

CONSULTATION PAPER:

Proposed content of New Local Government Legislation

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Introduction

The current *Local Government Act* (the Act) has been in place for a number of years and the Department of Local Government and Community Services (DLGCS) is conducting a comprehensive review of local government legislation.

The culmination of the review will be new and improved legislation for local government.

The purpose of this consultation paper is to inform stakeholders of the review's progress and to invite comment on the proposed content of the new legislation. This paper is written in the form that the "new legislation will", but the actual final policy will be dependent on submissions received and government's decision. Drafting of the legislation is anticipated to commence in late 2016.

While the effect of many parts of the current legislation will be retained, this paper highlights the intended differences which would be encompassed in the new legislation.

All comments, including further proposals for change, are welcome and encouraged. Please see information on how to have your say at page 19 below.

Background

The Act commenced in 2008, bringing local government reforms across the Territory into effect. As the reformed system of local government has developed over recent years, including the introduction of local authorities, the Act has provided a robust regulatory environment. However, local government councils, DLGCS and others have identified areas where the legislation could be strengthened to work effectively for the benefit of Territorians and the sector.

Consultation for the introduction of local authorities involved Territory-wide community consultation with the results fed through to a working group. The working group had extensive stakeholder representation, including representatives from all of the Land Councils.

In late 2014, DLGCS announced a wholesale review of the Act. Consultation continues to be a major focus for this review. Submissions were sought from all stakeholders, including the general public, by April 2015. All sorts of submission were received – from informal phone conversations to formal written submissions. Apart from submissions from individuals, submissions were received from:

- Central Desert Regional Council
- City of Darwin
- Katherine Town Council
- Local Government Accounting Advisory Committee (LGAAC)
- Local Government (Administration and Legislation) Advisory Committee
- Local Government Association of the Northern Territory (LGANT)
- MacDonnell Regional Council
- Northern Territory Electoral Commission
- Victoria Daly Regional Council
- West Arnhem Regional Council

The Local Government Working Party (LGWP) was formed to consider topics identified through the submissions and to make recommendations to DLGCS and the Minister regarding the contents of a new Act. The LGWP had representation from LGANT, regional and municipal councils and DLGCS staff with responsibilities for local government. The LGWP also consulted with the Northern Territory Electoral Commission regarding the electoral provisions in the Act and the *Local Government (Electoral) Regulations*.

The LGWP met four times from mid-2015 until early 2016. In addition, late submissions were consistently encouraged. Issues raised by late submissions were considered by the LGWP right up until early 2016. Any further submissions are still welcome (refer to 'How to have your say' at page 19 below).

DLGCS is largely in agreement with the LGWP's recommendations (which can be found at Attachment A). The LGWP's recommendations form the bulk of the intended changes set out in this consultation paper (in many cases the wording of the intended change is practically the same as the LGWP's recommendation). Where an intended change is not consistent with a recommendation of the LGWP, this is identified.

DLGCS also consulted with, and received recommendations from, LGAAC regarding the content of new *Local Government (Accounting) Regulations*. LGAAC's recommendations can be found at Appendix B. DLGCS agrees with many of LGAAC's recommendations but where an intended change is not consistent with a recommendation of LGAAC, this is also identified.

It should be noted that where proposed changes would require agreement or negotiation with other Agencies, or other Ministerial portfolios, the positions set forward in this paper are subject to such agreement.

Readers should be aware that this paper is concerned with informing stakeholders of intended policy changes and giving everybody an opportunity to comment on the intended policy. Ultimately, the precise wording in the new Act will be a matter for the legislative drafters.

For ease of reference, the intended policy differences from the current regime are set out in accordance with where the relevant provisions currently appear in the Act or Regulations.

Local Government Act

Chapter 1: Preliminary

Some definitions will change. Intended changes related to definitions are discussed under chapters where the affected provisions sit.

Chapter 2: System of local government

Constitutive powers

While the current Act allows for creation of a new council, there is no provision for a Manager to be appointed prior to elections being held. A Manager is needed to organise elections and open bank accounts to get a new council started. Without a manager to start it off, a new council would be unworkable.

The new legislation will provide that if a new council is created, the Minister must call a general election for the council within 12 months of the gazettal creating a council. The

Minister must also appoint a Manager to manage the affairs of the council until council members are elected. The Manager will have full power to transact any business of the council and do anything the council can do. The Manager will be able to get the council set up with staff, bank accounts, offices and other necessities to enable elected members to take control of a functioning council. This accords with the recommendation of the LGWP (topic 11.5).

Chapter 3: Planning at the local level

Representation reviews

Currently, a council must review its constitutional arrangements and whether they provide the most effective possible representation for the area, including ward boundaries, at least once in its term.

In line with the recommendation of the LGWP (topic 9.1), the new legislation will provide that representation reviews will be conducted by the Northern Territory Electoral Commission. Final determinations will be made by a panel that includes a representative of LGANT, the Electoral Commissioner (as chair and having a casting vote), the Surveyor-General, and the Auditor-General. The issues for the panel to consider (such as population, geographic and social factors) will be set out within the legislation.

Core services

Currently there are no core services gazetted by the Minister that regional or shire councils must consider when adopting or renewing their regional or shire plans. Submissions are sought as to whether it would be beneficial for there to be a prescribed list of core services for all councils.

Chapter 4: Council and its members

Conducting commercial business

Most other Australian jurisdictions either require Ministerial approval before a council can form or participate in a corporation, partnership or other trading body, or require Ministerial approval for expenditure on such activities over a certain amount.

The new legislation will provide that Ministerial approval will be required before a council can form or participate in a corporation, partnership or other trading body. This accords with the recommendation of the LGWP (topic 2.1).

Local government subsidiaries

Currently, it is optional for the constitution of a local government subsidiary to provide that its liabilities are guaranteed by the constituent council or councils. Under the new legislation this will be a mandatory requirement. This accords with the recommendation of the LGWP (topic 2.3). Councils are expected to be in control of, and take responsibility for, their subsidiaries.

Delegation by council

As recommended by the LGWP (topic 2.4), the new legislation will make it clear that the power to adopt or amend a budget cannot be delegated by a council.

The legislation will also provide that the power to enter into a transaction that is not of an arm's length nature cannot be delegated. A transaction that was not on commercial terms would not be of an arm's length nature. For example, if a council sold a good or service at significantly less than market value, or provided payment terms of one year for a good or service where the payment terms would usually be for one month, these transactions would not generally be of an arm's length nature. Entering into such a transaction would require a council resolution and could not be decided by council staff.

Professional development of members

As recommended by the LGWP (topic 8.6), the legislation will provide that councils must have a professional development policy for members.

In line with the recommendation of the LGWP (topic 8.5), council members will complete specified training after each general election. For a member who is elected through a by-election, the training will be undertaken within 12 months of election. The training would be for up to two days and could cover topics such as: roles and responsibilities of elected members; relationships with other members, CEO and council staff; council finances and budgets; conflicts of interest; effective meetings; and other relevant subjects. Recognition of prior learning (education or work experience) will be given.

Resignation of members

Currently, a council member may only give up to 14 days' notice of resignation. This can put pressure on a council to arrange a by-election in a short space of time.

The new legislation will provide that a council member may give up to three months' notice when resigning. A by-election may be called within the period of notice, provided the polling day is after the notice period expires. This accords with the LGWP recommendation (topic 8.7).

Disqualification

Currently, a person can be disqualified from being a council member if they fail to discharge a debt to the council for rates or surcharges within six months of the debt being due and payable. It is not clear what proof regarding the debt is required.

As recommended by the LGWP (topic 8.3), the new legislation will provide that disqualification for having an outstanding debt due and payable to council for six months is not triggered unless the debt is evidenced by a court order, i.e. a judgment debt and the person cannot produce a receipt showing that the amount has been paid. This will apply for any type of debt to council (not just rates and surcharges).

A person will be disqualified from being a council member if they are disqualified from managing a corporation under the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Currently, if a council member is convicted of an offence and is sentenced to a term of imprisonment for one year or more, the member is automatically disqualified under section 37(1)(c) of the Act. If a member is convicted of an offence but not sentenced to a term of imprisonment for one year or more, a decision to remove the member because the conviction makes that member unfit for office can be made by the Minister.

In other Australian jurisdictions removal from office due to conviction for an offence can only occur if:

- an offence specified in the Act has been committed; or
- a court or tribunal orders the removal from office.

The LGWP recommended that where a member is convicted of an offence and is not automatically disqualified, a decision about whether the conviction makes that member unfit for office should be made by NTCAT (topic 8.8). However, this could create practical difficulties in a situation where a member is imprisoned and a council has to wait a number of months for an NTCAT determination before finding out if a by-election is required. Constituents have a right to be represented and deserve a representative that is free to perform his or her role.

It is intended that if a member is convicted of an offence and serves any term of imprisonment, that person will be disqualified from being a member for five years after they are released.

However, if a member is convicted of an offence and does not serve any term of imprisonment (for example, the member is given a suspended sentence), a decision about whether the conviction makes that member unfit for office may be made by NTCAT. If NTCAT dismisses a member it will have the ability to disqualify that person from being a council member for up to five years.

In addition, where a member is convicted of an offence, the member must notify the council CEO of the conviction. If a member fails to notify the CEO of the conviction, the member commits an offence. The CEO must notify DLGCS of the member's conviction.

Casual vacancies

The new legislation will provide that if a casual vacancy occurs within 18 months prior to the next general election, a council will have the option of holding a by-election or co-opting a person to fill the vacancy. In the event that a casual vacancy occurs within six months of the next general election, a council will have the above options as well as the option to not fill the vacancy.

Chapter 5: Local authorities, local boards and council committees

Local authority appointments and quorums

The new legislation will provide that a council must appoint at least one elected member to a local authority. The member(s) for the ward in which the local authority is located and the principal member will not automatically be members of the local authority. A quorum will be the majority of appointed members. (See LGWP recommendation at topic 7.2.)

Local boards

The new legislation will provide that any council may have a local board. (See LGWP recommendation at topic 7.3.)

This differs from the current provisions which exclude regional councils from having local boards.

Chapter 6: Meetings

First ordinary meeting of a council

The new legislation will provide that after a general election, a council meeting must be held within 21 days. This aligns with the current meeting postponement provision and provides more time than the current 14 day limit. (See LGWP recommendation at topic 3.1.)

Notice of council meetings

The new legislation will provide that a notice convening an ordinary council meeting (including the agenda and relevant business papers) must be published on the council's website and be accessible at the council's public office at least two full business days before the meeting. (See LGWP recommendation at topic 3.4.)

Currently, a notice convening an ordinary meeting must be given to members at least three business days before the date of the meeting, while it must only be accessible on the council's website a 'reasonable time' before the meeting. 'Reasonable time' is not defined. In addition, the current Act requires the notice must be posted on a notice board at the council's public office but there is no specification as to when.

Postponement of meetings

As recommended by the LGWP (topic 11.1), the new legislation will provide that if a quorum is not present for a meeting of a council, council committee, local board or local authority within 30 minutes after the scheduled start time, the meeting may be postponed to a time later that day by:

1. the Chair;
2. if the Chair is not present, the majority of members present; or
3. if no members are present, the CEO or someone authorised by the CEO.

Reasonable efforts must be made to notify all members of the new meeting time. If a meeting is not held later that day, existing requirements will apply and the CEO is responsible for postponing the meeting to a time within the next 21 days.

This will provide clarity and more flexibility than is currently available.

Confidential business

In line with the recommendation of the LGWP (topic 3.5), the new legislation will provide that if a council closes a portion of a meeting to discuss confidential business, the agenda for that meeting must identify the type of matter that is to be discussed in the closed portion of the meeting. Publicly available minutes for that meeting must specify the type of confidential business discussed and which particular section of the legislation was relied upon to keep the matter confidential. Minutes must be kept in respect of the confidential business but the confidential portion of the minutes is not to be publicly available.

Not all matters kept confidential must remain confidential forever. At least once per year councils will review items previously declared confidential, and decide, according to council policy, whether to release the information included in the confidential business section of meetings.

Chapter 7: Rights and obligations of members

Council member allowances

The new legislation will provide that council members' allowances are to be set by a remuneration tribunal. (See LGWP recommendation at topic 8.1.)

Conflict of interest

In accordance with the LGWP recommendations regarding conflicts of interest and related matters (topics 1.1-1.6), the legislation will require the CEO to keep a register of council members' interests. Members will be required to complete an annual return. The register must be available for inspection by the public but will not have to be on a council's website.

A separate register of relevant gifts and benefits must be kept and each member will be responsible for ensuring the CEO is informed as soon as practicable after a gift or benefit is received.

To assist members with this new requirement, a council must have a policy on gifts and benefits that, among other matters, differentiates between what is given to a member for the council and what is given to a member as a gift or benefit to that member. The legislation will include the parameters of that policy to give councils some guidance.

Responsibility for declaring a conflict of interest during a meeting or on other relevant occasions will remain with the individual member.

Where a member is required to leave a meeting due to a conflict of interest, the member must leave the meeting without any comment on the matter in which they have a conflict.

The following categories of interest will be used to determine what interests should be declared by members of councils, local authorities, council committees or local boards:

Direct interest – occurs when the member is likely to be directly affected if the matter is decided in a particular way.

Example: a company controlled by the member is tendering for a contract being discussed by council.

Indirect interest by close association – occurs if an associate of the member has a direct or indirect interest, or a resident of the member's household has a direct interest.

Example: the member's sibling is suing council and council is considering whether to settle the matter.

Example: a resident of the member's household is tendering for a contract being discussed by council.

Indirect financial interest – occurs if the member is likely to receive a benefit or incur a loss because another person has an interest.

Example: the member has shares worth \$5 000 in a company that is tendering for a contract being discussed by council.

Indirect interest because of conflicting duties – occurs if the member is a director, partner, agent, trustee or employee of a person or entity (including a non-profit) that has a direct interest.

Example: the member is a director of a non-profit entity that is seeking a sponsorship or donation being discussed by council.

Example: the member is a director of a non-profit entity that is tendering for a contract being discussed by council.

Indirect interest because of a gift – occurs if the member received a gift of more than trivial or nominal value in the last three years from a person with a direct interest.

Example: the member recently received a gift of concert tickets from a local business operator who is negotiating a lease of a property from council.

Currently, a member who fails to disclose an interest may be prosecuted in court and, if found guilty, a penalty may be imposed. The Northern Territory Civil and Administrative Tribunal (NTCAT), as opposed to a court, may declare a council decision resulting from an undeclared interest, void. To avoid the need for dual proceedings, the new legislation will provide that where a court finds that a member has failed to disclose an interest, the court will also be able to declare a decision void.

Code of conduct

The new legislation will prescribe a code of conduct that applies to elected members of all councils without modification. The prescribed code will be substantially the same as the existing code in schedule 2 of the Act. (See LGWP recommendation at topic 4.3.)

Disciplinary proceedings

The Territory is the only jurisdiction that does not provide for a disciplinary panel to make remedial orders such as requiring someone to attend mediation or counselling.

It is common in other jurisdictions for complaints to be heard by a panel established by the peak body for council members. It is also common in other sectors for complaints to be heard by a panel established by a peak body for those professionals, such as a Law Society or Dental Board. The LGWP recommended that LGANT coordinate a panel to deal with code of conduct complaints (topic 4.1).

The new legislation will provide that where a breach of the code of conduct is alleged:

1. Complaints must initially be directed to the relevant council. The council will seek to resolve the matter according to council policy.
2. If the council cannot resolve the matter, the council may refer the matter to LGANT.
3. LGANT will have a panel constituted of representatives of LGANT and the Director of Legislation and Policy from DLGCS. The LGANT panel may:
 - reprimand a person;
 - order a person to attend training, mediation or counselling; and
 - order a person to make an apology.
4. A party to the complaint can appeal a decision of the LGANT panel to NTCAT and NTCAT will be able to make any order that could be made by the LGANT panel. If a member does not comply with an order from the LGANT panel, LGANT can apply to NTCAT to deal with the failure to comply. In determining such an application, NTCAT will be able to make any order that could be made by the LGANT panel and may also order that the

member be suspended or dismissed. If NTCAT dismisses a member it will have the ability to disqualify that person from being a council member for up to five years.

Chapter 8: Elections and polls

In accordance with the LGWP recommendation (topic 9.3), where a candidate is declared ineligible after an election (and was ineligible at the time of the election), NTCAT will have discretion to order that votes be recounted and that a vote for the ineligible candidate be distributed to the candidate next in order of the voter's preferences on the ballot paper.

Please note that intended changes to the *Local Government (Electoral) Regulations* are set out below on page 17.

Chapter 9: Council staff

Remuneration policy

In accordance with the LGWP recommendation (topic 5.3), councils will be required to have a remuneration policy for all staff, including the CEO.

CEO recruitment

As recommended by the LGWP (topic 5.4), the new legislation will set out compulsory due diligence steps that must be taken before a CEO may be appointed, including but not limited to:

- a. written references covering a shortlisted applicant's past three years of work history must be obtained from the applicant's manager or supervisor;
- b. positions must be advertised externally;
- c. qualifications and professional memberships must be verified; and
- d. a criminal history check must be conducted.

Contracts for new CEOs must include a probation period and a review of the CEO's performance must be undertaken before the end of the probation period. A CEO will be set performance criteria for his or her probation period and the review of the CEO must consider his or her performance against those criteria. The review must be undertaken by a panel that includes a person independent from council (unless DLGCS approves an exemption). The independent person on the review panel must be approved by LGANT.

CEO responsibilities

Currently CEOs are required to appoint staff in accordance with a staffing plan. However, there are different understandings of what a staffing plan actually means.

In accordance with the LGWP recommendation (topic 5.3), the requirement to appoint staff in accordance with a staffing plan will no longer be compulsory. Instead, a CEO will be required to keep council expenditure on staff within an approved staffing budget, as well as having to keep other expenditure within an approved non-staffing budget (all other operational and capital expenditure).

The legislation will explicitly require CEOs to ensure that spending does not exceed the budget adopted or amended by council.

Conflict of interest

The legislation will provide that council CEOs and senior staff who report directly to the CEO must complete an annual declaration of interests, using a prescribed form similar to that used by Northern Territory Public Sector CEOs and executives. The current requirement that all staff members (including the CEO) disclose a conflict of interest when it arises will remain. These interests and conflicts must be recorded on a non-public register. (See LGWP recommendation at topic 5.1.)

Chapter 10: Financial management

There are no anticipated changes to the requirements under this chapter. Please note that intended changes to the *Local Government (Accounting) Regulations* are set out below on pages 15-17.

Chapter 11: Rates and charges

Conditional rating

Submissions were received that suggested the removal of conditional rating. The LGWP did not reach a consensus regarding conditional rating, however a significant number of the LGWP members supported the following recommendations (topic 6.4):

- Conditional rating must be removed and all rateable land must be subject to general and special rates; and
- In the event that conditional rating remains, where land is held under a pastoral lease or mining tenement but is used for two or more different purposes, including a commercial activity that is not pastoral or mining, the land is to be rateable rather than conditionally rateable.

While there is no intention to remove or change conditional rating provisions, the legislation will align the definition of 'mining tenement' with titles described in the *Mineral Titles Act*. (See LGWP recommendation at topic 6.1)

Exemptions

The LGWP recommended (topic 6.2) that there not be any exemption from rates for land used for residential purposes by a charity or public benevolent institution. Further consideration will be given to the effect of such a change and whether it should be confined to certain types of housing, for example, staff housing. Submissions are invited on this particular issue.

All rateable land must be rated

In line with the recommendation of the LGWP (topic 6.9), the legislation will make it explicit that a council must rate all rateable land within its area.

Assessment record

Currently a copy of the assessment record must be available for inspection, free of charge, by any member of the public. In dealing with information available to the public, it is important that the principles of both freedom of information and protection of privacy are carefully balanced.

In accordance with the LGWP recommendation (topic 6.6), it is intended that the public will be able to inspect or obtain copies of all or part of the assessment record and councils may charge a fee for the provision of this service. No fee is to be payable for inspecting or obtaining copies of part of the record for land by:

- an owner, occupier or lessee of the land or of adjoining land;
- an agent of an owner, occupier or lessee of the land or of adjoining land; or
- a Northern Territory Government agency.

Councils must redact personal information (name, contact details, postal address, etc.) from any copies of the record inspected or provided unless the person seeking the copy of the record is an owner, occupier or lessee of the land; an agent of an owner, occupier or lessee of the land; or a Northern Territory Government agency. The proposed rules concerning personal information differ slightly from the recommendation of the LGWP and are intended to provide clear direction for council staff.

The requirement for a CEO to suppress a person's name and address on request will be retained.

Chapter 12: Council property

There are no anticipated changes to the requirements under this chapter.

Chapter 13: Regulatory powers

By-laws

The legislation will explicitly provide that by-laws may not operate retrospectively or impose a tax.

Chapter 14: Reporting and public disclosure

Public availability of information

The Act sets out the time that information that must be publically available on council websites. The *Local Government (Accounting) Regulations* require a notice of a successful tender to be published on a council's website but do not give a timeframe.

The legislation will provide that a notice of a successful tender must remain on a council's website for a minimum of three years after the financial year in which the tender was awarded.

Chapter 15: Compliance reviews and investigations

Investigations

Similarly to other Australian jurisdictions, it is intended that inspectors of local government appointed under the Act will have a general power to investigate the administration of the Act. Investigations will not connote a suggestion of wrongdoing.

Commencing proceedings to recover loss

The current Act provides that DLGCS may, if satisfied that a council has suffered a loss as a result of an irregularity and that the loss is recoverable in court, bring an action in the name of the council to recover the loss. The provision has not been used. The new legislation will omit this provision. (See LGWP recommendation at topic 11.2.)

Surcharges

The current Act allows a council to impose a surcharge on a person for the council's loss if DLGCS is satisfied that the council suffered loss as a result of dishonesty or serious illegality by the person. The existing surcharge provision reverses the onus of proof in legal proceedings to recover a loss. The onus of proof should only be reversed where there are compelling public policy reasons for doing so. The provision has not been used.

In accordance with the recommendation of the LGWP (topic 11.3), the new legislation will not have such a provision. Where it is suspected that a council has suffered a loss due to dishonesty or illegality, a court or tribunal must find that the allegation is proved before a person is held liable for a council's loss.

Chapter 16: Inquiries

There are no anticipated changes to this chapter.

Chapter 17: Defaulting councils

Official management

The new legislation will provide that the Minister must make a decision to either reinstate or dismiss the suspended members within 12 months after the council has been placed under official management. Dismissal would then automatically trigger a general election.

Chapter 18: Review and appeal

Administrative review committee

Currently the initial application for review must be made within 14 days of the decision, which is significantly shorter than the equivalent time periods in other Australian jurisdictions. Under the new legislation, the time for making an initial application for a review will be within 28 days of the decision.

Chapter 19: Miscellaneous

Offences

In accordance with the recommendation of the LGWP (topic 10.2), under the new legislation the offence for making a misleading representation will:

- extend to representations made to local authorities;
- extend to representations made to an inspector under the Act; and
- not require an intention to gain an advantage or cause a detriment, but instead require that a written or oral statement is false or misleading in a material particular.

Further, as recommended by the LGWP (topic 10.1), the corruption and 'abuse of office' offences in the *Northern Territory Criminal Code* that apply to public servants will also apply to council staff.

Service of documents

The legislation will clarify that councils may serve notices electronically where the recipient has consented to the particular means of electronic communication. (See LGWP recommendation at topic 6.3.)

Local Government (Accounting) Regulations

Financial administration

To reduce red tape, the new legislation will specify that an accounting and policy manual must include (but is not limited to) the following:

- the council's accounting policies and procedures;
- the council's internal control policies and procedures;
- the council's fraud protection plan;
- a statement of the duties and responsibilities of the CEO and other officers;
- details of all delegations; and
- any other information required in a guideline issued by the Minister.

This is less prescriptive than current regulation 9(2).

Budget and allocation of money

Currently the Regulations provide that a council must not budget for a deficit and that a deficit occurs if overall expenditure for a financial year (disregarding depreciation) exceeds income. LGAAC have recommended that the depreciation exception be extended to all non-cash expenditure.

Even if LGAAC's recommendation is taken up, this may not remove the potential issue where a council receives grant funding at the end of a financial year but does not expend some or all of the funds until the next financial year. The Australian Accounting Standards generally require the funds to be recognised as income in the year they are received. This can create a situation where a council will have a deficit in a year because it expends funds carried forward from the previous year.

In order to address such situations and to broaden the depreciation exception when calculating overall expenditure in a financial year, it is intended to expand the exception to include depreciation, amortisation, asset write downs and the expenditure of carried forward tied grant funding.

It is intended that the restriction under regulation 14 regarding allocation of money will be replaced by a restriction to the effect that a council cannot allocate (commit) money that has not been budgeted for in an adopted or amended budget, unless the expenditure:

- has been approved by council resolution; or
- is within the terms of a grant accepted by council or its delegate (and such spending is reported to council at the earliest opportunity); and

- the budget is adopted or amended at the earliest opportunity.

LGAAC also recommended that another exception should be where the expenditure was within the terms of a commercial contract entered into by council (and such spending is reported to council at the earliest opportunity). A council may resolve to try and enter into a contract and to expend money in the event that the contract is entered into. Expenditure not resolved by council or outside of a budget approved by council should be minimised as far as possible. For those reasons, it is not intended that a 'contract exception' be created.

With the above restrictions in place, the requirement that unbudgeted spending does not exceed 25 per cent of expected budgetary provision will be unnecessary. Accordingly, it is intended that this requirement will be removed.

Annual financial statement

In order to reduce red tape, it is intended that the current requirements for a council's annual financial statement will be replaced and a council's annual financial statement will have to:

- comply with the Australian Accounting Standards;
- include rates collected; and
- state the nature (capital or operating) and amounts of grants and subsidies received and identify the grantors.

Financial reports to council

Currently, the financial report that the CEO must lay before a meeting of council (or a council finance committee) each month requires, among other things, a statement of the debts owed to council and an indication of the age of the debts. There is no requirement that the debts owed **by** council are included in the report. To enhance transparency, it is intended that the monthly report must include the following information about debtors and creditors:

- total debts owed to council (other than rates) categorised by age – 30 days, 60 days and 90 or more days;
- total rates owed to council categorised by financial year (e.g. 2014-15, 2015-16, 2016-17); and
- total debts owed by council categorised by age – 30 days, 60 days and 90 or more days.

Authorised accounts and expenditure

Cheques issued on behalf of council must be signed by at least two people and electronic disbursements from an authorised account of council must be processed by at least two people.

The legislation will provide that the CEO is authorised to sign cheques and process electronic disbursements. The CEO, rather than council, will be responsible authorising other council staff members, or staff members of a subsidiary, to sign cheques and process electronic disbursements. In the event that a staff member of a subsidiary has been authorised by the CEO for this purpose, any cheque signed or electronic disbursement processed by that person must also be signed or processed by the CEO or an authorised member of the council's staff.

The intended changes are similar to the recommendation of the LGWP (topic 11.6) but also allow for a staff member of a subsidiary to assist a council in making payments.

Property

The legislation will explicitly require councils to undertake regular stocktakes of council property, ensuring that all categories of council property are the subject of a stocktake at least once every three years.

Quotations and tenders

LGAAC has recommended that the threshold value of a supply where a council must obtain tenders be increased from over \$100 000 (including GST) to over \$150 000 (excluding GST).

The legislation will provide that where supplies have a value over \$100 000 (including GST) but under \$150 000 (including GST), a public quotation process will be required. Where supplies have a value over \$150 000 (including GST), a council must obtain tenders.

Local Government (Administration) Regulations

Confidential information

As recommended by the LGWP (topic 3.7), classes of confidential information for council meetings will include advice in anticipation of litigation or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Local Government (Electoral) Regulations

Tied candidates

To minimise instances where lots are drawn to decide the outcome of an election, where two candidates remain in the count and have the same number of votes, all preceding counts/transfers will be able to be used to determine which candidate is elected (i.e. the candidate with larger number of votes at last count or transfer is elected, if votes are even at that last count/transfer then the second to last count/transfer can be used, and so on).

Death of a candidate

Currently if any candidate dies before polling day, a vote for the deceased candidate is distributed to the candidate next in order of the voter's preferences on the ballot paper. There is always a possibility that someone may not have stood as a candidate because of the popularity of the deceased candidate who was running, particularly where the deceased candidate was running for the principal member position.

As recommended by the LGWP (topic 9.2), if a principal member candidate dies after nominations are declared and prior to the declaration of results, the election for the principal member will fail and a new election will be held.

Postal voting

In order to maximise opportunities to vote in council elections, it is intended to extend the deadline to receive postal votes by one week, until the second Friday after polling day.

How to have your say

The general public, local government sector and other industry sectors are encouraged to provide written comments on any of the intended content for the new Act. Please provide any comments by 24 June 2016. Comments may be emailed to localgovernment.dlgcs@nt.gov.au.

Should you require further information in relation to this consultation paper, please contact Hugh King, Manager Legislation and Policy Projects by email (hugh.king@nt.gov.au) or telephone (08 8995 5118).

Appendix A – Recommendations of the Local Government Working Party

Introduction

To commence the review of the *Local Government Act* (the Act), in late 2014 the Department of Local Government and Community Services (DLGCS) invited submissions from stakeholders and the general public on changes to the *Local Government Act* to ensure it is working effectively for the benefit of local people and the sector generally. The initial cut-off date for submissions was 30 April 2015 but late submissions have been accepted.

The Local Government Working Party (LGWP) was established with representation from regional and municipal councils, the Local Government Association of the Northern Territory (LGANT) and DLGCS staff with responsibilities for local government.

The LGWP made recommendations to DLGCS and the Minister regarding possible changes to the Act on all the topics it considered. All the recommendations of the LGWP are set out within this document.

Working Party Members¹

Chair: Damien Ryan (President – LGANT; Mayor – Alice Springs Town Council)

Brendan Dowd (CEO – City Of Darwin)

Chris Kendrick (Director Corporate Services – MacDonnell Regional Council)

Tony Tapsell (CEO - LGANT)

David Willing (Executive Director Local Government – DLGCS)

Lee Williams (Director Legislation and Policy – DLGCS)

Nathanael Knapp (Regional Manager, Big Rivers Region – DLGCS)

Hugh King (Manager Legislation and Policy Projects – DLGCS)

Recommendations

Topic 1: Conflict of Interest

1. A register of council members' interests must be kept. This would involve an annual return by members. The register must be available to the public but would not have to be on a council's website.
2. A register of relevant gifts and benefits must be kept that is separate to the register of council members' interests.
3. Councils must have a policy on gifts and benefits that, among other matters, differentiates between what is given to a member for the council and what is given to a member as a gift or benefit to that member. The Act or Regulations must include the parameters of that policy to give councils some guidance.

¹ Some members were represented by proxy at one or more meetings.

4. Responsibility for declaring a conflict of interest during a meeting or on specific occasions must remain with the individual member.
5. Where a member is required to leave a meeting due to a conflict of interest, the member must leave the meeting without making statements or answering questions regarding the matter in which they have a conflict.
6. The following categories of interest must be used to determine what interests should be declared by members of councils, local authorities, council committees or local boards:

Direct interest – occurs when the member is likely to be directly affected if the matter is decided in a particular way.

Example: a company controlled by the member is tendering for a contract being discussed by council.

Indirect interest by close association – occurs if an associate of the member has a direct or indirect interest, or a resident of the member's household has a direct interest.

Example: the member's sibling is suing council and council is considering whether to settle the matter.

Example: a resident of the member's household is tendering for a contract being discussed by council.

Indirect financial interest – occurs if the member is likely to receive a benefit or incur a loss because another person has an interest.

Example: the member has shares worth \$5 000 in a company that is tendering for a contract being discussed by council.

Indirect interest because of conflicting duties – occurs if the member is a director, partner, agent, trustee or employee of a person or entity (including a non-profit) that has a direct interest.

Example: the member is a director of a non-profit entity that is seeking a sponsorship or donation being discussed by council.

Example: the member is a director of a non-profit entity that is tendering for a contract being discussed by council.

Indirect interest because of a gift – occurs if the member received a gift of more than trivial or nominal value in the last 3 years from a person with a direct interest.

Example: the member recently received a gift of 5 boxes of chocolates from a local business operator who is negotiating a lease of a property from council.

Topic 2: Council as a Body Corporate

1. Ministerial approval is required before a council can form or participate in a corporation, partnership or other trading body.
2. Current restrictions on changes to the constitution of a local government subsidiary must be maintained.
3. The constitution of a local government subsidiary must provide that its liabilities are guaranteed by the constituent council or councils.
4. The power to adopt or amend a budget must not be able to be delegated.

5. The Act must ensure that delegation and sub-delegation powers are clear.

Topic 3: Council Meetings

1. The maximum period for holding a meeting after a general election must be extended to 21 days, which aligns with the current meeting postponement provision.
2. Frequency of meetings must remain at a minimum of one in every two months.
3. The rule that a member present at a meeting (including the chair) must exercise his or her vote should not be changed.
4. A notice convening an ordinary council meeting (including the agenda and relevant business papers) must be published on the council's website and be accessible at the council's public office at least two business days before the meeting. For example, the legislation should ensure that for a Tuesday meeting, the papers are required to be accessible on the Friday before the meeting.
5. If a council intends to close a portion of a meeting to discuss confidential business, the agenda for that meeting must identify the type of matter that is to be discussed in the closed portion of the meeting. Publicly available minutes for that meeting must specify the type of confidential business discussed, which particular section of the legislation was relied upon to keep the matter confidential and why it was in the public interest for a portion of the meeting to be closed. Minutes must still be kept in respect of the confidential business but the confidential portion of the minutes is not to be publicly available.
6. There must be a review period, at least once a year, for maintaining the confidentiality of the information included in the confidential business section of meetings in accordance with council policy. For example, contracts and agreements may lose confidentiality over time but information on financial hardship of ratepayers would generally remain confidential.
7. Classes of confidential information must also include advice in anticipation of litigation or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
8. There are not to be motions of no confidence.

Topic 4: Code of Conduct

1. The current disciplinary proceedings must be replaced with the following processes:
 - a. Complaints must initially be directed to the relevant council. The Council would seek to resolve the matter.
 - b. If the Council cannot resolve the matter or wishes not to, the Council can refer the matter to LGANT.
 - c. LGANT would have a panel constituted of representatives of the Department of Local Government and Community Services, The Department of the Attorney-General and LGANT. The LGANT panel may:
 - reprimand a person;
 - order a person to attend training, mediation or counselling (at the council's expense);
 - order a person to make an apology; and/or

- refer the matter to the Department if it is an appropriate matter for an investigation under section 208 of the Act.
- d. If a person does not comply with an order from the LGANT panel, the matter may be referred to NTCAT, which may make any order that could be made by the LGANT panel and may also order that the member be suspended or dismissed.
2. Councils must have a code of conduct complaint resolution policy.
 3. To encourage consistent disciplinary processes and outcomes throughout the Territory, the Act must prescribe a code of conduct that applies to elected members of all councils without modification. The code prescribed should be substantially the same as the existing code in schedule 2 of the Act.

Topic 5: CEO

1. Council CEOs and senior staff who report directly to the CEO must complete an annual declaration of interests, using a prescribed form similar to that used by Northern Territory Public Sector CEOs and executives. The current requirement to disclose conflicts of interest must remain. These interests and conflicts must be recorded on a non-public register.
2. Council CEOs must be required to ensure that spending does not exceed the budget adopted or amended by council. This clarifies current practice.
3. Instead of being required to appoint staff in accordance with a staffing plan, a CEO must be required to keep council expenditure on staff within an approved staffing budget, as well as having to keep other expenditure within an approved non-staffing budget (all other operational and capital expenditure). A council must also be required to have a remuneration policy that covers all council staff.
4. Regulations or guidelines under the Act must set out compulsory due diligence steps that must be undertaken before a CEO can be appointed, including, but not limited to:
 - a. written references covering a shortlisted applicant's past three years of work history must be obtained from the applicant's manager or supervisor;
 - b. positions must be advertised externally;
 - c. qualifications and professional memberships must be verified; and
 - d. a criminal history check must be conducted.
5. Contracts for new CEOs must include a probation period and a review of the CEO's performance must be undertaken before the end of the probation period. A CEO is to be set performance criteria for his or her probation period and the review of the CEO must consider his or her performance against those criteria. The review must be undertaken by a panel that includes a person independent from council (unless the Department approves an exemption). The person independent from council on the review panel must be approved by LGANT.

Topic 6: Rates

1. The definition of 'mining tenement' should be amended to align with the *Mineral Titles Act*.
2. There must not be any exemption from rates for land used for residential purposes by a charity or public benevolent institution. "Non-commercial purpose" in section 144(1)(f) should be clarified and tightened.

3. The Act should expressly clarify that councils may serve notices electronically where the recipient has consented to the particular means of electronic communication.
4. The LGWP did not reach a consensus regarding conditional rating, however the following recommendations were supported by a significant number of the LGWP members:

Conditional rating must be removed and all rateable land must be subject to general and special rates.

In the event that conditional rating remains, where land is held under a pastoral lease or mining tenement but is used for two or more different purposes, including a commercial activity that is not pastoral or mining, the land is to be rateable rather than conditionally rateable.

6. The public must continue to be able to obtain copies of all or part of the assessment record and council may charge a fee for the provision of this service. No fee is to be payable for obtaining copies of part of the record for land by:
 - an owner, occupier or lessee of the land or of adjoining land;
 - an agent of an owner, occupier or lessee of the land or of adjoining land; or
 - a Territory Government agency.

Councils must redact personal information (name, contact details, postal address, etc.) from copies of the record unless:

- the person seeking the copy of the record is an owner, occupier or lessee of the land; an agent of an owner, occupier or lessee of the land; or a Territory Government agency; or
- for any other person, that person makes a written application in the form of a statutory declaration and provides a legitimate reason for wanting the personal information. For example, if an applicant wanted the personal information for marketing reasons, this would generally be legitimate, i.e. not illegal. However, if the applicant did not provide a reason or provided a reason which raised concerns of illegality (e.g. violence against a former partner), council would have the discretion not to release the personal information.

A council's decision not to provide requested personal information would be a reviewable decision.

The ability for someone to require that their name and address is suppressed must be retained.

7. Councils must not have rate increases capped.
8. Councils' existing ability to declare special rates at any time must remain.
9. A Council must rate all rateable land within its area.

Topic 7: Meetings of Local Authorities, local boards and council committees

1. Guideline 8 should be amended so that local authorities only have to meet a minimum of four times per year.
2. Principal members and ward members are not to automatically be local authority members. A council must appoint one or more elected members to the local authority. A quorum is the majority of appointed members.
3. The local board concept should not be limited to municipal or shire councils only and should be extended to regional councils.

4. Recommended amendments to the conflict of interest provisions for council members (annual disclosure of all interests, etc.) are not intended for members of local authorities, local boards or council committees. Otherwise, unnecessary red tape could be created. Accordingly, current conflict/disclosure of interest requirements in the Act must continue to apply to members of local authorities, local boards or council committees. However, the Act must clarify that these are minimum standards. For example, in the event that a council wanted to impose stricter requirements for members of a particular committee, such as requiring full disclosure of interests by the committee members, it would be free to do so.
5. All local authority members should be paid the same allowance for attending meetings, irrespective of any employment they have.

Topic 8: Terms and Conditions of Membership

1. Members' allowances must be set by the Remuneration Tribunal established under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*.
2. A member must be disqualified if they are disqualified from managing a corporation under the *Corporations Act 2001* (Cth).
3. Disqualification for having an outstanding debt due and payable to council for six months is not to be triggered unless the debt is evidenced by a court order, i.e. a judgment debt. This applies for any type of debt to council (not just rates and surcharges).
4. Suspended members must not be paid allowances.
5. Council members must complete specified training after each general election. For a member who is elected through a by-election, the training must be undertaken within 12 months of election. The training could cover topics such as: roles and responsibilities of elected members; relationships with other members, CEO and council staff; council finances and budgets; conflicts of interest; effective meetings; and other relevant topics. Recognition of prior learning (education or work experience) would be given.
6. Councils must have a professional development policy for members.
7. A council member must be able to give up to three months' notice when resigning. A by-election could be called within the period of notice, provided the polling day is after the notice period expires.
8. If a member is convicted of an offence and is not sentenced to a term of imprisonment for one year or more and automatically disqualified under section 37(1)(c), a decision about whether the conviction makes that member unfit for office should be made by the Northern Territory Civil and Administrative Tribunal (NTCAT).

If NTCAT dismisses a member it must have the ability to disqualify that person from being a council member for up to five years.

Topic 9: Elections

1. Representation reviews must be conducted by the Electoral Commission and final determinations made by a panel that includes the Electoral Commissioner (as chair and having a casting vote), the Surveyor-General, the Auditor-General and a representative of LGANT. The issues for the panel to consider must be set out within the Act.
2. An election for a principal member must be deemed to fail if a principal member candidate dies after nominations are declared and prior to the declaration of results.

3. The Northern Territory Civil and Administrative Tribunal must have wide discretionary powers where an elected candidate is declared ineligible after an election. Such powers should be clearly identified in the Act. This would include the ability to order that votes be recounted and that a vote for the ineligible candidate be distributed to the candidate next in order of the voter's preferences on the ballot paper.

Topic 10: Offences

1. The corruption and 'abuse of office' offences in the Northern Territory Criminal Code that apply to public servants must apply to council staff.
2. The offence for making a misleading representation must:
 - extend to representations made to local authorities;
 - extend to representations made to an inspector under the Act; and
 - not require an intention to gain an advantage or cause a detriment, instead require that a written or oral statement is false or misleading in a material particular (or words of equivalent effect).

Topic 11: Miscellaneous

1. If a quorum is not present for a meeting of a council, council committee, local board or local authority within 30 minutes after its scheduled start time, the meeting must be able to be postponed to a time later that day by:
 - a. the Chair;
 - b. if the Chair is not present, the majority of members present; or
 - c. if no members are present, the CEO or someone authorised by the CEO.

Reasonable efforts must be made to notify all members of the new meeting time. If a meeting is not held later that day, existing requirements apply and the CEO is responsible for postponing the meeting to a time within the next 21 days.

2. A council must be wholly responsible for commencing civil proceedings to recover its own loss.
3. The Department must not make a decision, for the purpose of allowing a council to surcharge a person, about whether it is satisfied that a person acted dishonestly or illegally. Where it is suspected that a council has suffered a loss due to dishonesty or illegality, a court or tribunal must find that the allegation is proved before a person is held liable for a council's loss.
4. Territory councils' existing powers to enter property must not be expanded.

As there is a significant risk that a definition could limit the powers in an emergency situation, the word 'emergency' must not be defined.
5. For a new council, the Minister must be able to appoint an official manager who will act as the council until the results of the first election are declared. The polling day for the first election must be set by the Minister and occur within 12 months of the council being established.
6. Authorisations by a council under regulation 20 of the *Local Government (Accounting) Regulations*, to sign cheques or process electronic disbursements on council's behalf, are to be given to the CEO and council staff, not elected members. The CEO is to be automatically authorised and the CEO, rather than council, must be responsible for other authorisations.

Appendix B – Local Government Accounting Advisory Committee Recommendations

Information about LGAAC

The Local Government Accounting Advisory Committee (LGAAC) is established under the Local Government (Accounting) Regulations. Its role is to provide advice to the Minister and DLGCS on:

- contemporary financial management and accounting practices relevant and appropriate to local government; and
- appropriate legislative changes necessary to improve standards of local government financial management and accounting.

Current members of LGAAC are:

- Chair: Chris Kendrick (MacDonnell Regional Council)
- Deputy Chair: Miles Craighead (City of Darwin)
- Tony Tapsell (LGANT)
- Diana Leeder (City of Darwin)
- Greg Arnott (Roper Gulf Regional Council)
- Lawrence Autencio (Merit Partners)
- Matthew Kennon (Merit Partners)
- Muhammad Waqas (West Arnhem Regional Council)
- Meeta Ramkumar (DLGCS)
- Jocelyn Nathanael-Walters (DLGCS)

Recommendations

Membership of LGAAC

LGAAC should have:

- 2 members appointed by the Department who are employees of the Department and responsible for local government;
- 2 members appointed by LGAAC with suitable accounting qualifications;
- 2 members appointed by LGANT;
- 2 members appointed by Local Government Professionals NT Incorporated (formerly Local Government Managers Australia); and
- up to 2 further members appointed by the Minister who work in local government.

In the event that the above recommendation is not accepted, LGAAC's alternative recommendation is that no change should be made to the current membership structure.

LGAAC should appoint its own chair every 12 months, with an existing chair able to be re-appointed.

The appointment process for LGAAC members should reflect the streamlined process used for the Local Government (Administration and Legislation) Advisory Committee and ensure a balanced mix between representatives from regional or shire councils and representatives from municipal councils.

Prescribed reporting formats

Council annual financial statements should:

- comply with the Australian Accounting Standards;
- include rates levied; and
- state the nature (capital or operating) and amounts of grants and subsidies received and identify the grantors.

Other requirements in regulation 15 should be removed. The ABS Local Government Purpose classification information would still be required to be provided to the NT Grants Commission but does not need to be part of the annual financial statement (noting that the accounting standards still require function reporting).

Accounting policy manual

Instead of the list of requirements set out in regulation 9(2), the regulations should require that a council must maintain an accounting and policy manual that conforms to the minimum standards in any relevant Minister's guideline issued by the Department.

Finance committee meetings

Where a council normally meets monthly but its monthly meeting is postponed to another month or cancelled, there should not be any compulsory requirement that the council have a finance committee meet during that month.

Allocation of money

The current requirement that a council must adopt a budget for a financial year by July 31 of the financial year should not be changed.

The restrictions under regulation 14 should be replaced by a restriction to the effect that a council cannot allocate (commit) money that has not been budgeted for in an adopted or amended budget, unless the spending:

- has been approved by council resolution;
- is within the terms of a grant accepted by council or its delegate (and such spending is reported to council at the earliest opportunity); or
- is within the terms of a commercial contract won by council (and such spending is reported to council at the earliest opportunity).

The requirement under regulation 14(2) that unbudgeted spending does not exceed 25 per cent of expected budgetary provision should be removed.

Stocktake of property

Councils should carry out regular stocktakes of council property, ensuring that all categories of council property are the subject of a stocktake at least once every three years.

Tendering and procurement

Tenders should be invited for a contract over \$150 000 (GST exclusive). The regulations should indicate that the amount is GST exclusive.

Written quotations should be required for obtaining supplies at a cost of more than \$10 000 (GST exclusive). The regulations should indicate that the relevant amount is GST exclusive.

Deficit budgeting

Non-cash expenditure should not be included in the calculation of a deficit in regards to budgeting.

General instructions

Matters currently covered by general instructions should be included in the Regulations.