

352 Land exempt from rates

- (1) This section applies if, before the commencement, land was exempt from rates under repealed section 144(1)(f).
- (2) Subject to subsection (3), the land continues to be exempt from rates under section 219 of the new Act after the commencement irrespective of whether the public benevolent institution or public charity is registered with the Australian Charities and Not-for-profits Commission established under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
- (3) Subsection (2) only applies to the first declaration of rates made for the land in the local government area under Chapter 11, Part 11.5, Division 1 of the new Act after the commencement.

353 Declaration of general rates

- (1) This section applies in relation to a council's declaration of general rates.
- (2) Repealed section 155 continues to apply to the declaration of general rates for the financial year preceding the financial year in which the new Act commences.

- (3) Section 234 of the new Act applies to the declaration of general rates for the financial year in which the new Act commences.

354 Official management of councils

- (1) Subsection (2) applies if a council is under official management under repealed section 224 before the commencement.
- (2) The new Act applies to the official management of the council after the commencement and, for section 312(6) of the new Act, the 12 month period is taken to start from the date of the commencement.

355 Adoption of code of conduct and policies by councils

- (1) Subject to this section, a council must adopt the following under the new Act not later than 12 months after the commencement:
- (a) a policy for gifts and benefits under section 110(1);
 - (b) a policy for contravention of the code of conduct under section 118;
 - (c) policies for human resource management under section 168;
 - (d) a policy for allowances and fringe benefits under section 170;
 - (e) a code of conduct for CEO and staff under section 171;
 - (f) a policy for investment under section 189(3);
 - (g) a policy for the availability of accounting records under section 201(3);
 - (h) a policy for shared services under section 213;
 - (i) a policy for the assessment record under section 227(5);
 - (j) a policy for rates concessions under section 244(2).
- (2) However, if the council is required to act in accordance with a policy within the period mentioned in subsection (1), the council must adopt the policy before taking the action.
- (3) On the commencement, a council that adopted a policy under a repealed section specified in the Table to this section before the commencement is taken to have adopted the policy under the corresponding section of the new Act if the policy has been adopted in accordance with the requirements of the new Act.
- (4) On the commencement, a council that adopted a policy mentioned

in subsection (1) before the commencement is taken to have adopted the policy under the section of the new Act specified if the policy has been adopted in accordance with the new Act.

Table

| | Repealed section | Section of new Act |
|----|--|--|
| 1 | Policy for co-opting a person to fill a casual vacancy under section 39(5) | Policy for filling a casual vacancy under section 51(2) |
| 2 | Policy for authorising a council member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 61(4) | Policy for authorising a member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 93(3) |
| 3 | Policy allowing the Chair of a council meeting to exercise a casting vote under section 61(6) | Policy allowing the chairperson of a meeting to exercise a casting vote under section 93(5) |
| 4 | Policy for authorising a local authority or council committee member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 64(4) | Policy for authorising a local authority or council committee member's attendance at a meeting by means of an audio or audiovisual conferencing system under section 96(3) |
| 5 | Caretaker policy under section 96A | Caretaker policy under section 157 |
| 13 | Privacy policy under section 130(3) | Privacy policy under section 201(3) |

356 Adoption of code of conduct and policies by local government subsidiaries

A local government subsidiary must adopt the following under the new Act not later than 12 months after the commencement:

- (a) policies for human resource management under section 168;
- (b) a policy for allowances and fringe benefits under section 170;
- (c) a code of conduct for the chief executive and staff under section 171;
- (d) a policy for investment under section 189(4);
- (e) a policy for the availability of accounting records under section 201(4).

Chapter 22 Consequential amendments

Part 22.1 Amendments to Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006

357 Act amended

This Part amends the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

358 Part 3, Division 1A inserted

After section 7

insert

Division 1A Members of local government council

7A Application

This Division applies to members of local government councils.

7B Allowances

- (1) The Tribunal must, on the Administrator's request, inquire into and determine the following allowances:
 - (a) the maximum amount of the base allowance, electoral allowance and professional development allowance for a principal member of a local government council;
 - (b) the maximum amount of the base allowance, electoral allowance and professional development allowance for a deputy principal member of a local government council;
 - (c) the maximum amount of the base allowance, electoral allowance, extra meeting allowance and professional development allowance for a member of a local government council other than a principal member or a deputy principal member.
- (2) The Tribunal may determine different amounts of allowances for the members of different local government councils.
- (3) The Tribunal must prepare a report for each inquiry conducted under subsection (1).

- (4) The report must include a determination of the entitlements.
- (5) The Tribunal must give the following a copy of the report as soon as practicable after the report is made:
 - (a) the Administrator;
 - (b) the Minister responsible for the administration of the *Local Government Act 2019*;
 - (c) the CEO of the Agency responsible for the administration of the *Local Government Act 2019*.
- (6) The Minister responsible for the administration of the *Local Government Act 2019* must table a copy of the report in the Assembly within 6 sitting days after receiving it.
- (7) The CEO of the Agency responsible for the administration of the *Local Government Act 2019* must give a copy of the report to the local government council as soon as practicable after the CEO receives the copy under subsection (5).
- (8) The allowances determined under subsection (1) apply as follows:
 - (a) if the report is made before 1 February – from the next financial year;
 - (b) if the report is made after 1 February – from the financial year after the next financial year;
 - (c) for subsequent financial years after the financial year specified under paragraph (a) or (b) – as adjusted with reference to the CPI figure for Darwin in the December quarter for the previous financial year.

Examples for subsection (8)

If a report is made on 1 February 2019, the allowances apply from 1 July 2019.

If a report is made on 2 February 2019, the allowances apply from 1 July 2020.

- (9) In this section:

CPI figure for Darwin means the Consumer Price Index: All Groups Index Number for Darwin published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* (Cth).

deputy principal member, see section 7 of the *Local Government Act 2019*.

principal member, see section 7 of the *Local Government Act 2019*.

Part 22.2 Other legislation amended

359 Legislation amended

Schedule 5 amends the legislation mentioned in it.

Part 22.3 Repeal of Chapter

360 Repeal of Chapter

This Chapter is repealed on the day after it commences.

Schedule 1 Code of conduct

section 117

1 Honesty and integrity

A member must act honestly and with integrity in performing official functions.

2 Care and diligence

A member must act with reasonable care and diligence in performing official functions.

3 Courtesy

A member must act with courtesy towards other members, council staff, electors and members of the public.

4 Conduct towards council staff

A member must not direct, reprimand, or interfere in the management of, council staff.

5 Respect for cultural diversity

A member must respect cultural diversity and must not therefore discriminate against others, or the opinions of others, on the ground of their cultural background.

6 Conflict of interest

6.1 A member must avoid any conflict of interest, whether actual or perceived, when undertaking official functions and responsibilities.

6.2 If a conflict of interest exists, the member must comply with any statutory obligations of disclosure.

7 Respect for confidences

7.1 A member must respect the confidentiality of information obtained in confidence in the member's official capacity.

7.2 A member must not make improper use of confidential information obtained in an official capacity to gain a private benefit or to cause harm to another.

8 Gifts

8.1 A member must not solicit, encourage or accept gifts or private

benefits from any person who might have an interest in obtaining a benefit from the council.

- 8.2 A member must not accept a gift from a person that is given in relation to the person's interest in obtaining a benefit from the council.

9 Accountability

A member must be prepared at all times to account for the member's performance as a member and the member's use of council resources.

10 Interests of municipality, region or shire to be paramount

- 10.1 A member must act in what the member genuinely believes to be the best interests of the municipality, region or shire.
- 10.2 In particular, a member must seek to ensure that the member's decisions and actions are based on an honest, reasonable and properly informed judgment about what best advances the best interests of the municipality, region or shire.

11 Training

A member must undertake relevant training in good faith.

Schedule 2 NTCAT reviewable decisions and affected persons

section 321

| | NTCAT reviewable decision | Affected person |
|---|---|--|
| 1 | A determination in relation to a person's eligibility to hold office under section 53(3) | The CEO and the member of council mentioned in section 53(1) |
| 2 | A decision of a review panel to summarily reject an application under section 123(2) | The complainant mentioned in section 118(1) |
| 3 | A decision of a review panel in relation to a contravention of the code of conduct under section 125 | The complainant and the respondent mentioned in section 118(1) |
| 4 | A decision of a complaint panel in relation to a contravention of the code of conduct under section 127 | The complainant and the respondent mentioned in section 118(1) |
| 5 | A decision of a council to change an entry in the assessment record under section 229(1), unless the decision is to correct a typographical error | The person to whom the decision notice is given under section 229(2) |
| 6 | A decision of a council to summarily reject an application in whole or in part to correct the assessment record under section 230(6) | The applicant mentioned in section 230(1) |
| 7 | A decision of an administrative review committee to summarily reject an application under section 318(2) | A person adversely affected by the reviewable decision mentioned in section 317(1) |
| 8 | A decision from the review of a reviewable decision made by an administrative review committee under section 319(1) | A person adversely affected by the reviewable decision mentioned in section 317(1) |

| | | |
|---|---|--|
| 9 | A reviewable decision under section 320 | A person adversely affected by the reviewable decision mentioned in section 317(1) |
|---|---|--|

Schedule 3 Information to be publicly available

section 287

| | Material | Conditions |
|---|---|--|
| 1 | The council's draft and final municipal, regional or shire plans (section 33(2)). | <p>A draft plan must be available on the website until the final plan is made available on the website.</p> <p>A final plan need not be available on the website after 3 years from the last day of the period to which the plan relates.</p> |
| 2 | The constitution of a local government subsidiary for which the council is a constituent council (section 67). | <p>The constitution need not be available if:</p> <p>(a) 3 years have elapsed since the day on which the subsidiary ceased to exist; and</p> <p>(b) during the 3 years when the material was available on the website after the subsidiary ceased to exist, the material was accompanied by a note indicating the day on which the subsidiary ceased to exist.</p> |
| 3 | The notices, minutes of meetings of the council, local authorities, council committees and electors (sections 91(1), 95(3), 99(4) and 101(2)). | The material need not be available after 3 years from the day on which the meeting was scheduled, or if later, was held. |
| 4 | The amounts of allowances payable by the council to its members and a statement of the expenses to be paid to members under this Act (sections 104(3) and 107). | The material need not be available after 3 years from the last day of the relevant financial year. |

| | | |
|----|---|---|
| 5 | The register of annual returns of interest and the register of declared conflicts and gifts (section 115). | The material need not be available after 3 years from the conclusion of the next general election after the entry was made. |
| 6 | The council's code of conduct (section 117(2)). | |
| 7 | The council's budget and any amendment to the council's budget (section 198(4) and (5)). | The material need not be available after 3 years from the last day of the financial year for which the budget or amendment was adopted. |
| 8 | An approved rating proposal or a notice in relation to conditionally rateable land (section 216(5)). | The material need not be available after 3 years from the last day of the financial year during which the approved rating proposal or notice was published. |
| 9 | Notice of the declaration of rates (and charges) for the current financial year (section 238(1)). | The material need not be available after 3 years from the last day of the financial year during which the notice was published. |
| 10 | Notice of the council's intention to sell land, by auction, for non-payment of rates (section 256(4)). | The material need not be available if the land has been sold or the sale has been called off. |
| 11 | Notice of the council's assumption of the care, control and management of land (section 260(5)). | The material need not be available after 3 years from the last day of the financial year during which the council published the notice on the website. |
| 12 | Notice of an application by the council to the Supreme Court for variation of a trust (see section 262(5)) and notice of an order made on such an application (section 262(6)). | If an order has been made, the material need not be available after 3 years from the last day of the financial year during which the order was made. |
| 13 | Notice of a proposed by-law the council intends to make (section 274(1)). | The material need not be available after the by-law is made or the proposed by-law is defeated. |

- 14 The register of by-laws (section 275(3)).
- 15 The council's annual reports (section 285(2)). The material need not be available after 3 years from the last day of the relevant financial year.
- 16 A list setting out each category of reviewable decisions (section 316(2)).
- 17 An invitation notice for nominations of candidates for an election (any other material prescribed by regulation). The material:
(a) need not be available after the day that is 6 months before the polling day for the periodic general election next following the election to which the material relates (see any other material prescribed by regulation); and
(b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.
- 18 A declaration of the results of an election (any other material prescribed by regulation). The material:
(a) need not be available after the day that is 6 months before the polling day for the periodic general election next following the election to which the material relates (see any other material prescribed by regulation); and
(b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.

- 19 A declaration of the names of the duly nominated candidates for an election (any other material prescribed by regulation).
- The material:
- (a) need not be available after the day on which the results of the election are declared; and
 - (b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.
- 20 A public notice of early voting centres, absentee voting centres, mobile polling places and other polling places for an election (any other material prescribed by regulation).
- The material:
- (a) need not be available after the day on which the results of the election are declared; and
 - (b) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.
-

Schedule 4 Repealed Acts

section 337

| | |
|---|--------------------|
| <i>Local Government Act 2008</i> | Act No. 12 of 2008 |
| <i>Local Government (Consequential Amendments) Act 2008</i> | Act No. 28 of 2008 |
| <i>Local Government Amendment Act 2013</i> | Act No. 28 of 2013 |
| <i>Local Government Amendment (Restructuring) Act 2013</i> | Act No. 34 of 2013 |
| <i>Local Government Amendment Act 2014</i> | Act No. 19 of 2014 |
| <i>Local Government Legislation Amendment Act 2015</i> | Act No. 8 of 2015 |

Schedule 5 Other legislation amended

section 359

| Provision | Amendment | |
|--|---|--|
| | <i>omit</i> | <i>insert</i> |
| <i>Alice Springs (Public Library) By-laws 2009</i> | | |
| by-law 3, definition officer , paragraph (b) | appointed and acting under Part 9.6 of the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |
| <i>Associations Act 2003</i> | | |
| section 6(3)(c)(iii) | 2008 | 2019 |
| <i>AustralAsia Railway (Special Provisions) Act 1999</i> | | |
| section 11(2) | 2008 | 2019 |
| <i>Borroloola Community Government Council (Control of Dogs) By-laws 1992</i> | | |
| Schedule 2 | 2008 | 2019 |
| <i>Children's Commissioner Act 2013</i> | | |
| section 6, definition public authority , paragraph (c) | constituted under the <i>Local Government Act 2008</i> | |
| <i>Commercial Passenger (Road) Transport Act 1991</i> | | |
| section 3(1), definition road | whole definition | road , see section 266 of the <i>Local Government Act 2019</i> |
| <i>Constitutional Convention (Election) Act 2011</i> | | |
| sections 28(2) and 195(3) | 2008 (<i>all references</i>) | 2019 |
| <i>Consumer Affairs and Fair Trading Act 1990</i> | | |
| section 9(1) | 2008 | 2019 |

Consumer Affairs and Fair Trading (Pawnbrokers and Second-Hand Dealers) Regulations 1998

| | | |
|------------------|------|------|
| Schedule, item 4 | 2008 | 2019 |
|------------------|------|------|

Control of Roads Act 1953

| | | |
|-----------|------|------|
| section 7 | 2008 | 2019 |
|-----------|------|------|

Criminal Code

| | | |
|---------------------------------------|-----------------|-----------------------------|
| section 1, definition owner | local authority | local government council |
|---------------------------------------|-----------------|-----------------------------|

| | | |
|------------------|---|---|
| section 79(7)(s) | section 3 of the <i>Local Government Act 2018</i> | section 7 of the <i>Local Government Act 2019</i> |
|------------------|---|---|

| | | |
|------------------|---|--|
| section 79(7)(t) | mentioned in section 42 of the <i>Local Government Act 2008</i> | defined in section 7 of the <i>Local Government Act 2019</i> |
|------------------|---|--|

Crown Lands Act 1992

| | | |
|-------------------------------------|--------------------------|------|
| sections 24(4), 31, 74 and 75(2) | 2008 (all references) | 2019 |
|-------------------------------------|--------------------------|------|

Dangerous Goods Regulations 1985

| | | |
|--|------|------|
| regulation 138(4), definition municipality | 2008 | 2019 |
|--|------|------|

Darwin City Council By-laws 1994

| | | |
|------------------|--|---|
| by-law 121(2)(d) | within the meaning of the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |
|------------------|--|---|

| | | |
|---|------------------|--|
| by-law 184(1), definition authorised person | whole definition | authorised person , see section 7 of the <i>Local Government Act 2019</i> . |
|---|------------------|--|

Darwin Waterfront Corporation Act 2006

| | | |
|---------------|------|------|
| section 15(5) | 2008 | 2019 |
|---------------|------|------|

| | | |
|--|---|---|
| section 52(3), definition relevant interest rate | section 162(4) of the <i>Local Government Act 2008</i> | section 242(4) of the <i>Local Government Act 2019</i> |
|--|---|---|

Darwin Waterfront Corporation By-laws 2010

| | | |
|--|---|--|
| by-law 3, definition council , paragraph (b) | 2008 | 2019 |
| by-law 89(3)(a) | within the meaning of the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |

Electoral Act 2004

| | | |
|--|------|------|
| sections 19(3)(a)(ii) and 140(2)(g)(ii) | 2008 | 2019 |
|--|------|------|

Emergency Management Act 2013

| | | |
|---|------------------|--|
| section 8, definitions local government area and local government council | whole definition | |
|---|------------------|--|

Fines and Penalties (Recovery) Regulations 2001

| | | |
|------------|--------------------------------------|--------------------------------------|
| Schedule 1 | <i>Local Government Act 2008</i> | <i>Local Government Act 2019</i> |
|------------|--------------------------------------|--------------------------------------|

Firearms Act 1997

| | | |
|---|------------------|--|
| section 78(1), definition local government area | whole definition | |
|---|------------------|--|

Housing Act 1982

| | | |
|---------------|---|---|
| section 32(1) | 2008 | 2019 |
| | section 141 of the <i>Local Government Act 2008</i> | section 215 of the <i>Local Government Act 2019</i> |

Interpretation Act 1978

| | | |
|--|---|---|
| section 17, definitions local government area and local government council | section 3 of the <i>Local Government Act 2008</i> | section 7 of the <i>Local Government Act 2019</i> |
|--|---|---|

Jabiru Town Development (Control of Dogs) By-laws 1992

| | | |
|---|--|---|
| by-law 3(1), definition authorised person | section 82 of the <i>Local Government Act 2008</i> | section 179 of the <i>Local Government Act 2019</i> |
|---|--|---|

Juries Regulations 1983

| | | |
|--|---|--|
| regulation 5(2), definition municipality | section 8 of the <i>Local Government Act 2008</i> | section 15 of the <i>Local Government Act 2019</i> |
|--|---|--|

Katherine Town Council By-laws 1998

| | | |
|------------|------|------|
| Schedule 2 | 2008 | 2019 |
|------------|------|------|

Kava Management Act 1998

| | | |
|--|--|---|
| section 53, definition area , paragraph (a) | within the meaning of the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |
|--|--|---|

| | | |
|--|------------------|--|
| section 53, definitions regional council and shire council | whole definition | |
|--|------------------|--|

| | | |
|------------|--|---|
| section 53 | | council means a council for a Territory region or a shire under the <i>Local Government Act 2019</i> . |
|------------|--|---|

| | | |
|----------------------------|---------------------------|--|
| sections 54(1A) and 58D(1) | shire council or regional | |
|----------------------------|---------------------------|--|

Lands Acquisition Act 1978

| | | |
|--------------------------------|------|------|
| Schedule 2, clause 8(a)(ii) | 2008 | 2019 |
|--------------------------------|------|------|

Law of Property Act 2000

| | | |
|--|------|------|
| Schedule 2, Covenants, item 3, column 2 | 2008 | 2019 |
|--|------|------|

Liquor Act 1978

| | | |
|--|--|---|
| section 4(1), definition municipality | within the meaning ascribed to that term in the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |
|--|--|---|

| | | |
|--|--|--|
| section 4(1), definition region | local government area constituted as a region under the <i>Local Government Act 2008</i> | Territory region as defined in section 7 of the <i>Local Government Act 2019</i> |
|--|--|--|

| | | |
|--|---|---|
| section 4(1), definition shire | local government area constituted as a shire under the <i>Local Government Act 2008</i> | shire as defined in section 7 of the <i>Local Government Act 2019</i> |
| section 6(2)(g)(i) | 2008 | 2019 |
| Litter Act 1972 | | |
| section 3, definition CEO | see section 3 <i>Local Government Act 2008</i> | see section 7 of the <i>Local Government Act 2019</i> |
| Local Government Grants Commission Act 1986 | | |
| section 5(2)(a) | municipal councils (within the meaning of the <i>Local Government Act 2008</i>) | councils for municipalities (as defined in section 7 of the <i>Local Government Act 2019</i>) |
| section 5(2)(b) | shire councils or regional councils (within the meaning of the <i>Local Government Act 2008</i>) | councils for shires or regions (as defined in section 7 of the <i>Local Government Act 2019</i>) |
| Mataranka Community Government Council (Control of Dogs) By-laws 1992 | | |
| Schedule 2 | 2008 | 2019 |
| Mineral Titles Act 2010 | | |
| section 8, definition Aboriginal community living area | section 3 of the <i>Local Government Act 2008</i> | section 7 of the <i>Local Government Act 2019</i> |
| section 88(c) | 2008 | 2019 |
| Motor Vehicles Act 1949 | | |
| section 5(1), definition public street , paragraph (b) | 2008 | 2019 |
| Nhulunbuy (Animal Control) By-laws 1998 | | |

| | | |
|-------------------|--|--|
| by-law 2(1), note | <i>by section 270(1)(b) of the Local Government Act 2008 (Act No. 12 of 2008).</i> | by: (a) <i>section 270(1)(b) of the Local Government Act 2008 (Act No. 12 of 2008); and</i> (b) <i>section 346(1)(b) of the Local Government Act 2019.</i> |
|-------------------|--|--|

| | | |
|---|--|---|
| by-law 4(1), definition authorised person | within the meaning of the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |
|---|--|---|

Northern Territory Civil and Administrative Tribunal Regulations 2014

| | | |
|------------------|----------------------------------|----------------------------------|
| Schedule, Part 2 | <i>Local Government Act 2008</i> | <i>Local Government Act 2019</i> |
|------------------|----------------------------------|----------------------------------|

Northern Territory Rates Act 1971

| | | |
|---|---|---|
| section 3, definitions Aboriginal community living area, Aboriginal community living area association and mining tenement | section 3 of the <i>Local Government Act 2008</i> | section 7 of the <i>Local Government Act 2019</i> |
|---|---|---|

Pine Creek (Control of Dogs) By-laws 1992

| | | |
|------------|-------------|-------------|
| Schedule 2 | <i>2008</i> | <i>2019</i> |
|------------|-------------|-------------|

Payroll Tax Act 2009

| | | |
|--|-------------|-------------|
| section 3, definition local governing body, paragraph (a) | <i>2008</i> | <i>2019</i> |
|--|-------------|-------------|

Planning Act 1999

| | | |
|--|--|------------------------------|
| section 3(1), definition consolidation, paragraph (d) | local authority under section 187(3) of the <i>Local Government Act 2008</i> | local government council |
| | the local authority | the local government council |
| section 3(1), definition council area | <i>2008</i> | <i>2019</i> |

| | | |
|--|--|--|
| section 3(1), definition development , paragraph (c)(iv)(A) | local authority | local government council |
| section 3(1), definitions local authority and Local Government Association | whole definition | |
| section 3(1), definitions service authority and statutory corporation | local authority | local government council |
| section 3(1) | | prescribed corporation means the corporation prescribed under section 9 of the <i>Local Government Act 2019</i> . |
| section 5(2)(a)(ii) | <i>2008</i> | <i>2019</i> |
| section 5(2)(a)(iii) | local authority under section 187(3) of the <i>Local Government Act 2008</i> | local government council |
| section 19, heading | local authority | local government council |
| section 19(1) and (2) | local authority | local government council |
| section 30H, heading | local authority | local government council |
| sections 30H(1), 30X(2)(b) and (4), 30Y(2)(b) and(4), and 30Z(2)(b)and (4) | local authority (<i>all references</i>) | local government council |
| section 48, heading | local authority | local government council |
| sections 48(1), 49(3), 50(2), 53A(2)(b) and (4), 53B(2)(b) and (4), 53C(1)(b) and (3) and 60(1)(e) | local authority (<i>all references</i>) | local government council |

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| section 64(3) | <i>2008</i> | <i>2019</i> |
| section 68(2) | local authority (<i>all references</i>) | local government council |
| section 69(2) | local authority | local government council |
| | local authority's | local government council's |
| section 72(a)(ii) | local authority – an authorised deposit account within the meaning of the <i>Local Government Act 2008</i> | local government council – an authorised deposit account as defined in section 7 of the <i>Local Government Act 2019</i> |
| section 73(2)(b)(ii) | local authority | local government council |
| | <i>2008</i> | <i>2019</i> |
| sections 74(b) and 83(3) | local authority | local government council |
| section 81F(1)(e) and (3) | Local Government Association | prescribed corporation |
| section 81H(1)(c) | Local Government Association | prescribed corporation |
| | the Association | the corporation |
| section 89(2) to (5) | local authority | local government council |
| section 91, heading | local authority | local government council |
| sections 91(2) to (4) and 92(2) | local authority (<i>all references</i>) | local government council |
| section 98, heading | local authority | local government council |
| section 98(1) | <i>local authority</i> | <i>local government council</i> |

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| | local authority | local government council |
| sections 98(2) to (4), 100(3)(a) and (b), 107(e)(i) and 117(1AA) to (3) | local authority (<i>all references</i>) | local government council |
| <i>Ports Management Act 2015</i> | | |
| section 149(5), definition <i>local government rates</i> | 2008 | 2019 |
| <i>Pounds Act 1930</i> | | |
| section 5(b) | local authority | local government council |
| <i>Power Generation Corporation Act 2014</i> | | |
| section 13(4), definition <i>local government rates</i> | 2008 | 2019 |
| <i>Power Retail Corporation Act 2014</i> | | |
| section 13(4), definition <i>local government rates</i> | 2008 | 2019 |
| <i>Special Purposes Leases Act 1953</i> | | |
| section 3, definition <i>municipality</i> | 2008 | 2019 |
| <i>Summary Offences Act 1923</i> | | |
| section 75A(1) | within the meaning of the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |
| <i>Tenant Creek (Control of Dogs) By-laws 1992</i> | | |
| Schedule, Forms 1 to 7 | 2008 | 2019 |
| <i>Timber Creek Community Government Council By-laws 1992</i> | | |
| Schedule 2 | 2008 | 2019 |

Traffic Act 1987

| | | |
|---|------|------|
| section 3(1), definition public street , paragraph (a) | 2008 | 2019 |
|---|------|------|

Traffic Regulations 1999

| | | |
|------------------|---|--|
| regulation 52(1) | within the meaning of the <i>Local Government Act 2008</i> | as defined in section 7 of the <i>Local Government Act 2019</i> |
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Unit Title Schemes Act 2009

| | | |
|------------------------|------|------|
| section 106(1) and (2) | 2008 | 2019 |
|------------------------|------|------|

Unit Titles Act 1975

| | | |
|-------------|------|------|
| section 108 | 2008 | 2019 |
|-------------|------|------|

Volatile Substance Abuse Prevention Act 2005

| | | |
|--|-----------------|--|
| section 42(1), definition community council , paragraph (a) | whole paragraph | (a) a council for a Territory region or a shire under the <i>Local Government Act 2019</i> ; or |
|--|-----------------|--|

Volatile Substance Abuse Prevention Regulations 2006

| | | |
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| regulation 3, definition local authority | section 53B of the <i>Local Government Act 2008</i> | section 74 of the <i>Local Government Act 2019</i> |
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| regulation 3, definition local board | whole definition | |
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| | | |
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| regulation 8(2) | or a local board or local board | |
|-----------------|--|--|

Water Act 1992

| | | |
|--|------|------|
| section 4(1), definition public authority , paragraph (b) | 2008 | 2019 |
|--|------|------|

Work Health and Safety (National Uniform Legislation) Regulations 2011

regulation 5, definition
local authority

local authority for the
local authority area

local government
council for the local
government council
area
