

Frequently asked questions - draft Local Government Bill

Will the new Act mean that councils have to have new elections?

No, the next general elections are scheduled for August 2021 and this will not change.

What will be done to strengthen local decision making?

A council with local authorities will be required to seek advice and recommendations from its local authorities in relation to the following:

- the council's budget;
- the council's priorities for expenditure;
- the council's service delivery;
- the council's regional plans;
- the council's strategic directions;
- the council's funding; and
- cemeteries and cemetery plans for the cemeteries in the local government area.

A council will also ensure that its strategies and plans are informed by the vision and priorities of the local authorities.

In addition, a council will work with local authorities to create strong relationships between council members, local residents and local organisations.

Who will decide what the ward boundaries are for councils?

Reviews about whether or not a council should have wards and the boundaries of such wards will be made by an independent panel consisting of the Chief Executive Officer of the Local Government Association of the Northern Territory (LGANT), the Electoral Commissioner, the Surveyor-General and a person appointed by the Minister

Who can be a council member?

For a person to be eligible for election or appointment as a member of a council, they must be enrolled as an elector in respect of a place of residence within the council area and their principal place of residence must be within the council's area.

A person will be disqualified from being a council member if they:

- hold a judicial office (other than justice of peace);
- are bankrupt;
- have been sentenced to a term of imprisonment (which has not expired) of 12 months or more;
- are a staff member of the council;

- are a staff member of the local government subsidiary of which the council is a constituent council of the local government subsidiary;
- are indebted to the council and fail to discharge the debt within 6 months after the debt becomes due and payable in accordance with the regulations;
- are certified as mentally unfit to carry put the functions of a member;
- are disqualified from managing a corporation under the Corporations Act 2001 (Cth) or the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);
- are disqualified under the Northern Territory's *Associations Act 2003* from being an officer of an incorporated association;
- are a member of the Federal House of Representatives or Senate;
- are determined by NTCAT to be unfit to be a member; or
- are incapable of holding a local government office under section 89(3) of the *Criminal Code Act 1983* due to a finding of guilt for corrupt practices.

A resident of a council will be able to object to their member being in office, if the member has been convicted of an offence that could make the member unfit to remain in office. These proceedings will go through a formal process at the Northern Territory Civil and Administrative Tribunal (NTCAT), rather than through the Minister. NTCAT can make a decision to remove the member and impose a time period of disqualification.

As a council member, what interests must I declare?

In addition to declaring conflicts of interest, a council member will be required to complete an annual return of interests. The return will include matters such as properties owned, businesses owned and employers.

A council member must submit an annual return of interests to the Council CEO:

- within 60 days of election to council; or
- by no later than 30 September each year unless the member submitted an annual return after 31 March.

A council member must also notify the council CEO when they receive a gift or benefit from a person.

What are the new donation disclosure requirements?

A candidate for the position of mayor or president will be required to give the Northern Territory Electoral Commission details of the donations they receive in relation to their electoral campaign. This will only apply where the mayor or president is elected or voted in by the public, not where they are appointed or chosen at the first council meeting.

Will there be any change to the process for code of conduct complaints?

Yes, a complaint of breach of code of conduct must be made within 4 months after the date of the alleged breach.

Complaints of breach of code of conduct by a council member will go to the council in the first instance, to be dealt with internally. The council will seek to resolve the matter according to council policy within 90 days. The council may:

- take no action;
- reprimand a person; or
- recommend that a person attend training, mediation or counselling.

A party to the complaint can appeal a decision of council to the Local Government Association of the Northern Territory (LGANT). In addition, if the council does not make a decision within 90 days after receiving the complaint, a party to the complaint can appeal to LGANT.

LGANT will have a panel constituted by two representatives of LGANT and one from the Department of Local Government, Housing and Community Development. The LGANT panel may, within 90 days of receiving the complaint:

- take no action;
- reprimand a person;
- recommend a person attend training, mediation or counselling; and
- make any other recommendation the LGANT panel considers appropriate.

A party to the complaint can appeal a decision of the LGANT panel to the Northern Territory Civil and Administrative Tribunal (NTCAT). In addition, if the LGANT panel does not make a decision within 90 days after receiving the complaint, a party to the complaint can appeal to NTCAT. Furthermore, a party to the complaint can complain to NTCAT if the LGANT panel's recommendations are not followed.

NTCAT can make any order it deems fit for an appeal decision. However, if a party to a complaint brings an application to NTCAT where the LGANT panel's recommendations have not been followed, NTCAT can:

- order that the complainant, respondent or any other person attend training, mediation or counselling by a specified date;
- if NTCAT finds the respondent contravened the code of conduct – order that the respondent not subsequently contravene the code of conduct; (this creates an offence); and
- make any other order NTCAT considers appropriate.

Will the code of conduct for each council remain the same?

The new Act will prescribe a code of conduct that applies to elected members of all councils. This code cannot be changed by councils. The prescribed code will be similar to the existing code in schedule 2 of the current Act.

Are there any changes to the exemption from Council rates?

Yes, a public benevolent institution or charity will have to be registered with the Australian Charities and Not-for-profits Commission for land it occupies for a non-commercial purpose to be exempt from rates. The 'non-commercial purpose' exemption for land used

by a public benevolent institution or charity will not include land used as residential accommodation by staff employed or contracted by the public benevolent institution or charity.

In addition, Crown land will not be rateable except where it has been leased or is used to provide public housing.

What are the eligibility criteria for a council CEO?

A person will not be eligible to be a council CEO if they are:

- disqualified from managing a corporation under the Corporations Act 2001 (Cth) or the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);
- disqualified under the Northern Territory's *Associations Act 2003* from being an officer of an incorporated association; or
- bankrupt.

What is the role of a finance controller?

A financial controller will be able to be appointed for a local government council if the council is not performing its financial responsibilities appropriately or not complying with the Act. A financial controller will be responsible for implementing financial controls, including authorising all payments.

What changes have been made to the offence of misleading information?

Currently, the offence for making a misleading representation is restricted to where a person makes the misleading representation to a council, local board, council committee, or an officer or staff member of a council to obtain some advantage for him/herself or another or to cause detriment to another.

Under the new Act, it will be offence for a person to knowingly provide misleading information to the following persons when they are acting in their official capacity:

- a member of an audit committee, council, council committee or local authority;
- staff member of a council or local government subsidiary;
- council CEO or chief executive of a local government subsidiary;
- an inspector appointed under the Act;
- an investigator or official manager;
- an authorised officer or;
- finance controller.

The maximum penalty for providing misleading information is 200 penalty units (equivalent to \$31,000 as at the date of publishing this paper) or 2 years imprisonment.

It will be an offence for a person to knowingly provide a document which contains misleading information to the persons mentioned above when they are acting in their official capacity, unless the person draws attention to the misleading aspect of the

document and to the extent to which the person can reasonably do so, give information necessary to remedy the misleading aspect of the document. The penalty for providing a document which contains misleading information is 400 penalty units (equivalent to \$62,000 as at the date of publishing this paper) or 2 years imprisonment.

The concept of misleading includes any omissions and misinformation.

When is the closing date to make a submission on the draft Bill?

18 July 2019.